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Kateryna Holovko*, Doctor of Law, Head of the Department of Economic and Legal Research, Black Sea Research Institute of Economy and Innovations (Ukraine).*

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UKRAINIAN LEGISLATION REGULATING INFORMATION SUPPORT OF PUBLIC ADMINISTRATION BODIES: HISTORY, PRESENT, PERSPECTIVES

Blinova H. O., Demchuk A. M., Yatsyshyn M. M.

INTRODUCTION

The scientific theories determining the content of the concept "legislation", its elements and structure are investigated. Information support of public administration bodies is determined. The types of information that are in circulation under information support of public administration bodies are considered. The content and peculiarities of information legislation of Ukraine and its part regulating information provision of public administration bodies are considered. An attempt is made to determine the historical stages of the formation of legislation that regulates the information provision of public administration bodies. The system of legislation of Ukraine, which regulates information support of public administration bodies, is determined. The author's adjustment of e legal acts regulating information provision of public administration bodies is presented. Legal acts are distributed according to their hierarchy. It is presented an attempt to classify legal acts in terms of social relations they regulate: acts regulating relations that arose during the creation of information in the process of scientific, scientific-technological, inventive, economic, political or other creative, public, private activity of citizens and their associations, legal entities, the state; acts that create the legal basis for the formation and use of information resources, databases, registries; acts ensuring the implementation of the right of individuals and legal entities to access, information use; acts regulating the use of information technologies and means of their provision; acts on information security issues. The problems of legal regulation of information provision of public administration bodies are determined, and proposals for improvement of Ukrainian legislation regulating the information provision of public administration bodies are made.

1. General Theoretical Description of the Ukrainian Legislation Regulating Information Support of Public Administration Bodies and Stages of its Formation

In the modern legal field of Ukraine there is no more dynamic field of law than informational. As V.D. Havlovsky said, today in Ukraine there are more than 3000 legal acts that directly or indirectly regulate information relations in society[1]. Moreover, annually, as Maksimenko Yu.E. emphasizes, the quantity in contrast to the quality of these legal documents is increasing[2].

New concepts of e-governance development in Ukraine, development of e-democracy in Ukraine, digital economy and society of Ukraine for 2018-2020, approved by the Cabinet of Ministers of Ukraine in 2017-2018, create preconditions for emergence of new goals, interests and needs in the information area of public administration bodies[3, 4, 5]. The achievement of these new objectives of information support of public administration bodies requires appropriate individual and regulatory regulation. At the same time, as M.V. Tsvik, O.V. Petryshyn, L.V. Avramenko and O.F. Skakun emphasize, normative legal regulation is primary or basic in relation to individual one, because it is with it in the mechanism of legal regulation is associated definition in the legal rules of general patterns of behavior, the legal status of participants in the relevant social relations, the conditions of their rights and obligations, without which in the future is impossible to use

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[1] Гавловський В. Д. Поступ України до інформаційного суспільства. *Сучасні проблеми інформатизації органів внутрішніх справ України* : матеріали міжвуз. наук.-практ. конф., м. Київ, 15 березня 2001 р. Київ : НАВСУ, 2002. С. 100.

[2] Максименко Ю. Є. Нормативно-правове регулювання інформаційних відносин в Україні: стан та перспективи. Глобальна організація союзницького лідерства. URL: http://goal-int.org/normativno-pravove-regulyuvannya-informacijnix-vidnosin-v-ukraini-stan-ta-perspektivi/

[3] Про схвалення Концепції розвитку електронного урядування в Україні: Розпорядження Кабінета Міністрів України від 20.09.2017 № 649-р : *Урядовий кур'єр*. 2017. № 181.

[4] Про схвалення Концепції розвитку електронної демократії в Україні та плану заходів щодо її реалізації: Розпорядження Кабінета Міністрів України від 8 листопада 2017 р. № 797-р. *Урядовий кур'єр*. 2017. № 217.

[5] Про схвалення Концепції розвитку цифрової економіки та суспільства України на 2018-2020 роки та затвердження плану заходів щодо її реалізації: Розпорядження Кабінету Міністрів України від 17 січня 2018 р. № 67-р. *Урядовий кур'єр*. 2018. № 88.

individual means of legal regulation and the emergence of specific legal relationships[6].

In this regard, systematic study of the legal and regulatory level of legal regulation of information support of public administration bodies is relevant to legal science and necessary for further improvement of the relevant legislation and practice of its use.

Under the informational support of public administration bodies, within this scientific research we will understand the complex of regulatory, organizational and managerial, scientific and technical measures, an uninterrupted process of creation, use, research, storage, protection, transmission, processing, destruction of information of a definite type, quality, volume, structure, form, with the help of information systems, networks, resources and technologies, aimed at meeting information needs and the implementation of information interests of public administration bodies[7].

The basic element that underlies the mechanism of legal regulation in any area, in particular in the field of information support of public administration bodies, is the rule of law. In the theory of law, scholars have defined the rule of law as established or authorized by the government, a compulsory, formally determined rule of conduct that regulates social relations by consolidating the rights and obligations of their participants, the realization of which is ensured and / or protected by the government, in particular, with the use of measures of official coercion[8]. The rules of law regulating relations in the field of information support of public administration bodies are not a simple accumulation of normative material concerning the subject of legal regulation, but as Yu.P. Burylo form a complex system, the vertical section of which is a reflection of the existing hierarchy of law. Vertical structure of the legal and regulatory array regulating information

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[6] Цвік М.В., Петришин О.В., Авраменко Л.В. та ін. Загальна теорія держави і права : підручник для студентів юридичних вищих навчальних закладів. Харків : Право, 2009. С. 207–208, 217–218, 221; Скакун О.Ф. Теория государства и права : учебник. Харків : Консум ; Ун-т внутр. дел, 2000. С. 545–547.

[7] Блінова Г.О. Понятие и содержание информационного обеспечения органов публічной администрации. *Legea si Viata.* 2018. № 12. С. 17–21.

[8] Скакун О.Ф. Теория государства и права : учебник. Харків : Консум ; Ун-т внутр. дел, 2000. С. 297–298, 541; Общая теория права и государства : учебник. 2-е. изд., перераб. и доп. / под. ред. В.В. Лазарева. М. : Юристъ, 1996. С. 147; Теория государства и права : курс лекций / под. ред. Матузова Н.И. и Малько А.В. Москва: Юристъ, 1997.С. 316.

relations, notes Yu.P. Burylio is due to different legal force of the relevant legal rules, and the legal force of the legal rule depends on the source (form) of the law in which it is enshrined[9].

Scholars understood sources of law as ways of external expression of the rules of law, which give them mandatory legal force, and they include normative legal acts, agreements with normative content, legal traditions, court precedents and legal doctrine[10]. Depending on the nature of each of the sources of legal force, as M.N. Marchenko notes, all formal-legal sources are located one in relation to one in the hierarchical, subordination order, subordinate to each other, supplement and detail each other[11].

M.V. Tsvik, O.V. Petryshyn and L.V. Avramenko stress that the leading place in the system of sources of legal regulation of relations in the information area is a legal act – an official written document adopted by the authorized entity of rulemaking in the manner prescribed by law and in a form that contains relevant legal rules[12].

The system of legal acts of independent Ukraine, which regulates the information support of public administration bodies, has undergone several stages of formation. Criteria for determining the stages of formation of such legislation may be many, which will be the subject of our next research. At the same time, we present the historical stages of the formation of the Ukrainian legislation regulating the support by the public administration with information with restricted access, defined by V.V. Glukhoverya[13].

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[9] Бурило Ю.П. Правові норми та джерела правового регулювання у сфері господарських інформаційних відносин. *Правова інформатика.* 2013. № 2(38). С. 65.

[10] Вишневский А. Ф. Горбатюк Н. А., Кучинский В. А. Общая теория государства и права : учебник. Москва: Изд-во деловой и учеб. лит-ры, 2006. С. 336; Байтин М.И. Сущность права (Современное нормативное правопонимание на грани двух веков). Саратов : СГАП, 2001. С. 67; Бондаренко Є.І. Теоретико-правове дослідження поняття «джерело права». *Вісник Харківського національного університету імені В.Н. Каразіна. Серія «Право».* 2010. № 8. С. 224.

[11] Марченко М.Н. Источники права : учеб. пособие. Москва : ТК Велби, Изд-во Проспект, 2008. С. 53.

[12] Загальна теорія держави і права : підручник для студентів юридичних спеціальностей вузів / ред. Цвік М. В. Х.: Право, 2009. С. 278.

[13] Глуховеря В.А., Негодченко О.В. Адміністративно-правовий захист суспільних відносин у сфері обігу інформації з обмеженим доступом в Україні : монографія. Дніпропетровськ : Дніпроп. гуманітар. ун-т ; Дніпроп. держ. ун-т внутр. справ, 2015. 276 с.

The first stage of the formation of legislation, says V.A. Glukhoverya, which regulates the information support of public administration bodies with information with restricted access, is related to the adoption in the first edition of the Law of Ukraine "On information" of October 2, 1992. In Art. 28 of this Law it was noted that according to access the information is divided into open information and information with restricted access. Art. 30 determined that classified information under its legal regime is divided into confidential and secret one. Then confidential information was defined as – information that is in the possession, use or disposal of individual individuals or legal entities and distributed at their request in accordance with the conditions provided for them. According to the current rules, citizens, legal entities who possess information of professional, business, industrial, banking, commercial and other nature, received at their own expense, or which is the subject of their professional, business, industrial, banking, commercial and other interests and not violates the secrecy envisaged by law, independently determine the regime of access to it, including its affiliation to the confidential category, and establish a system for it (s) of protection. The exception was information of commercial and banking nature, as well as information the legal regime of which was established by the Verkhovna Rada of Ukraine on the submission of the Cabinet of Ministers of Ukraine (on statistics, ecology, banking operations, taxes, etc.), information which constitutes a threat to people's life and health[14]. However, what kind of exception was the language, as Glukhoverya V.A. emphasizes: the classification of this information to the secret or an open one the lawmaker did not specify[15]. This created some uncertainty about the legal regime of such information and the problem of legal regulation of information support of public administration bodies.

The secret information for that period included information containing information that constitutes a state secret and other statutory secrets, disclosure of which is detrimental to the individual, society and

[14] Про інформацію: Закон України від 2 жовтня 1992 року № 2657-XII. *Голос України від 13.11.1992.*

[15] Глуховеря В.А., Негодченко О.В. Адміністративно-правовий захист суспільних відносин у сфері обігу інформації з обмеженим доступом в Україні : монографія. Дніпропетровськ : Дніпроп. гуманітар. ун-т ; Дніпроп. держ. ун-т внутр. справ, 2015. 276 с.

the state. The classification of information into the category of classified information constituting state secrets and access to it by citizens was carried out as it is now in accordance with the law on this information.

During this time period, the formation and improvement of such a legal institution as an institution of state secrets took place. Thus, on January 21, 1994, the Law of Ukraine "On State Secrets" was adopted, which was improved in 1999 in terms of legal definitions and a mechanism for securing state secrets.

Within the framework of the first time period, an important event took place on October 30, 1997, namely, the official interpretation of the notion of personal data by the Constitutional Court of Ukraine in a case concerning the official interpretation of Articles 3, 23, 31, 47, 48 of the Law of Ukraine "On Information" and Article 12 of the Law Of Ukraine "On the Prosecutor's Office" (the case of K.G. Ustymenko).

The second stage began with the adoption of the new wording of the Law of Ukraine "On Information" dated June 9, 2004, to which amendments were made in accordance with the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine" dated May 11, 2004 No. 1703-IV[16]. In connection with these amendments, the term "confidential information" was replaced by "confident information". At the same time, after Article 30, after the second part, the following third and fourth parts were added: "With regard to information owned by the government and used by public authorities or local self-government bodies, enterprises, institutions and organizations of all forms of ownership, in order to preserve it, it may be appropriate the law has limited access – confidential status is granted. The procedure for the registration, storage and use of documents and other media of information containing the specified information is determined by the Cabinet of Ministers of Ukraine. Also, a list of information that could not be attributed to confidential information owned by the state and used by public or local authorities, enterprises, institutions and organizations of all forms of ownership was determined in Article 37 of the Law of Ukraine" On Information " Documents and information that are not subject to submission for examination inquiries "in the wording of 09.06.2004, by separate paragraphs divide official documents, which

[16] Про внесення змін до деяких законодавчих актів України : Закон України від 11 травня 2004 року N 1703-IV. *Урядовий кур'єр*. № 106.

contain already confidential information and information concerning citizens' privacy[17].

The third stage started on June 1, 2010, with the adoption of the Law of Ukraine " On Personal Data Protection", the creation of a corresponding service and the adoption of a significant number of sub-legal regulations regulating the protection of personal data and amending a large number of laws governing administrative relations with about the use of personal data[18].

The fourth stage began with the adoption of the Law of Ukraine "On Public Information Access " on January 13, 2011[19]. This law introduced a new concept of public information with restricted access. According to Art. 6 public information with restricted access is a confidential information, classified information and official information. The understanding of secret information was changed, unlike the previous one, during which such information was essentially a state secret. Accordingly, to Art. 8 of the Law of Ukraine "On Public Information Access", secret information, which contains state, professional, bank secrecy, secret of investigation and other statutory secret is recognized. Also, the concept was introduced instead of confidential information, which is the property of the state concept service information. Corresponding changes were made to the Law of Ukraine "On Information"[20]. During the same time period, transfer of all powers to protect personal data from the specially authorized state body on protection of personal data to the Commissioner on Human Rights was passed, as notes V. Glukhoverya[21].

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[17] Глуховеря В.А., Негодченко О.В. Адміністративно-правовий захист суспільних відносин у сфері обігу інформації з обмеженим доступом в Україні : монографія. Дніпропетровськ : Дніпроп. гуманітар. ун-т ; Дніпроп. держ. ун-т внутр. справ, 2015. 276 с.

[18] Про захист персональних даних: Закон України від 1 червня 2010 року № 2297-VI. *Урядовий кур'єр*. 2010. № 122.

[19] Про доступ до публічної інформації: Закон України від 13 січня 2011 року № 2939-VI. *Голос України*. 2011. № 24.

[20] Про інформацію: Закон України від 2 жовтня 1992 року № 2657-XII. *Голос України від 13.11.1992.*

[21] Глуховеря В.А., Негодченко О.В. Адміністративно-правовий захист суспільних відносин у сфері обігу інформації з обмеженим доступом в Україні : монографія. Дніпропетровськ : Дніпроп. гуманітар. ун-т ; Дніпроп. держ. ун-т внутр. справ, 2015. 276 с.

The fifth stage of the formation of domestic legislation is connected with the conduct of the anti-terrorist operation. He began with the adoption of the Presidential Decree "On the decision of the National Security and Defense Council of Ukraine dated April 13, 2014" On urgent measures to overcome the terrorist threat and preserve the territorial integrity of Ukraine No. 405/2014 of April 14, 2014[22]. The terms for access to state secrets by certain categories of citizens were reduced. We also have manifestations of the formation of a new type of information with restricted access – information about a terrorist act[23]. New types of registries are being formed, for example, a register of volunteers of the antiterrorist operation. Information about ATO volunteers is restricted information[24]. In subsequent scientific studies, the study of the history of the formation of Ukrainian legislation will be continued, which regulates the information support of public administration bodies according to other criteria.

2. The System of the Ukrainian Current Legislation Regulating Information Support of Public Administration Bodies

In the general theory of state and law, normative legal rules for their legal force are classified as follows: 1) the Constitution; 2) codified laws; 3) ordinary laws; 4) the resolution of the Verkhovna Rada of Ukraine; 5) decrees of the President of Ukraine; 6) the resolution of the Cabinet of Ministers of Ukraine; 7) orders, decisions of central executive bodies; 8) acts of local executive bodies; 9) acts of local self-government; 10) local acts[25].

The overwhelming majority of legal norms governing the information support of public administration bodies are enshrined in normative legal acts. N.M. Parkhomenko points out that in the aggregate, the relevant

[22] Про рішення Ради національної безпеки і оборони України від 13 квітня 2014 року «Про невідкладні заходи щодо подолання терористичної загрози і збереження територіальної цілісності України» : Указ Президента України № 405/2014 від 14 квітня 2014 року.

[23] Про боротьбу з тероризмом : Закон України 20 березня 2003 року N 638-IV. *Голос України*. 2003. № 77.

[24] Порядок формування та ведення Реєстру волонтерів антитерористичної операції : Наказ Міністерства фінансів України 30.10.2014 № 1089. *Офіційний вісник України*. 2014. № 95. С. 122. Ст. 2754. Код акту 74831/2014.

[25] Загальна теорія держави і права : підручник для студентів юридичних спеціальностей вузів / ред. Цвік М. В. Х.: Право, 2009. С. 284-291.

normative legal acts form the system of information legislation, and the internal structure of this system, has the form of an organic system of laws and subordinate normative legal acts, between which there are established subordinate relationships[26]. Expands this view by Yu. E. Maksimenko, who points out that the regulatory framework in the information area consists of normative legal acts of different jurisdictions – the Constitution, laws, decrees, orders, etc., as well as the information laws of Ukraine include international agreements and treaties ratified by Ukraine, and principles and rules of international law[27].

Maruschak A.I. defines the information legislation as branched complex industry; in addition to legislative acts, it is also made in accordance with the Decrees of the President of Ukraine, resolutions of the Cabinet of Ministers of Ukraine, acts of ministries and other normative-legal rules. The new branch of national legislation also forms constitutional norms, rules of administrative, civil, criminal and other branches of law that regulate relations in the information area. It develops intensively at the expense of intra-sectoral systematization of legislation: on scientific and technical information, on printed mass media (press), on television and radio, on information in automated systems ("computer legislation"), on information with restricted access, and others[28]. Thus, the legislation of Ukraine regulating the information support of public administration bodies is part of the information law with its inherent elements and features.

In connection with the fact that the bodies of public administration are the subjects of information relations, as we have been clarified in previous scientific articles[29], then the system of legislation regulating the information provision of public administration bodies includes: 1) the constitution; 2) codified laws; 3) ordinary laws; 4) the resolution of the Verkhovna Rada of Ukraine; 5) decrees of the President of Ukraine;

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[26] Пархоменко Н.М. Система джерел права: ознаки, властивості та зміст. *Часопис Київського університету права.* 2007. № 3. С. 12.

[27] Максименко Ю. Є. Нормативно-правове регулювання інформаційних відносин в Україні: стан та перспективи. Глобальна організація союзницького лідерства. URL: http://goal-int.org/normativno-pravove-regulyuvannya-informacijnix-vidnosin-v-ukraini-stan-ta-perspektivi/

[28] Марущак А.І. Інформаційне право: Доступ до інформації: навчальний посібник. Київ: КНТ, 2007. С. 98.

[29] Блінова Г.О. Органи публічної адміністрації як суб'єкти інформаційних відносин. *Науковий збірник Актуальні проблеми вітчизняної юриспруденції.* 2017. Вип. 5. С. 82–86.

6) the resolution of the Cabinet of Ministers of Ukraine; 7) orders, orders, decisions of central bodies of executive power; 8) acts of local executive bodies; 9) acts of local self-government; 10) local acts; 11) ratified international documents.

The basic legal act, which is headed by the domestic legislation regulating the information support of public administration bodies, is the Constitution of Ukraine. The provisions of the Constitution have the highest legal force in the general system of legal sources. Laws and other normative acts are adopted on its basis and must comply with its norms[30]. The Basic Law of Ukraine by its nature is the primary act of institutional nature. With regard to the legal regulation of information provision of public administration bodies, the following norms of the Constitution of Ukraine can be defined: Article 17, which states that ensuring information security of Ukraine are the most important functions of the state; Art. 31 which guarantees the confidentiality of correspondence, telephone conversations, telegraph and other correspondence, with exceptions from which cases specified by the court are stipulated by law, in order to prevent a crime or to find out the truth during the investigation of a criminal case, if other ways to receive information are impossible; Art. 32 which does not allow the collection, storage, use and distribution of confidential information about a person without his/her consent, except in cases specified by law, and only in the national security interests, economic welfare and human rights; every citizen is guaranteed the right to get to know at state, local self-government bodies, institutions and organizations with information about themselves that are not state or other secrets protected by law; everyone is guaranteed the judicial protection of the right to refute false information about themselves and their family members and the right to demand the removal of any information, as well as the right to compensation for material and moral damage caused by the collection, storage, use and dissemination of such false information; Art. 34, which refers to the right to freely collect, store, use and disseminate information; Art. 50, in which everyone is guaranteed the right to free access to information on the state of the environment, the quality of food

[30] Конституція України : Закон України від 28.06.96 р. *Відомості Верховної Ради.* 1996. № 30. Ст. 141.

products and household items, as well as the right to distribute it, such information can not be classified by anyone else[31].

The codified laws of Ukraine are the next link of Ukrainian legislation on information support of public administration bodies. Thus, the rules governing the information support of public administration bodies are contained in Articles 50, 90, 94, 182, 200, 277, 278, 285, 286, 293, 294, 296, 302, 306, 335, 338, 438, 434 , 505-507, 639, 700, 861, 862, 868, 869, 1076, 1120, 1121, 1144, 1150, 1277 and others of the Civil Code of Ukraine[32]; Articles 19, 39, 47, 48, 64-1, 73, 73-1, 75, 78, 79, 90, 112, 162, 251, 252, 259, 329, 381 and other articles of the Commercial Code of Ukraine[33]; Articles 7, 8, 16, 18, 20, 22, 28, 29, 33, 35, 38, 44, 48, 58, 61, 75, 76, 87, 89, 91, 111, 116, 118 and other articles of the Budget Code of Ukraine[34]; Articles 12, 14, 16, 17, 19, 20, 21, 30, 35, 39, 42, 42-1, 45, 62, 63, 66, 68, 70, 71-74, 78, 80, 82, 83 , 85, 95, 118, 119, 128, 172, 183, 200, 200-1, 230, 250, 254, 258, 266, 267, 289, 298, 299, 350 and other articles of the Tax Code of Ukraine[35]; in Articles 9, 12, 15-2, 79-1, 137, 139, 183, 191, 193, 211 and other articles of the Land Code of Ukraine[36]; Art. 29, 49-2, 49-4, 251 and others of the Codes of labor laws of Ukraine[37]; Articles 8, 11, 24, 39, 46 of the Code of Ukraine on Subsoil[38]; Art. 1, 5, 10, 16, 18, 21, 22, 23, 25, 26, 31, 33, 37, 69, 70, 88, 94, 95, 99, 100, 112, 119, 120, 122, 127 and other articles of the Air Code of Ukraine[39]; in Articles 2, 7, 8, 17, 19, 20, 23, 24, 30, 31, 43, 67, 73, 75,

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[31] Конституція України : Закон України від 28.06.96 р. *Відомості Верховної Ради.* 1996. № 30. Ст. 141.

[32] Цивільний кодекс України : Закон України від 16 січня 2003 року № 435-IV. *Відомості Верховної Ради України*. 2003. № 40–44. Ст. 356.

[33] Господарський кодекс України : Закон України від 16 січня 2003 року № 436-IV. *Відомості Верховної Ради України.* 2003. № 18, № 19–20, № 21–22. Ст. 144.

[34] Бюджетний кодекс України : Закон України від 8 липня 2010 року № 2456-VI. *Відомості Верховної Ради України.* 2010. № 50–51. Ст. 572.

[35] Податковий кодекс України: Закон України від 2 грудня 2010 року № 2755-VI. *Відомості Верховної Ради України*. 2011. № 13–14. № 15–16. № 17. Ст. 112.

[36] Земельний кодекс України : Закон України від 25 жовтня 2001 року № 2768-III. *Відомості Верховної Ради України*. 2002. № 3–4. Ст. 27.

[37] Кодекс законів про працю України : Закон № 322-VIII від 10.12.71 ВВР, 1971, додаток до № 50, Ст. 375. *Відомості Верховної Ради УРСР*. 1971. Додаток до № 50.

[38] Кодекс України про надра: Закон України від 27 липня 1994 року № 132/94-ВР. *Відомості Верховної Ради України*. 1994. № 36. Ст. 340.

[39] Повітряний кодекс України: Закон України від 19 травня 2011 року № 3393-VI. *Відомості Верховної Ради України*. 2011. № 48–49. Ст. 536.

76, 110 and others of the Code of Civil Protection of Ukraine[40]; in Articles 8-1, 9, 11, 13-2, 17-1, 21, 34, 44, 55, 108 and other articles of the Water Code of Ukraine[41]; in Articles 14, 45, 50, 54, 55, 96, 97 and other articles of the Forest Code of Ukraine[42] and other articles of other codes of Ukraine.

These codified legislative acts contain norms defining the general principles of information support of public administration bodies, which contain special rules regulating information support of certain public administration bodies or certain areas of their activities.

Responsibility for violation the norms governing the procedure for providing information to public administration bodies is provided by the above normative legal acts and specified in Articles 41, 41-3, 53-2, 82-3, 82-7, 83-1, 91-4 , 91-5, 96, 148-2, 148-5, 163-5, 163-9, 163-10, 164-9, 164-12, 164-14, 164-17, 165-4, 166-4 , 166-9, 166-11, 166-13, 166-20, 166-21, 172-8, 184-2, 185-13, 186-3, 186-6, 188-5, 188-7, 188 -11, 188-14, 188-15, 188-18, 188-19, 188-31, 188-32, 188-35, 188-36, 188-37, 188-45, 188-46, 188-47, 188-48, 188-49, 188-51, 195-5, 212-2, 212-3, 212-5, 212-6, 212-9, 212-11, 212-13, 212-20 of the Code of Ukraine on Administrative Offences[43], as well as in articles 111, 158, 163, 176, 182, 209-1, 220-2, 222, 232-1, 232-2, 329, 330, 351, 351-1, 359, 361, 361 -2, 362, 363, 366-1, 376-1 of the Criminal Code of Ukraine[44].

The analysis of the aforementioned articles of the codified normative-legal acts shows the lack of a systematic approach to the regulation of information relations of public administration bodies in general and information support of their activities in particular. At the current stage of development of domestic legislation information and information technologies are used as service elements. At the same time, modern legal acts, which approved new information concepts, fixed a new direction in the development of domestic legislation that is changing under the

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[40] Кодекс Цивільного захисту України: Закон України від 2 жовтня 2012 року № 5403-VI. *Відомості Верховної Ради України.* 2013. № 34–35. С. 1802. Ст. 458.

[41] Водний кодекс України : Закон України від 6 червня 1995 року № 213/95-ВР. *Відомості Верховної Ради України.* 1995. № 24. Ст. 189.

[42] Лісовий кодекс України: 21 січня 1994 року № 3852-XII. *Відомості Верховної Ради України.* 1994. № 17. Ст. 99.

[43] Кодекс України про адміністративні правопорушення. *Відомості Верховної Ради Української РСР (ВВР).* 1984. Додаток до № 51. Ст.1122.

[44] Кримінальний кодекс України : Закон України від 5 квітня 2001 року № 2341-III. *Відомості Верховної Ради України.* 2001. № 25–26. Ст. 131.

influence of globalization and integration impacts of information technologies. An example of a change in domestic legislation under the pressure of information technology is the law of Ukraine on amending the procedural codes

The thesis on the priority of information resources issues, that "the creation of information resources and the implementation of effective access to them in the course of informatization are the goals of the highest order, is the core of the Concept of the formation of the system of national law. Everything else – hardware, technology, legal norms and organizational decisions – are elements of infrastructure and are subject to the goal of forming an information resource environment in which they are rapidly created, effectively used and properly protected"[45].

The above mentioned norms are sufficiently universal and wide in scope, therefore, these laws should be considered as general system of formation acts of information support of public administration bodies.

After codified laws, the following sources of law regulating the information support of public administration bodies by legal force are ordinary laws. These laws are normative legal acts of higher legal force, adopted in a special procedure by parliament or directly by the people, and determine the starting basis for the legal regulation of social relations[46].

Laws regulating relations in the information area, according to E.O. Reznichenko, can be divided into groups[47]. Maintaining the position of E.O. Reznichenko, let's try to distribute the laws of Ukraine to several subgroups in the direction of their regulatory influence.

It is possible to propose to the first group to include acts regulating relations that arose during the creation of information in the course of scientific, technical, inventive, economic, political or other creative, public and private activities of citizens and their associations, legal

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[45] Антонов И.Э. Формирования региональной нормативно-правовой базы информатизации Приморского края. *Мировые информационные ресурсы: новые возможности минимизации рисков* : матер. IV междунар. научнопракт. конф. Владивосток: ВФ РТА, 2000. 220 с.

[46] Загальна теорія держави і права : підручник для студентів юридичних спеціальностей вузів / ред. Цвік М. В. Х.: Право, 2009. С. 282.

[47] Резченко Є. О. Необхідність розробки та прийняття Закону України «Про інформаційне забезпечення органів державної влади». *Державне будівництво*. 2007. № 1(2). URL: http://nbuv.gov.ua/UJRN/DeBu_2007_1%282%29__56

entities, and the state. These acts should ensure the consolidation of the copyright and intellectual property rights of the information being created. The acts of this group, in our opinion, include: Laws of Ukraine "On Copyright and Related Rights", "On Mandatory Copy of Documents", "On Printed Media (Press) in Ukraine", "On Television and Radio Broadcasting", " "On the National Program of Informatization", "On the National Archival Fond and Archival Institutions", "On Information Agencies".

The second group is an act that creates the legal basis for the formation and use of information resources, databases, registries. This group of acts includes the laws of Ukraine "On Information", "On Scientific and Technical Information", "On Libraries and Library Affairs", "On Electronic Documents and Electronic Documentation", "On the Uniform State Register of Military Persons", "On State register of voters" and others.

The third group are acts that ensure the implementation of individuals and legal entities right to access and use information. In our opinion, such groups as "On Public Information Access", "On Personal Data Protection", "On the Uniform State Demographic Registry and Documents That Affirm the Citizenship of Ukraine, Identify a Person or his/her Special Status", "On access to court decisions","On the openness of the use of public funds","On the State Land Cadastre ", etc.

The fourth group are laws on information technology and means of providing them. These include the laws of Ukraine "On Telecommunications", "On Electronic Trust Services" and others.

The fifth group are acts on information security issues: "On State Secrets", "On State Service for Special Communications and Information Protection", "On Information Security in Automated Systems", "On Information Protection in Information and Telecommunication Systems" and others.

Thus, the third group of normative acts in the system of legislation regulating the information support of public administration bodies form the laws of Ukraine. Depending on the subject of regulation, laws in this area should be united into four groups: 1) laws defining the general principles of regulation of information relations; 2) create a legal basis for the formation and use of information resources, databases, registries; 3) ensuring the realization of the right of individuals and legal entities to access and use information; 4) laws on information technologies and

means of their provision; 5) laws regulating the scope of information security.

The fourth group of normative legal acts regulating the information support of public administration bodies are Resolutions of the Verkhovna Rada of Ukraine. According to Art. 138 of the Law of Ukraine "On the Regulations of the Verkhovna Rada of Ukraine" dated February 10, 2010, No. 1861-VI, resolutions of the Verkhovna Rada of Ukraine are adopted on specific issues with a view to implementing its constituent, organizational, control and other functions[48]. Such documents are the Regulations of the Verkhovna Rada of Ukraine "On the Results of Parliamentary Hearings" Problems of Information Activity, Freedom of Speech, Compliance with the Lawfulness and Status of Information Security of Ukraine" of June 7, 2001, No. 2498-III; "On the results of the parliamentary hearings "Society, media, power: freedom of speech and censorship in Ukraine" of January 16, 2003 N 441-IV;" On Recommendations of the Parliamentary Hearings on the topic: "Legislative Support for the Development of the Information Society in Ukraine" of July 3, 2014 No. 1565-VII, etc.

The fifth group of normative legal acts regulating the information support of public administration bodies make decrees and orders of the President of Ukraine. These legal acts of the head of state are issued on the basis and in pursuance of the Constitution and laws of Ukraine on the most important issues that fall within its competence and are binding in the whole territory of Ukraine[49]. In the field of information provision of the public administration bodies, the decrees of the President of Ukraine are aimed at implementing the provisions of the Constitution and laws of Ukraine and determine the directions of development of the state and society in the conditions of the evolution of information technologies. These documents include Decrees of the President of Ukraine "On the Provisions on Technical Protection of Information in Ukraine" of September 27, 1999, No.1229/99; "On Measures for the Development of the National Component of the Global Internet Information Network and Providing Broad Access to this Network in

[48] Про Регламент Верховної Ради України: Закон України від 10 лютого 2010 року № 1861-VI. *Відомості Верховної Ради України*. 2010. № 14. № 14–15, № 16–17. С. 412. Ст. 133.

[49] Конституція України : Закон України від 28.06.96 р. *Відомості Верховної Ради.* 1996. № 30. Ст. 141.

Ukraine" of July 31, 2000, No. 928; "On the Strategy of Sustainable Development Ukraine-2020" of January 12, 2015, No. 5/2015 ; "On the decision of the National Security and Defense Council of Ukraine dated December 29, 2016," On the Doctrine of the Information Security of Ukraine "of February 25, 2017 No. 47/2017; On the decision of the National Security and Defense Council of Ukraine of December 29, 2016, "On threats to the cybersecurity of the state and urgent measures for their neutralization", February 13, 2017, No. 32/2017 and others. The sixth group of normative legal acts regulating the information provision of public administration bodies make decisions and instructions to the Cabinet of Ministers of Ukraine. According to Art. 49 of the Law of Ukraine "On the Cabinet of Ministers of Ukraine" of February 27, 2014, No. 794-VII, the Government of Ukraine, on the basis and in pursuance of the Constitution and laws of Ukraine, acts of the President of Ukraine, resolutions of the Verkhovna Rada of Ukraine, adopted in accordance with the Constitution and laws of Ukraine, normative acts in the form of resolutions and orders[50]. The resolutions and directives of the Cabinet of Ministers of Ukraine are aimed at defining the procedures for providing information to the public administration bodies in order to ensure transparency of accounting, free access of citizens to information and public oversight.

Among the resolutions of the CMU, the following are important for the legal regulation of information support of public administration bodies: "On Approval of the Rules for the Protection of Information in Information, Telecommunication, Information-Telecommunication Systems", "On Measures for the Development of the National Information Network of the Internet and Providing Broad Access to this Network in Ukraine "No. 928/2000 of July 31, 2000; "On the Procedure for Disclosing Information on the Activities of Executive Bodies on the Internet" of January 4, 2002 No. 3; On Measures to Create an Electronic Information System Electronic Government "of February 24, 2003, No. 208," On Approval of the Procedure for Legalizing Computer Programs in the Executive Bodies" of 25.03.2004 No. 253, as well as the Order of the Cabinet of Ministers of Ukraine" On approval of the concept of the formation of a system of national electronic information

[50] Про Кабінет Міністрів України : Закон України від 27 лютого 2014 року № 794-VII. *Відомості Верховної Ради*. 2014. № 13. Ст. 222.

resources" of May 5, 2003, No. 259-p; "On approval of the list of tasks (projects) of the national program of informatization, their state customers and amounts of financing" of November 8, 2006 No. 552-p; "On the Uniform State Register of Citizens Needing Improvement of Housing Conditions" of March 11, 2011, No. 238; "On Approval of the Regulation on the Administration of the State Service for Special Communications and Information Protection of Ukraine" of September 3, 2014, No. 411; "On approval of the procedure for access of state registers of rights to real estate and use of information from the State Land Cadastre" of July 12, 2017, No. 509; "On Approval of the Concept for the Development of E-Governance in Ukraine" of September 20, 2017 No. 649-r; "On approval of the Concept for the development of e-democracy in Ukraine and the plan of measures for its implementation "of November 8, 2017 No. 797-p; "On Approval of the Concept for the Development of the Digital Economy and Society of Ukraine for 2018-2020 and approval of the plan of measures for its implementation" of January 17, 2018 No. 67-r[51] [52] [53].

Following the resolutions of the Government on information support of public administration bodies, the legal force are the acts of ministries and other central executive bodies. Information provision is an equally important element of the functioning of all public administration bodies, different departmental subordination, it is difficult to identify a ministry or other agency whose normative documents would have priority. Therefore, sub-normative legal acts regulating the information support of public administration bodies do not have a system. Thus, such sub-normative legal acts can include: Provisions on the Unified State Register of Persons who have committed corruption or corruption-related offenses, approved by the decision of the National Corruption Prevention Agency of 09.02.2018, No. 166; Regulations on the Uniform

[51] Про схвалення Концепції розвитку електронної демократії в Україні та плану заходів щодо її реалізації: Розпорядження Кабінета Міністрів України від 8 листопада 2017 р. № 797-р. *Урядовий кур'єр*. 2017. № 217.

[52] Про схвалення Концепції розвитку цифрової економіки та суспільства України на 2018-2020 роки та затвердження плану заходів щодо її реалізації: Розпорядження Кабінету Міністрів України від 17 січня 2018 р. № 67-р. *Урядовий кур'єр*. 2018. № 88.

[53] Резченко Є. О. Необхідність розробки та прийняття Закону України «Про інформаційне забезпечення органів державної влади». *Державне будівництво*. 2007. № 1(2). URL: http://nbuv.gov.ua/UJRN/DeBu_2007_1%282%29__56

State Register of Persons Who Made Corruption Offenses, approved by the Decree of the Ministry of Justice of Ukraine of January 11, 2012 No. 39/5; Procedure for maintaining the Single Register of Notaries, approved by the Order of the Ministry of Justice of Ukraine of 13.10.2010 N 2501/5; Regulations on an automated informational system of operative appointment of a single information system of the Ministry of Internal Affairs, approved by the Order of the Ministry of Internal Affairs of Ukraine dated 10.20.2017 No. 870; Regulations on the information and telecommunication system "Information portal of the National Police of Ukraine", approved by the Order of the Ministry of Internal Affairs of Ukraine on August 28, 2017, No. 1059/30927; Regulations on the Credit Register of the National Bank of Ukraine, approved by the Resolution of the Board of the National Bank of Ukraine dated May 4, 2018, No. 50; Regulations on the automated system of document circulation of the court, approved by the Decision of the Council of Judges of Ukraine dated November 26, 2010, No. 30 (as amended by the decision of the Council of Judges of Ukraine dated March 02, 2018, No. 17); Regulations on the Uniform State Information System for Transplantation, approved by the Order of the Ministry of Health of Ukraine of November 29, 2002 N 432; The procedure for access to the information of the personal information system of the unified information system of the Ministry of Internal Affairs of Ukraine, approved by the Order of the Ministry of Internal Affairs of Ukraine dated November 29, 2016 No. 1256; On approval of the Regulation on state expertise in the field of technical protection of information, approved by the Order of the Administration of the State Service for Special Communications and Information Protection of Ukraine of May 16, 2007 No. 93 and other normative-legal acts. In subsequent scientific works they will be systematized and generalized.

According to Art. 9 of the Constitution of Ukraine, valid international acts, the consent to be bound by which is provided by the Verkhovna Rada of Ukraine, is a part of the national legislation, including information support of the public administration bodies. The bulk of such legal acts is made up of two categories of documents: those that guarantee the right of access to public information disclosed and those that determine the procedure for the circulation of information with restricted access.

The first group of international normative legal acts include the following: Universal Declaration of Human Rights 1948[54]; European Convention for the Protection of Human Rights and Fundamental Freedoms[55]; International Covenant on Civil and Political Rights[56]; The Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (Aarhus Convention)[57]; Okinawa charter of the global information society[58]; Strasbourg Convention on the Protection of Individuals with regard to Automatic Processing of Personal Data[59]; The cybercrime convention[60]; Council of Europe Recommendation No. R (81) 19 of 1981 "On Access to Information Available to Public Authorities"[61].

The list of international documents defining the rules for the circulation of classified information should include the Model Law on Informatization, Information and Information Protection adopted at the Twenty-sixth Plenary Meeting of the Inter-Parliamentary Assembly of the CIS Member States in 2005[62] and the Convention ratified in 2010 on

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[54] Загальна декларація прав людини 1948 р. Інформаційне законодавство: зб. законодав. актів: у 6 т. / за заг. ред. Шемшученка Ю. С., Чижа І. С.. Київ: Юрид. думка, 2005. Т. 5: Міжнародно-правові акти в інформаційній сфері. С. 5–17.

[55] Європейська конвенція про захист прав людини і основоположних свобод від 4 листопада 1950 р.: у ред. від 27 травня 2009 р. URL: http://zakon1.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=995_004

[56] Міжнародний пакт про громадянські і політичні права : прийнято 16 грудня 1966 року Генеральною Асамблеєю ООН. Док. ООН A/RES/2200 A (XXI); ратифіковано Указом Президії Верховної Ради Української РСР N 2148–VIII (2148–08) від 19.10.73) URL: http://zakon4.rada.gov.ua/laws/show/995_043

[57] Конвенція про доступ до інформації, участь громадськості в процесі прийняття рішень та доступ до правосуддя з питань, що стосуються довкілля: ратифікована Законом № 832-XIV від 6 липня 1999 р. Правове регулювання інформаційної діяльності в Україні: станом на 1 січня 2001 р. / упоряд. С. Е. Демський; відп. ред. С. П. Павлюк. Київ: Юрінком Інтер, 2001. С. 62–67.

[58] Окінавська хартія глобального інформаційного суспільства від 22 липня 2000 р. URL: http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=998_16

[59] Страсбурзька конвенція про захист осіб стосовно автоматизованої обробки даних особистого характеру від 28 січня 1981 р. URL: http://conventions.coe.int/Treaty/EN/Treaties/PDF/Ukrainian/108-Ukrainian.pdf

[60] Конвенція про кіберзлочинність від 23.11.2001 р. URL: http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=994_575

[61] Рекомендація № R (81) 19 про доступ до інформації, що знаходиться у розпорядженні державних органів: прийнята Комітетом Міністрів 25 листопада 1981 на 340-й зустрічі заступників міністрів; Інститут медіа права. URL: http://www.medialaw.kiev.ua/laws/laws_international/116

[62] Модельный закон об информатизации, информации и защите информации: Постановление № 26–7 от 18 ноября 2005 года: принят на двадцать шестом пленарном заседании Межпарламентской Ассамблеи государств-участников СНГ URL: http://zakon2.rada.gov.ua/laws/show/997_d09/print1329875570254855

the protection of individuals concerning automated processing of personal data[63]. The principles contained in the Convention are clarified and expanded in Directive 95/46 / EC of the European Parliament and of the Council of 24.10.1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data[64] and Directive 97 / 66 / EC of the European Parliament and of the Council of 15.12.1997 "On the processing of personal data and the protection of the right to non-interference in privacy in the telecommunications sector"[65], which have not yet been ratified by Ukraine, but can be used to improve domestic legislation.

CONCLUSIONS

The branching of legislation regulating the information support of public administration bodies currently creates such problems as the contradictory nature of the terminology apparatus, the existence of legal uncertainties regarding the procedure for access to certain categories of information of public administration bodies, the lack of clear grounds for prosecution of representatives of public administration bodies for violations of information legislation and ineffective administrative and legal protection of information relations in Ukraine. Public administrations, mainly, independently provide the services of external consumers of information (legal entities and individuals), which leads to unsatisfactory information provision of public administration bodies and unreasonable material costs for the creation of incompatible automated information systems and databases of these bodies.

The administrative and legal regulation of information support of public administration bodies in Ukraine, aimed at execution the state

[63] Про ратифікацію Конвенції про захист осіб у зв'язку з автоматизованою обробкою персональних даних та Додаткового протоколу до Конвенції про захист осіб у зв'язку з автоматизованою обробкою персональних даних стосовно органів нагляду та транскордонних потоків даних: Закон України від 6 липня 2010 р. № 2438-VI. *Відомості Верховної Ради України*. 2010. № 46. Ст. 542.

[64] Директива 95/46/ЄС Європейського Парламенту і Ради "Про захист фізичних осіб при обробці персональних даних і про вільне переміщення таких даних" від 24 жовтня 1995 року. *Законодавство України*. URL: http://zakon4.rada.gov.ua/laws/show/994_242/print1359106886760987

[65] Стосовно обробки персональних даних і захисту права на невтручання в особисте життя в телекомунікаційному секторі: Директива 97/66/ЄС Європейського Парламенту і Ради від 15 грудня 1997 року *Законодавство України*. URL: http://zakon2.rada.gov.ua/laws/show/994_243

information policy, should receive decent legal regulation. In our opinion, it is necessary to develop and adopt the Information Code of Ukraine, the Concept of information provision of public administration bodies up to 2020, and the Law of Ukraine "On information support of public administration bodies" taking into account the strategic documents adopted by the Cabinet of Ministers of Ukraine and the President of Ukraine, such as the Cabinet of Ministers of Ukraine of September 20, 2017 No. 649-r "On Approval of the Concept of the Development of E-Governance in Ukraine", of November 8, 2017 No. 797-p "On Approval of the Concept of Development in e-democracy in Ukraine and a plan of its implementation" of January 17, 2018, No. 67-p" On Approval of the Concept for the Development of the Digital Economy and Society of Ukraine for 2018-2020 and approval of the plan of measures for its implementation "create the preconditions for the emergence new goals, interests and needs in the information area of public administration bodies.

We believe that the implementation of the proposed amendments in domestic legislation on the definition of the administrative and legal framework of the information support of public administration bodies should ensure its alignment with international and European standards; to increase the efficiency of public administration bodies in Ukraine; to increase the level and quality of service provision by public administration bodies; to increase the level of public trust in public administration bodies in Ukraine.

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Information about the authors:

Blinova H. O.
PhD in Law, Associate Professor,
Head of the Civil Legal Disciplines Department,
Dniprovskii University of the Humanities

Demchuk A. M.
PhD in Law,
Dean of the Faculty of Law,
Lesya Ukrainka Volyn National University

Yatsyshyn M. M.
Doctor of Law, Professor, Head of the Department
of Theory and History of State and Law,
Lesya Ukrainka Volyn National University

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THE PROBLEM OF JUVENILE CRIME IN UKRAINE AND MEASURES FOR ITS PREVENTION

Bohatyrov I. H., Yarmysh O. N., Dębiński Antoni

INTRODUCTION

Juvenile crime is deviance of a minor from socially established norms and rules. Unfortunately, that kind of crime is the most negative part of the deviant behavior of minors, so domestic and foreign scholars have a long-held belief that one of the most important problems of the research of criminology is juvenile crime.

Covering the problem of juvenile crime in Ukraine, the author follows the fact that its scientific-theoretical analysis should be considered as a part of the overall crime in society because it evolves under the effects of the same factors that the crime in general. For this very reason, it is impossible to build a good democratic society without paying due attention to minors.

Moreover, juvenile crime is an indicator of sustainable development of transitive society and rather mass social phenomenon which takes place in all countries, and therewith it always gains the attention of society. Unfortunately, our country is no exception.Thefts, fights, carjacking, the consumption of alcoholic beverages and drugs (dealing), acts of cruelty, violence and even rapes and murders have become the lifestyle for many minors. But most importantly, juvenile offenders annually fall into the ranks of adult crime[1].

Hence, it is essential to support the standpoint of domestic scholars that juvenile crime is one of the urgent criminological problems which reflects the main crime trends in the country. It is an indicator of the moral health of society and allows predicting general prospects and possible directions for the development of crime manifestations for the future.

Studying causal chain which clarifies criminal behavior of minors and is a quite complicated and multifarious one, it is possible to

[1] Богатирьов І. Г. Кримінологія : підручник / за заг. ред.. І. Г. Богатирьова, В. В. Топчія. Київ : ВД. Дакор, 2018. С. 132.

understand it only by using knowledge in a range of sciences – philosophy, psychology, law etc. It is worth highlighting three main links in the causal chain, which causes unlawful acts of minors.

The first covers that which precedes the criminal activity of a minor, that is, the period of formation of the criminal personality and interaction with a specific life situation.

The second unitei cause and effect, there is the criminal personality with his will and consciousness.

The third (consequence) includes the origin of a causal link from an act of illegal behavior to the occurrence of a criminal result. Most authors, who have dealt with the issue concerned, also agree with such a standpoint.

Thus, when studying juvenile delinquency in Ukraine, it is important to take into account that this phenomenon is part of overall crime and evolves under the influence of the same processes and factors as a crime in general.

The purpose of the article is to update and clarify the problem of juvenile delinquency in Ukraine as well as to identify the determinants of this negative phenomenon to develop relevant prevention measures.

Considering the problem of juvenile delinquency in Ukraine, the author could not ignore its methodological tools as a specific cognitive discourse of the problem by using research methods. Such an approach is substantiated by the correlation of methodological and theoretical approaches of the science of criminology to the study of the problem of juvenile crime in Ukraine.

In this context, it is worth supporting the idea of a Ukrainian scholar H. Yu. Lukianova, the methodological provision of science, the accuracy of research methods assists researchers to find new ways of learning the processes and phenomena which are studied, their adequate reflection in the system of scientific knowledge. None branch of science can exist or advance without a methodological framework[2].

At the same time, the idea of the domestic scholar criminologist O. H. Kulyk is interesting in the context of the article. He argues that the use of complex methods is expedient only in cases when the

[2] Лук'янова Г. Ю. Методологічні основи дослідження права у сучасній юридичній науці. *Науковий вісник Львівського державного університету внутрішніх справ. Серія юридична*. 2011. № 4. С. 33.

establishment of certain trends and patterns of crime is impossible by other means[3]. The author believes that the studying of the problem of juvenile crime in Ukraine is that kind of complicated process which is necessary for research method of this legal phenomenon.

Thus, methodological set of tools of the focus of the paper is to study the system of scientifically-based general and special methods of scientific cognition to obtain reliable data on the results of juvenile delinquency in Ukraine and to improve the practice of its prevention.

1. Criminalization of juvenile delinquency

Taking into consideration the fact that crime in Ukraine is the most negative part of the deviant behavior of minors, domestic criminologists concur that juvenile crime is one of the most important problems in the science of criminology.

L.M. Dubchak states that it is quite predictable as the young generation is a natural reserve for social development. Breach of the criminal law by young people is the basis for predicting the advance of recidivism[4].

Moreover, the age of juvenile offenders in Ukraine has become younger every year. It is no secret that the level of these offenses entirely depends on the norms of social development of the society as a whole, its culture, the upbringing of children inside the family, at school: the lower the level, the higher the percentage of juvenile delinquency and the social consequences of their actions.

It's unfortunate but juvenile crime also engages females. Sometimes, girls outperform boys by their actions. At the same time, criminologists are convinced that the vast majority of offenders are male minors.

H.V. Didkivska writes that adequately reacting on the social processes which take place in the society, juvenile crime "aimed at a certain result – to cause socially dangerous harm to the social environment". According to the above scholar, juvenile delinquency is a negative social phenomenon having a self-regulating set of interconnected elements, quickly responds to changes in society as a type of crime the

[3] Кулик О. Кримінологічний аналіз злочинності в Україні: напрями вдосконалення методології та методик. *Право України.* 2009. № 7. С. 53.

[4] Дубчак Л. Злочинність неповнолітніх як віддзеркалення недоліків шкільного та вузівського виховання. *Підприємництво, господарство і право.* 2006. № 7. С. 46.

specifics of which is conditioned by probabilistic observation resulting from the study of crimes and offenders aged 14–17 years[5].

Domestic scholar V.A. Mozhova considers juvenile crime as a relatively mass social phenomenon which is expressed in the statistical aggregate of facts of unlawful (criminally forbidden) behavior of crime perpetrators aged between 14 and 18 in a certain territory for the relevant period[6].

At the same time, among the main causes of juvenile delinquency, the authors of the monographic research "Criminological Problems of Prevention of Juvenile Crime in a Big City" mark as follows: inadequate attention to the problems of minors on the part of the state and the public; the impact of internal and external social conditions on the commission of various offenses by minors; unfavorable situation in the family and its negative impact, etc.[7]

The last cause is worth noticing because that the general and specific reasons do not coincide as the criminality itself is not an ordinary set of crimes, and therefore the causes of criminality cannot be considered as an arithmetic supplement to the causes of individual crimes.

General causes of a negative influence of family create the ground for individual criminal behaviour, conditions for the distorting of moral education of groups and persons who have committed a specific offence. This process is considered through the prism of their identification as determinative, social causes of crime. All depends on the specific living conditions where a particular person is, that is, on a lifestyle, a microenvironment, a relevant life situation.

Analyzing the causes of the negative impact of the family on juvenile delinquency, some scholars mention ones which are connected with the negative conditions of moral formation of the personality in the family. In particular, they are as follows: a poisonous situation in some families; alcoholism of parents who sometimes accustom their children to alcohol; quarrels and scandals; the influence of parents and other

[5] Дідківська Г. В. Сімейне неблагополуччя в системі детермінантів злочинності неповнолітніх в Україні : монографія. Вінниця : Нілан ЛТД, 2017. С. 24.

[6] Мозгова В. А. Поняття та особливості злочинності неповнолітніх. *Юридичний вісник.* 2014. № 2 (31). С.143.

[7] Кримінологічні проблеми попередження злочинності неповнолітніх у великому місті: досвід конкретного соціологічного дослідження : монографія / В. В. Голіна, В. П. Ємельянов, В. Д. Воднік та ін. ; за заг. ред. професорів В. В. Голіни та В. П. Ємельянова. Харків : Право, 2006. С. 59–61.

relatives on family relationships, and all of these things create the conditions for violence.

Some of these effects may be caused by the impact of genetic factors and some – by education system within the family. Thus, the negative influence of the family on juvenile crime is triggered by:

1) family ill-being, negligence of parental duties towards the natural needs of children (nutrition, clothing, housing, training, recreation, treatment);

2) physical abuse (causing bodily harm, mental humiliation, compulsion to commit forced labor);

3) sexual abuse (rape, involvement in prostitution, etc.);

4) unresolved social and economic problems (insecurity of the future, the difficult financial situation of the family, consumption of alcohol and drugs by family members, begging and homelessness of children, lack of family values, inability to protect own rights and freedoms);

5) high level of isolation of private houses and separate apartments that leads to the formation of the stereotype among the population "it's neither my headache nor my piece of cake".

6) low level of public confidence in law enforcement bodies, and in particular, in the police.

It seems the criminalization of juvenile crime is also affected by:

1) age and gender discrepancies between spouses;

2) poor living conditions and a significant difference in social roles and statuses;

3) disruption of normal family structure and housekeeping;

4) mental and physical health;

5) shortcomings of psychosocial communication of spouses, including the distinction between value orientations, levels of emotionality;

6) regular conflicts in the family etc.

Particular attention should be paid to the sixth factor of criminalization of juvenile delinquency – regular conflicts in the family. The author believes the factor has a pivotal role in the genesis of family violence. Therefore, criminogenic conflict of domestic violence should be considered as a consequence of family contradictions, which are contrary to socially established standards of cohabitation, the standard of

a mode of life of the majority of law-abiding citizens and the requirements of law and order.

In general, family conflicts are primarily reduced to increasing divorce rates, lowering birth rates, and a growing number of unhappy marriages. Moreover, they lead to an increase in juvenile delinquency and crime. Such families do not fulfill their main function – the upbringing of children.

Given the above, an unhealthy family atmosphere can provoke aggressive behavior and contribute to domestic crime, but the family may play a re-socializing role if its members have not lost empathy.

Many researchers believe that prevention of juvenile delinquency requires comprehensive and multidisciplinary activities and strategies whose participants and subjects are not only government agencies and law enforcement bodies but also non-governmental organizations, the private sector, volunteers etc. Strengthening and improving the institution of the family in the country is also directly related to the decrease in the level of domestic violence.

Given the State of Judicial Administration of Ukraine (SJA), juvenile crime over last three years shows the urgent need to organize and join efforts of society and the state to prevent such a crime due to its growth.

In particular, in 2016, 6 041 criminal proceedings against 7 438 minors were under consideration of the courts of original jurisdiction. In 2016, the courts of general jurisdiction concluded the trial of 4 240 criminal proceedings of that number of cases, including:

1) 3 099 proceedings with the pronouncement of judgment (255 were based on the conciliation agreement, and 59 were the plea of guilty);

2) termination of proceedings – 535 against 574 minors;

3) 140 indictments against 190 minors were sent back to a prosecutor;

4) 12 criminal proceedings demanding involuntary treatment were against 13 minors. Thus, at the end of 2016, the number of pending juvenile criminal proceedings was 1 801.

Over 2017, the number of criminal proceedings against minors increased by 6.1%. In 2017, the courts of general jurisdiction concluded the trial of 4 240 criminal proceedings of that number of cases, including:

1) 2 854 proceedings with the pronouncement of judgment (237 were based on the conciliation agreement, and 89 were the plea of guilty);

2) termination of proceedings in juvenile case – 545;

3) 90 indictments against 128 minors were sent back to a prosecutor;

4) 15 criminal proceedings demanding involuntary treatment were against 16 minors. Thus, at the end of 2017, the number of pending juvenile criminal proceedings was 2 536.

In 2018, the number of criminal proceedings against minors increased by 6.8%. The courts of general jurisdiction concluded the trial of 4 640 criminal proceedings in 2018, including:

1) 2 654 proceedings with the pronouncement of judgment (247 were based on the conciliation agreement, and 94 were the plea of guilty);

2) termination of proceedings in juvenile case – 515;

3) 80 indictments against 138 minors were sent back to a prosecutor;

4) 18 criminal proceedings demanding involuntary treatment were against 20 minors. Thus, at the end of 2018, the number of pending juvenile criminal proceedings was 2 728.

The foregoing statistics of the increase of annual pending criminal proceedings involving minors is mainly caused by the lack of judicial staff and the increase of criminal proceedings in their workload. It requires the creation of a post of the juvenile judge under the local courts that will allow other judges to relieve and to conduct proceedings on juvenile delinquency professionally.

In domestic criminology, the following scholars pay attention to the study of juvenile crime and application of effective preventive measures: I.K. Andriiv, Yu.A. Ambrosimova, A. M. Babenko, V.M. Burdin, K. S. Varyvoda, V.O. Hlushkov, V.V. Holina, V.K. Hryshchuk, L.M. Davydenko, H.V. Didkivska, I.M. Danshyn, O.M. Dzhuzha, V.P. Yemelianov, A.P. Zakaliuk, O.M. Kostenko, V.I. Lanovenko, O.M. Lytvak, I.V. Odnolko, V. A. Mozghova, M.I. Panov, O.M. Podilnyk, O.S. Steblynska, I.K. Turkevych, A. P. Tuzov, N.S. Yuzikova, S.S. Yatsenko et al.

According to domestic scholar N.S. Iuzikova, research studies of the problems of juvenile delinquency as well as the conceptual

approaches to the formation of policy on juvenile crime have not yet been analyzed comprehensively.

As the above-named scholar states, despite the numerous research papers devoted to the problems of juvenile delinquency and measures for its prevention, nowadays, no comprehensive studies are covering the problem of the interconnection of socializing functions of the social institutions and juvenile crime at the multidisciplinary level. Juvenile crime is characterized by certain innovations compared to one of the Soviet period. The crimes are committed with extreme cruelty and cynicism; their organised nature and autonomy, arms and resources provisions are growing[8].

Furthermore, it should be noted that juvenile crimes are due to their idleness, lack of entertainment and clear motivation for the future. Absence of parental supervision is a distinguishing feature of the modern juvenile offender.

According to the data of the school of sciences "Intellect", juvenile offenders are mainly represented by those who at the time of crime commitment neither worked nor studied – they just dawdled, consumed alcohol, tobacco, drugs. Moreover, in trying to become popular, they openly adhere to values that are condemned by the staff of the correctional facility.

Moreover, one -third of the convicted juveniles serving their sentences in correctional colonies committed crimes together with adults, mostly under their direct supervision. Usually, these adults already had a criminal record and deliberately involved young people in illegal activities[9].

Besides, juvenile delinquency, as defined by most criminologists, has a predominantly group nature. As a rule, greed, revenge, jealousy and hooliganism act as triggers of juvenile crime.

O.S. Steblynska in her research marks that socially dangerous consequences of juvenile crimes committed in a state of intoxication require not only the application of socio-economic, medical, legal and other measures of influence but also the implementation of scientific and

[8] Юзікова Н. С. Проблема кримінально-правового захисту інтересів неповнолітніх : монографія. Дніпропетровськ : Вид-во Дніпропетровського ун-ту, 1999. С. 3.

[9] Матеріали узагальнення наукових здобутків школи «Інтелект» / укладачі: І. Г. Богатирьов, А. І. Богатирьов, М. С. Пузирьов. Київ, 2017. С. 11.

theoretical study of the condition, the determinants of the spread and the search for effective methods of preventing this dangerous socially-legal phenomenon[10].

According to criminological indicators, juvenile delinquency should be gradually reduced or kept at the same level over the coming years in the structure of crime in Ukraine as a whole. All will depend on significant demographic changes, improvements in the economic and family and domestic spheres, the development of a democratic state of law in the framework of lawmaking and law enforcement activities on the prevention of juvenile delinquency.

Besides, among all regions of Ukraine, domestic criminologists O. M. Lytvak and I. V. Odnolko mark the largest number of juvenile drug crimes in Dnipropetrovsk, Luhansk, Donetsk, Kharkiv and Kyiv regions[11].

2. The causes and conditions of juvenile crime

In the process of studying the causes and conditions of juvenile crime, it is obligatory to consider them together as they cannot be examined separately from one another. However, according to the research, causes and conditions of juvenile crime depend on criminogenic motivation, the socially negative needs of the minor, the desire to solve problems as an adult at the level of own interests, which are manifested when committing a crime.

Therefore, the causes and conditions of juvenile delinquency can be considered as general, in-depth, stable relationships and trends that determine the nature of a particular crime, the contradictions forming it. Among the main causes and conditions of juvenile delinquency are as follows:

1) **family sphere**. The author supports the standpoint of O. M. Dzhuzha that the negative influence of the surrounding environment, in particular family plays a decisive role for a juvenile

[10] Стеблинська О. С. Запобігання злочинам, які вчиняються неповнолітніми в стані сп’яніння: монографія. Івано-Франківськ, Надвірна: ЗАТ «Надвірянська друкарня» 2011. 280 с.

[11] Литвак О. М., Однолько І. В. Запобігання наркозлочинності неповнолітніх в Україні кримінально-правовими засобами : монографія. Днепропетровськ : ДДУВС, 2012. С. 123.

offender[12]. It is a bad influence on the part of parents or other family members that shape a personality through behavior and actions. Difficult financial terms can be a motivation for committing a crime at a young age.

In such families, as the domestic scholar I.K. Andriiv states, there is a mood of hopelessness, social envy and resentment due to a difficult financial situation. Without social support, these circumstances trigger crimes – theft, hooliganism etc.; – negative impact of the immediate environment – domestic, educational, production, both peers and adults – incitement of adult offenders; quite often such situation is connected with the previous involvement in drunkenness, gambling games, other forms of criminal antisocial behavior in combination with propaganda of "advantages" of criminal life[13].

In the literature on criminology devoted to juvenile delinquency, the record shows that most of the perpetrators of violent crimes were subjected to humiliation and punishment in childhood as well suffered from cruelty and violation of adults;

2) **social sphere**. Homelessness and child neglect often force children to commit petty offences as in such a way they try to get their attention or take revenge on the outside world. There is an unfavorable situation in secondary general institutions. If the school administration does not provide adequate control and educational measures, the risk of juvenile delinquency is significantly increasing.

In this regard, we draw attention to the research of domestic scholar O.M. Podilnyk who believes that sometimes juvenile offenders have an inherent sense of shame, however, in a weakened form, that often makes them unrestrained and violent that complicates their condition even more. Who is guilty? No doubt, adults are, as they have been unable to give due attention to their children and help them in a black moment. It is possible to minimize the phenomena of juvenile crime by joint efforts and intelligent approach.

However, as the abovementioned scholar marks, minors have a natural striving for self-assertion, the desire to be a leader in a group combined with limited capabilities can be manifested in a particular

[12] Профілактика злочинів : підруч. / О. М. Джужа, В. В. Василевич, О. Ф. Гіда та ін. ; заг. ред. О. М. Джужи. К. : Атіка, 2011. С. 56.

[13] Андріїв І. К. Причини злочинності неповнолітніх у світлі кримінологічних теорій. *Вісник Львівського ун-ту. Серія юридична.* 2002. Вип. 37. С. 471.

crime specifically. Thus, during the offences against a person, there is senseless cruelty, infliction of numerous injuries on the victim[14].

Particular attention should also be paid to the impact of the Internet on juvenile delinquency. K. S. Varyvoda believes that modern development of technologies influenced on the fact that most minors nowadays prefer computer games and the Internet but not walking outside. The all-encompassing popularity of social networks among young people often causes various unpleasant and difficult situations in the context of the insufficiently formed psyche and consciousness, when there is no full comprehension of the difference between good and evil.

According to the above scholar, modern minors live in the information society where any media product is a kind of advertisement of lifestyle and certain values that influence the outcome of their choices. Teen psyche is often not mature for an information blow-up and becomes quite vulnerable without adequate protection[15].

It also worth turning attention to the viewpoint of the domestic criminologist A. M. Babenko who states the system of prevention of juvenile delinquency has to take into account particular regional peculiarities and include the following components:

a) assessment of the criminogenic situation of the region based on the comparison with socio-economic indicators of a particular region;

b) comparison with national indicators and crime trends;

c) analysis of the effectiveness of crime prevention in the region;

d) identification and elimination of criminogenic factors that cause juvenile delinquency in a particular region;

e) taking into account the positive experience of combating juvenile delinquency in other regions and countries of the world;

f) development of regional programs for the prevention of juvenile delinquency and combating neglect among minors;

g) harmonization of regional programs for the prevention of juvenile delinquency and combating neglect with integrated programs of socio-economic development of the region[16].

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[14] Подільник О. М. Особливості злочинності неповнолітніх жінок. *Питання боротьби зі злочинністю* : зб. наук. праць. Х., 2004. Вип. 8. С. 124.

[15] Варивода К. С. Інформаційна безпека підлітків в Інтернет-мережі. 2016. № 3. С. 365.

[16] Бабенко А. М. Запобігання злочинності в регіонах України: концептуально-методологічний та праксеологічний вимір : монографія. Одеса : ОДУВС, 2014. С. 243.

3) criminal sphere. According to domestic criminologists, a serious challenge in the prevention of juvenile delinquency is the negative impact on minors by the organized crime groups. A situation where minors are actively involved in committing subordinate or direct criminal acts becomes more popular.

The entertainment network for minors created with the direct participation of the organized crime contributes to their drag into the consumption of drugs, psychotropic substances and precursors, alcohol and equally dangerous ideology of rejection of established social norms that is expressed in minors' unwillingness to study and work.

As a rule, juvenile offenders take well so-called criminal romanticism and consider it as the manifestations of courage, bravery, "masculine strength". It is general practice they don't think about harmful, sometimes tragic side of criminal acts, and therefore they do not have it on their mind and cool on the victims.

The majority of juvenile offenders show, verbally and by virtue of activity, high self-esteem, low level of understanding of responsibility for their actions, lack of shyness, sympathy for other people.

According to domestic criminologist V.M. Burdin, it is introduced values and behaviour models, which are approved or not approved by the society, through the video culture, and mutual influence of institutions of video culture and dominant values of youth environment is carried out[17].

In the context of prevention of juvenile delinquency, the author shares the idea of Yu. A. Ambrosimova who marks that such prevention will be more effective and efficient when it is addressed, oriented on specific individuals, conditions and activity. For this very reason, improvement of the effectiveness of the activity on prevention of juvenile delinquency is closely related to the regional characteristics, cause factors and complex social impacts that can be identified and taken into account at the regional level and which can be subject to preventive measures[18].

Highway route map for the prevention of juvenile crime envisages:

[17] Бурдін В. Особливості кримінальної відповідальності неповнолітніх в Україні. К. : Атіка, 2004. С. 89–90.

[18] Абросімова Ю. А. Злочинність неповнолітніх та запобігання їй на регіональному рівні : автореф. Дніпро. 2009. С. 19.

– creation in Ukraine of powerful information and analytical support for the prevention of juvenile crime, that is, based on legal, organizational, technical and methodological fundamentals – purposeful activity on gathering, processing, storage, use of information necessary for the effective functioning of the system for the prevention of juvenile delinquency.

As a result of such activity, it is obtained information on the status, dynamics and structure of crimes committed minors, the impact on that kind of crime of the socio-economic status of the state, the activities of the subjects of its prevention;

– *normalization of living conditions and education of minors, improvement of social environment*. Unfortunately, the lack of state-run programs for support of minors shows that the state has delegated the function of children upbringing only to family. Moreover, domestic legislation on children's rights is still incomplete taking into account that there are significant reserves for further legal actions on minors.

It is a case of the inconsistency of state policy in carrying out its international obligations to provide children with the standard of living that is necessary for their physical, mental, spiritual, moral and social development, protection against abuse and "careless" attitude. It is high time for the adoption of a unified law on children's rights.

It seems the family, unfortunately, is not able to get through the problem of proper, law-abiding education of the child independently. Moreover, if a family experiences violence, children can automatically adopt it as a means for resolving conflicts or getting a wish.

Primarily, they transfer these skills to the external environment in kindergarten and school, then to friends and close relationships and, consequently, to their families and children. At the same time, children recognize that pressure and aggression lead to the desired result and don't look for other ways for communication with people;

– *cooperation of police officers with the authorities and academic staff of education institutions to conduct preventive conversations, lectures not only for school children and students but also for teachers;*

The very school is a universal mass social institute of positive socialization of minors under the condition of its normal functioning. A school is a place where one can implement educational and preventive potential without any obstacles and apply modern approaches to working with children to form their anti-social motivational behaviour.

– *running various subject-matter events with minors by authorities of the police, education sector, social services, libraries.* For example, to discuss what offense is, punishments are prescribed for their commission. Screening of documental films on juvenile delinquency is a very effective way of influence on young spectators as it is possible to develop one of many topics (orally) for hours without effect, and the visible material seen with own eyes changes the perception of boys and girls of many things;

– *conducting raids by police squads to identify the facts of attendance of shopping and entertainment centers by minors under 16 years of age without parents at after 10 pm*. If such facts are found, the parents are subject to Art. 184 of the CAO of Ukraine for improper fulfillment of parental responsibilities;

– *preventive registration of minors, who are inclined to commit a criminal offense, in the police*. It is expedient to agree with A.P. Tuzov who wrote in the last century that "prevention of juvenile offenses contributes, on the one hand, to the adequate upbringing of the younger generation and, on the other, to the eradication of offenses as a whole"[19]. In the context of individual prevention, the possibility of crime commitment is anticipated by eliminating the external and internal factors which determine the decision on its commitment.

In each case, the decision in individual-preventive influence is taken towards a particular person, who has a disposition towards crime commitment. It is another story when the measures are taken against a group which has a criminogenic influence on a person who is under prevention effect. In this case, the purpose of the effect is to improve the deviations of the person and his behavior, which requires a broader application of the forms and methods of such influence by the subjects of prevention.

Individual prevention also includes such influence when its object is a group of persons or a work collective. A characteristic feature of individual prevention is a deliberate positive effect not on a separate isolated factor or element of the causal mechanism of individual criminal behavior but on the whole set of causes that may determine criminal behavior.

[19] Тузов А. П. Профілактика правопорушень серед молоді. К. : Вид-во політ. л-ри України, 1978. С. 62.

Juvenile offenders, who break norms of behaviour established in the society, abuse alcohol and drugs, kick up a row, ignore parents' demands for proper behavior, react aggressively and inadequately, need special attention on the part of bodies of the National Police, in particular:

- preventive registration of such persons;
- administrative accountability for the crimes committed;
- close cooperation between the police and the public in identifying violations rules of conduct in the community by minors, etc. Besides, according to crime statistics, the very close cooperation between the police and the public most often makes it possible to prevent juvenile crime.

Among modern measures for prevention of juvenile crime by the police, it is essential to mark as follows: involvement of cliff dwellers in the protection of public order in their district; provision of recommendations for reinforcing the front door with metal and putting metal bars on the windows; positively cooperate with courtyard cleaners and watchmen in the context of detection of juvenile offences; creation of guard detachments under the settlement communities.

Finally, it should be noted that a crucial measure to prevent juvenile delinquency is the availability of relevant political will as a basis for such prevention. It is the political will that determines the content, and hence the effectiveness of the other two main factors in crime prevention – the proper legal framework and the activities of law enforcement and other bodies towards its application. The latter, depending on the political leadership of the state, can be used for different purposes, with different efficiency factor.

According to domestic criminologist L.M. Davydenko, in the context of lack of the political will, the most perfect legal support for crime prevention, including juvenile delinquency, is doomed to declarative existence and the activity of law enforcement agencies – to simulate counteraction to criminal acts[20].

CONCLUSIONS

The authors study the problem of juvenile crime, which gives grounds to argue that 14-16 years are an age range of its criminological manifestations among minors. Besides, it is the age when most minors

[20] Давиденко Л. М., Бандурка А. А. Противодействие преступности: теория, практика, проблемы : монографія. Х.: Изд-во Нац. ун-та внутр. дел, 2005. С. 31.

are under the influence of adult crime and, consequently, they are most often exposed to the various temptations and desires to get everything they want immediately.

On the other hand, it is established that juvenile crime by its nature has a venal, venal-violent and violent orientation. At the same time, almost half of the crimes committed by minors belong to the category of serious and particularly serious ones. And this is the biggest problem of juvenile delinquency. Unfortunately, police officers today do not have a criminological set of tools to prevent such crime, thus creating distrust of the police in the country.

Among the most typical juvenile crimes, it is worth marking a theft (characterized by the theft of items made of ferrous and non-ferrous metals, so-called home burglary, thefts in booths, crowds, motor vehicles, etc.).

Thus, the analysis of criminological literature gives grounds to conclude that a significant place in the system of criminogenic factors of formation of a child's personality is occupied by deficiencies in the work of educational institutions, in particular, preschool, secondary and extracurricular educational institutions, training schools, orphanages, foster homes that along with the indifference to children in the family, society and a number of other criminogenic factors cause an increase of juvenile delinquency.

SUMMARY

Scientific domestic literature considers the problem of juvenile crime in Ukraine and measures for its prevention as one of the most topical. The paper substantiates the idea that modern strategy for the prevention of juvenile crime should be developed taking into account moral principles and traditional values of Ukrainian society which are aimed at building up the family and moral health of a child. Based on the analysis of scientific papers of domestic scholars, the authors specify the reasons and conditions for the origin of that kind of crime in the modern context and propose own highway route map for the prevention of juvenile crime.

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Information about the authors:

Bohatyrov I. H.
Doctor of Law, Professor,
Honoured Scientist and Engineer,
Professor at the Department of Criminal Law and Criminology,
National University of the State Fiscal Service of Ukraine

Yarmysh O. N.
Doctor of Law, Professor, Corresponding Member
of the National Academy of Legal Sciences of Ukraine,
President of the International Association of Historians of Law,
Senior Research Associate of the Legislation Institute
of the Verkhovna Rada of Ukraine

Dębiński Antoni
doctor habilitowany nauk prawnych,
ksiądz profesor, rector,
Katolicki Uniwersytet Lubelski Jana Pawła II
(Rzeczpospolita Polska)

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VIOLENT CRIME IN PENAL INSTITUTIONS: CRIMINOLOGICAL CHARACTERISTICS

Bohatyrova O. I., Bohatyrov A. I.

INTRODUCTION

The commission of the violent crime by prisoners in penal institutions is not only a dangerous encroachment on the goals and objectives of justice, the adequate functioning of the State Criminal-Executive Service of Ukraine (SCES of Ukraine) but also a real threat to the life and health of both prisoners and the staff of the penal institutions.

In addition, over three recent years, prisoners have committed 415 crimes in the penal institutions of the Ministry of Justice of Ukraine, and its vast majority is related to violence. Their social danger is caused not only by quantitative indicators but, as a rule, by threats of a large number of prisoners oriented on the conflict both among themselves and with the staff of the penal institution.

Thus, crimes committed in penal institutions are always of public attention, subject of discussion for Ukrainian and international human rights organizations, and they are often politicised.

Consequently, criminology, whose modern development provides strong evidence of its potential to be the most important tool for determining the degree of reliability of scientific substantiation and prediction regarding the prevention of crime among prisoners in penitentiary facilities, is an integral part in this process.

Theoretical problems of violent crime in penal institutions have been discussed by the following domestic and foreign scholars: Ya.S. Bezpala, I.H. Bohatyrov, O.V. Brynzanska, L.D. Haukhman, O.M. Dzhuzha, A.I. Druzin, B.C. Ishyheiev, I.V. Kernadzhuk, I.Ia. Kozachenko, N.I. Korzhanskyi, V.N. Kudriavtsev, N.F. Kuznietsova, S.V. Nazarov, I.H. Prasolova, A.A. Piontkovskyi, A.I. Raroh, O.N. Rumiantsev, A.V. Tkachenko et al.

Studying the violent crime in penal institutions, the authors can't ignore the definition "violence" which is used to describe different phenomena and determined in broad and narrow senses. Violence is

identified as a category of sociology (broad) and as a criminal category (narrow). In the course of discussions that have been lasting for over a hundred years, there has been a change of concepts which the parties do not notice. Using the same term, opponents differently interpret it.

According to the definition of the World Health Organization, violence is the intentional use of physical force or power, threatened or actual, against oneself, another person, or against a group or community that either results in or has a high likelihood of resulting in injury, death, psychological harm, maldevelopment or deprivation[1].

The above definition combines the intentionality and de facto commission of an act of violence regardless of its outcome, and the use of the words "use of power" extends the traditional understanding of the nature of the act of violence by including violence acts into the concept whose source is power over a man, that is, threats and intimidation. However, the definition is a wide-ranging concept for its application in criminal law; particularly, it is controversial to use the power, which in the authors' opinion, is not a common phenomenon and has a different meaning in jurisprudence[2].

The Special Part of the Criminal Code of Ukraine uses the term "violence" in more than 40 articles of the Special Part as a constructive or qualified feature of some crimes of individual types. Violence involves not only the whole range of violent actions covered by the term "violence" but also criminal phenomena defined by other terms describing actions that, in the scholars' opinion, are "violence" in its broadest sense, or "violence" as a form of its manifestation. L.D. Haukhman writes: "Sometimes, there are actions which are essentially violence or may be manifested in violence or the mentioned consequences of violence in the form of death or personal injury"[3].

Unfortunately, the Criminal Code doesn't define the concept "violence" providing scholars with an unlimited area for research and scientific discussions. Although most scholars are limited to the listing of force actions and their consequences, some interpretations of "violence" seem like the definition of a criminal act.

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[1] Насилие и его влияние на здоровье. Доклад о ситуации в мире / под ред. Этьенна Г. Круга и др. / Пер. с англ. М: Издательство «Весь Мир», 2003. 376 с.

[2] Ведмідський О. В., Богатирьов А. І., Некрасов О. О. Втеча в'язнів з місць несвободи (міжгалузеве дослідження) : монографія. К. : ВД «Дакор», 2015. С. 26.

[3] Гаухман Л. Д. Насилие как средство совершения преступления. М., 1974. С. 74.

Thus, P.N. Nazarov renders violence as a volitional, socially dangerous, unlawful, guilty action, with the use of physical or mental force trespassing on public relations ... protected by the laws specified in the Special Part of the Criminal Code ... and harming or threatening them, which is expressed within the scope and intensity of the law[4].

L.D. Haukhman[5], R.D. Sharapov[6], L.V. Serdiuk[7] et al. presented their fundamentally different definitions for the category concerned. V.I. Symonov divides modern ideas into four groups: a) the use of physical force towards the victim; b) any influence on the physical integrity of the victim; c) the influence on the victim, which may involve striking blow(s), causing bodily injury or death; d) any unlawful action towards the body of another person against his will[8].

Analysing the dispositions of the norms of the CC of Ukraine, one can conclude that the legislator considers the concept of violence as a cause of death, grievous, moderate, and mild harm to human health, bodily blows or commission of other violent acts that provoke physical pain to the victim. In general, the authors agree with P.E. Tokarchuk, who claims that the category "violence" cannot be defined in the Criminal Code of Ukraine as a concept because it is evaluative one and selectively contains several particularly aggressive forms of physical coercion due to which it should be cleared up[9].

Consequently, without digging too much into a scientific discussion based on the above, the authors propose own alternative for the understanding of the concept "violence" in the criminal sense. Violence is considered as the intentional unlawful use of physical force using weapons and objects, which may be used as weapons, other objects or substances or without such towards another person, aimed at the violation of physical integrity or damage to health or deprivation of life.

In the crimes under consideration, except crimes related to infliction of bodily harm, violence is used during committing penitentiary crimes,

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[4] Назаров П. Н. К вопросу о насилии при грабеже и разбое. *Труды Киевской ВШ МООП СССР.* Киев, 1968. Вып. 1. С. 91.

[5] Гаухман Л. Д.Борьба с насильственнымипосягательствами. М., 1969. С. 7.

[6] Шарапов Р. Д. Физическое насилие в уголовном праве. СПб., 2001. С. 31.

[7] Сердюк Л. В. Насильники и их жертвы: криминологическое и уголовно-правовое исследование. Уфа, 2002. С. 16.

[8] Симонов В. И. Уголовно-правовая характеристика физическогонасилия : автореф. дис. … канд. юрид. наук. Свердловск, 1972. С. 16.

[9] Токарчук Р. Е. Насилие как составообразующий признак хищений: вопросы уголовной ответственности : автореф. дис. ... канд. юрид. наук: 12.00.08. Омск, 2008. С. 14.

that is, actions which disorganize the work of correctional institutions, and escape from the institutions. In article 393 of the CC of Ukraine, violence is a qualifying feature during the escape from a penitentiary institution or custody by a person who serves his/her sentence of imprisonment or arrest, or who is under pretrial detention.

Moreover, the above is qualified if it has been committed with the use of violence threatening to life or health, or with the threat of such violence as well as with the use of weapons or objects utilizing as weapons. In other words, violent crime in penal institutions is not only dangerous for life or health, but it also requires an individual qualification as a whole.

Purpose of the article is to study violent crime in penal institutions through the prism of criminology and to identify the determinants of the negative phenomenon to develop relevant preventive measures.

In order to get a vision of the extent of violence in the penal institutions over the last five years, the authors have analyzed statistics, which, unfortunately, is not based on all canons of statistical generalization as there is no access to all information units. However, due to the available data, the authors analyze some of the modern causes of violence in penal institutions.

1. The commission of a new crime by a prisoner in the penal institution

Undoubtedly, the commission of a new crime by a prisoner in the penal institution is an extraordinary event, or as I.M. Kopotun calls it, an extraordinary event of criminal nature in the penal institution[10]. First of all, malicious defiance of authorities of the penal institution, escape from the institution of confinement disorganizing the functioning of correctional institutions, murders of convicts or the staff of penal institutions cause a negative resonance in society, adversely affects the authority both a criminal executive system and the entire system of law enforcement and judicial bodies.

According to O.O. Stulov, the state of crime in penal institutions for 2004 – 2008 indicates that the bulk of crimes are committed by prisoners who are serving custodial sentences. Thus, an analysis of the crime for

[10] Копотун І. М. Поняття надзвичайних подій кримінального характеру в кримінально-виконавчих установах. *Південноукраїнський правничий часопис.* 2012. № 3. С. 40.

2008 shows that 536 criminal cases were initiated during a year against persons sentenced to imprisonment as compared to 489 cases in 2007 (2006 – 411, 2005 – 386, 2004 – 324 criminal cases). Almost 60% of their number is cases are commenced based on "preventive articles" (arts. 342, 345, 390, 391 of the CC of Ukraine). Compared to 2007, the number of escapes of prisoners from penal establishments with minimum-level security with less strict conditions of detention (former colonies-settlements) increased the number of deliberate killings by 100% and the serious injuries that caused the death of the victims by 200%. At the same time, the number of prisoners' escape from custodial institutions was reduced by 66.6%[11].

Therewith, many crimes committed by prisoners in detention facilities are peculiar only to this category of persons since the perpetration is possible only while they are serving their sentences. In particular, they involve: 1) evasion of punishment not related to imprisonment (Art. 389); 2) evasion of a sentence in the form of restriction of freedom and the form of imprisonment (Art. 390); 3) malicious disobedience to the requirements of authorities of a penal institution (Art. 391); 4) actions that disorganize the functioning of penal institutions (Art. 392); 5) escape from prison or custody (Art. 393); 6) escape from a specialized medical establishment (Art. 394).

Thus, despite the sharp decrease in the number of prisoners from 149,000 in 2009 (186,000 in 2013) to 60,000 in 2018, the number of reported crimes committed in penal institutions has a disappointing trend. The above fact is also confirmed by statistical reports of the State Judicial Administration, analytical reports of the State Department of Ukraine on the Execution of Sentences, the State Penitentiary Service of Ukraine and the Ministry of Justice of Ukraine for the period 2008–017.

According to official statistics, a specific feature of crimes, which have been committed by prisoners in penal institutions over the last 10 years (2009–2018)[12], is a tendency to a significant reduction of their number with some dynamic fluctuations. In particular, if during the

[11] Стулов О. О. Характеристика злочинності засуджених в установах виконання покарань. *Держава та регіони. Серія: Право.* 2009. № 4. С. 126.

[12] Статистична інформація Про зареєстровані кримінальні правопорушення та результати їх досудового розслідування за 2011–2017 рік. URL: https://www.gp.gov.ua/ua/stat.html

period (2009–2010), the number of crimes decreased from 422 to 404 in 2010 and in 2011–2012, the absolute rate of crime among prisoners increased from 465 to 576 in 2012, respectively.

However, further, in the dynamics of fluctuations, there was a slight decrease in the absolute number of crimes committed by prisoners in penal institutions – from 324 in 2013 to 298 in 2014. In the following years, the dynamics of fluctuations were associated with a slight increase in the absolute number of crimes committed by convicts in prisons from 302 in 2015 to 314 in 2018.

2. Classification of crimes in penal institutions

The very high latency of violent crime in penal institutions is associated with some shortcomings in the system of performance evaluation of correctional facilities. Besides, it should be noted that the showings for 2014–2018 don't include statistical indicators of the number of crimes committed by prisoners in penal institutions which are located in the temporarily occupied territory of the Autonomous Republic of Crimea and some areas of Donetsk and Luhansk regions. The authors divide crime in the penal institutions into three groups.

The first group includes penitentiary offenses: escape from imprisonment or custody, malicious disobedience to the requirements of authorities of correctional institutions, which generally are more than half of all crimes committed in prisons.

According to quantitative indicators, the authors attribute crimes in the distribution of narcotic drugs, psychotropic substances, their analogues or precursors to the group. In particular, the level of the crimes has recently increased that may indicate the inaction of staff of penal institutions in the prevention of these crimes.

At the same time, taking into account the latency of these crimes, the dynamics likely indicate the random nature of indicators rather than the actual state of crime in the institution. At the same time, the increase in the distribution of narcotic substances in penal institutions may indicate an intensification of the influence of the criminal subculture.

The third, however, no less dangerous than other types, group involves violent crimes: intentional homicide, attempted murder, intentional grievous bodily harm, hooliganism, threat or violence.

Also, it is necessary to distinguish thefts in penal institutions as an individual category. Predominantly, prisoners take things of other prisoners that leads, as a rule, to physical altercations following the traditions of the gangland. Frequently, personal belongings and food and parcels are penetrated by those who are leaders in the penal establishment. Experience has proven that the above facts are often hidden from authorities of penal institutions, or when the facts come to light, they either are ignored, or disciplinary actions are taken.

While studying violent crime among convicts in penitentiary institutions, criminologists rarely pay attention to the study of prisoners, the processes and phenomena that occur inside and mainly focus their efforts on the criminal aspects of the problem.

Individual research makes it possible to look at such crime through the prism of victimology. In particular, structural and functional analysis of victimhood of the convicts in connection with the criminal activity of the SCES staff during professional activity deserves special attention. The basic provisions of such an analysis are synthetic and, at the same time, differentiated attention to the victimology-relevant personal (structural victimogenic factors) qualities of prisoners and their manifestations in psychophysical activity (functional victimogenic factors) in a particular social context where the employee of SCES is involved anyway.

However, criminological insight is somewhat broader and implies its expression in real life, which inevitably involves a number of restrictions and risks in the context of social isolation. Thus, Ya.O. Likhovitskyi presents them as follows:

1) forced contact with the staff of the SCES while performing the duties of a convict and with the exercise of the relevant rights;

2) limited movement, choice of location;

3) in the conditions of restricted access facilities of closed penal institutions; limited arsenal of actually available personal, including legal, physical protection tools, especially in the context of unlawful behavior by the SCES staff. For example, the inability to use telephone promptly, to use means of individual protection, in relation to which the regime of correctional facility set well-known restrictions, etc.

4) low efficiency of control system over the observance of the rights of prisoners, their protection;

5) prisonization of a person, a disruption or a significant limitation of his socially useful connections (labor, family, leisure, etc.). In this sense, victimhood of convicts can be defined, first of all, as a status[13].

Thus, the insufficient elaboration of the scientific problem under consideration at the doctrinal level cannot adversely affect the functioning of the penal institutions of the Ministry of Justice of Ukraine. Moreover, the lack of a criminological basis for a common cross-branch method of preventing violent crime among convicts leads to difficulties and contradictions in the formation of individual measures of its preventive activity.

This, in turn, reduces the scientific and practical value of improving the current legislation and methodological recommendations, complicates their implementation in the practical activity of the penal institutions of the Ministry of Justice of Ukraine.

Analyzing violent crime among convicts, it should be remembered that with the development of penitentiary criminology of Ukraine on crime in penal institutions, it is not only a complex, multidimensional phenomenon, but most important that it is conditioned by the need for scientific and theoretical comprehension and study of crime problems among convicts; its features are as follows:

- commission of crimes by the convicts; a lack of control and supervision over them on the part of the staff of the penal institutions;
- increased risk of serious consequences for both staff and prisoners;
- inadequate control over crime by the authorities and staff of penal institutions, etc.

At the doctrinal level, a strong argument in favor of analyzing violent crime in penitentiary institutions of the Ministry of Justice of Ukraine is a lack of proper legal regulation of public relations in the area of crime prevention in penitentiary institutions and public evaluation of the effectiveness of crime prevention activities in the institutions under consideration.

According to the modern theory of penitentiary criminology, violent crime in penal establishments is the result of the correlation of criminogenic factors (causing crime among convicts) and anti-criminogenic factors (causing its prevention in penitentiary institutions).

[13] 1.Ліховіцький Я. О. Характеристика віктимності засуджених в аспекті злочинів у сфері службової діяльності, що вчиняються працівниками Державної кримінально-виконавчої служби України. *Форум права.* 2017. №. 1. С. 90–91.

In terms of the determinants of violent crime in penal institutions, the authors identify objective (external) and subjective (internal) manifestations. In particular, objective (external) ones include: shortcomings in the activities of agencies and institutions of penalties of organizational-legal, living, social-educational, practical, technical nature, which support and sometimes stimulate the action of subjective and objective causes of crime in penal establishments[14].

Moreover, most of modern criminological studies of violent crime in penitentiary institutions, for objective and subjective reasons (analysis of previous studies despite their obsolescent nature, constant discussion of the problem; criticism and comments, etc.) have not formed a strategy and tactics for relevant practical activity and criminological influence on the state policy of crime prevention in penitentiary institutions and probation of the Ministry of Justice of Ukraine.

It is expedient to mark that general measures for prevention of violent crime in penal establishments provide for:

- further gradual improvement of the conditions of serving the criminal sentence and gradual approximation of these conditions to the requirements of international standards and positive experience of serving sentences in the leading countries of the world;
- creation of conditions for maximum involvement of convicts in work activities;
- search for new forms and methods of educational and preventive work with prisoners and qualitative improvement of their content.

Thus, analyzing violent crime in penitentiary institutions among prisoners through 2009 to 2018, the authors find that it is largely determined by the same criminogenic factors that have been identified before, but today, crime among convicts is becoming more threatening and dangerous for penitentiary institutions.

Moreover, its constant instability indicates insufficient results of anti-criminogenic factors. By the way, the system of prevention of violent crime in penitentiary establishments in the years under

[14] Зубов Д. О. Деякі питання запобігання пенітенціарній злочинності. *Державна пенітенціарна служба України: історія, сьогодення та перспективи розвитку у світлі міжнародних пенітенціарних стандартів та Концепції державної політики у сфері реформування Державної кримінально-виконавчої служби України, затвердженої Указом Президента України від 8 лист. 2012 р. № 631* : матеріали міжнар. наук.-практ. конф., Київ, 28–29 березня 2013 р. К. : Державна пенітенціарна служба України, 2013. С. 373.

consideration led to the actual reduction of such crime. It was especially observed until 2013.

In the crimes under investigation, violence, in addition to crimes related to the infliction of bodily injury, is also used during the commitment of prison crimes; violence is a qualifying feature during the escape from a prison, from arrest or from custody, which is committed by a person who is serving his sentence or in pre-trial confinement.

Moreover, it is qualified if it has been committed with the use of violence threatening to life or health, or with the threat of such violence as well as with the use of weapons or objects utilizing as weapons. That is, escape during the violence, which is dangerous to life or health, requires an individual qualification in the whole.

It is worth noting that Art. 392 of the CC of Ukraine provides for the terrorization of condemnation, which is understood as the use of violence or the threat of violence to compel them to give up on their conscientious attitude to work, observance to the rules of the regime as well as the performance of the same acts for revenge for the fulfillment of public duties to strengthen discipline and order in the penal establishment.

The term "violence" covers both actions and consequences. Consequences of violence are recognized as trivial and moderate bodily injuries. That sort of conclusion is confirmed by other research[15] as well as by the instructions of the Supreme Court Plenum. In particular, it was noted that the attacks on the authorities or terrorizing of prisoners, who are pursuing a better path, related to threats, bodily blows, causing trivial, less serious (moderate) bodily harms and other similar activities are covered by the crimes stipulated in Art. 392 of the CC of Ukraine and do not require additional qualifications in other articles of the CC.

Consequently, the authors can't agree with V.V. Shablystyi, A.V. Tkachenko who attributes exclusively violence, which is not dangerous to life or health, to violence during activities disorganizing the work of penal institutions[16]. Thus, using the interpretation of criminal law by analogy, according to the Resolution of the Plenum of

[15] Насилие и его влияние на здоровье. Доклад о ситуации в мире / под ред. Этьенна Г. Круга и др. / Пер. с англ. М: Издательство «Весь Мир», 2003. С. 107.

[16] Шаблистий В. В., Ткаченко А. В. Кримінальна відповідальність за дії, що дезорганізують роботу установ виконання покарань : монографія / за заг. ред. д-ра юрид. наук. доц. В. В. Шаблистого. Дніпро : Видавець Біла К. О., 2018. С. 63.

the Supreme Court of Ukraine No. 2 as of 26.03.93, it indicates that violence that is not dangerous to life or health of the victim should be understood as bodily blows or commission of other violent acts related to causing the victim physical pain or restriction of his freedom (tying hands, using handcuffs, isolation in closed space, etc.)[17]. That is, intentional infliction of light bodily harm that did not cause short-term health disorders or minor disability as well as other acts of violence (striking blows, beating, unlawful imprisonment) provided that they were not dangerous to life or health at the moment of infliction.

At the same time, Arts. 391, 392, 393 of the CC of Ukraine, violence dangerous to life or health is a violence that has caused severe and moderate harm to the victim's health as well as causing mild harm to health that has caused short-term health disorders or trivial loss of working capacity[18]. In other words, it is the intentional infliction of a mild injury to a victim that caused a short-term health disorder or slight disability, moderate or serious injury as well as other violent acts, which did not lead to the above consequences but were dangerous to life or health at the moment of commitment. In particular, they should include violence that has led to the loss of consciousness or had the character of a torture, suffocation, drop from a height, the use of electric current, weapons, special tools as well as the use of narcotic drugs, psychotropic, toxic or potent substances (gases), etc. without the consent of the victim.

Thus, according to Art. 392 of the CC of Ukraine, violence is a violence which is not dangerous to life or health of a person. In the case of causing actions that disorganize the functioning of the institution to a prisoner or staff of the penal institution or committing actions during the escape from penitentiary establishment or custody or commission; such actions shall be qualified additionally by Art. 122 or Art. 115, Art. 348 of the CC of Ukraine.

Criminal doctrine also widely covers the concepts "physical and psychological abuse". In particular, physical abuse is an unlawful intentional physical effect on the body of another person contrary to his or her will that causes different severity level of harm to health or life and may restrict the freedom of movement of a person without violating

[17] Про судову практику у справах про злочини проти власності : Постанова Пленуму Верховного Суду України від 6 листопада 2009 року № 10. *Постанови Пленуму Верховного Суду України в кримінальних справах*. К.: Алерта; ЦУЛ, 2011. 400 с.

[18] Там само.

bodily integrity. And psychological abuse is an intended effect on the mental sphere of the human body. It can take the form of threats of violence (an expression of intent to cause a person physical harm), an image aimed at causing the victim a mental trauma with the purpose of revenge or violent influence on his will, bullying, harassment, if it is not related to causing physical harm[19]. However, the provisions of the CC provide for only one form of this type of violence – physical menace.

In addition to the use of violence, which is dangerous or not dangerous to the life or health of the prisoner or the employee of the establishment, the disposition of Art. 392 of the CC of Ukraine also includes a threat of violence. The current criminal law lacks its concept, and scientific literature has different ideas both about its essence and the relation with other types of violence, in particular, psychological.

Thus, N.I. Panov assumes that the threat is a mental violence, which is expressed in the dangerous unlawful influence on the mental sphere (substructure) of the person, or either the ultimate purpose of the action of the perpetrator (for example, with murder threat) or "means" of limiting or suppressing the will of the victim and forcing him to perform a certain (passive or active) behavior[20]. The above position is shared by many experts.

L.D. Haukhman argues that the threat may include physical influence providing the following example: in the vestibule of a train carriage, the perpetrator pushes the victim to an open door demanding to cease legal activity[21]. The authors believe the described situation also points at information actions because the main thing is not the physical actions – pushing to the door, but the information they involve, how they affect the human psyche.

It is unjustified the statement that the threat can be modified (transformed) into physical violence if it causes harm to one's health or life and the perpetrator reckoned on the result.

Psychological abuse is different from the physical one not due to the consequences (they can be exactly the same), but in the mechanism of causing harm to health. "Physical violence is the intentional unlawful

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[19] Хахуда Ю. Насильство як спосіб перешкоджання здійсненню виборчого права. *Право України.* 2003. № 4. С. 102.

[20] Панов Н. И. О точности норм уголовного права и совершенствовании законодательной техники. *Правоведение.* 1987. № 4. С. 79.

[21] Назаров П. Н. К вопросу о насилии при грабеже и разбое. *Труды Киевской ВШ МООП СССР.* Киев, 1968. Вып. 1. С. 18.

infliction of physical harm to another person against his will by the energetic impact on the organs, tissues or physiological functions of the victim's body". The energy group of methods includes those types of behavior which are related to or expressed in the entity's physical influence on the object and subject of the criminal attack (victim).

Some authors in identifying the threat rely on two criteria: a) its affiliation to psychological abuse and b) functional orientation. For example, V.F. Karaulov considers the threat as a mental abuse applied to the victim in order to change his behavior in the interests of the perpetrator[22]. According to K.L. Akoev, the threat is an intention expressed in any way to harm protected benefits[23].

It is differently logical to reduce the content of the threat to an "externally expressed intent to cause harm". The true motives of the perpetrator often consist of not so much the desire to harm the wealth of the victim as of the desire to cause him feelings of fear, anxiety, and concern. N.V. Sterekhov renders the essence of the concept under consideration more adequately. He proposes to comprehend the threat as an encroachment on the freedom of activity of a citizen, which is expressed in the influence on the will of the victim by conveying information about the decision to cause essential harm to his interests[24].

According to the authors, Art. 392 of the CC of Ukraine renders the threat as a socially dangerous information influence on the convict, employee of the penitentiary institution due to which the victim is in a state of choice: to pursue the fulfillment of the requirements of the regime, to assist authorities of the institution or body of the penitentiary system, to carry out official activities recognizing the possibility of realizing the threat and causing harm (to sacrifice one protected benefit for the sake of another) or to bend to the addressee of the threat to execute his will, to neglect own duties. However, it should be noted that not only the moral paradigm arises as the latter type of behavior means that due to the threat the victim causes harm to the work of the correctional institution.

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[22] Караулов В. Ф. Стадии совершения преступления : учеб. пособие. М., 1982. С. 74.

[23] Акоев К. Л. Место совершения преступления и его уголовно-правовоезначение. Ставрополь, 2000. С. 22.

[24] Стерехов Н. В. Ответственность за угрозу по советскомууголовному праву (вопросы теории и практики) : дис. канд. юрид. наук. Свердловск, 1972. С. 131.

It should be emphasized that the informational nature of the threat determines its personification. In other words, it must be addressed to the particular person whose behavior is conquered to be changed, and that person is capable of perceiving the threat. Otherwise, the effect on the human psyche is excluded. Therefore, the authors considered it a mistake that the threat is a mental abuse also when it, for reasons independent of the perpetrator, was not or could not be perceived by the person – the addressee of the threat.

The authors support the opinion of A.A. Krashenynnykov and A.I. Chuchaev who point out what composes the threat according to Art. 392 of the CC of Ukraine. The legislator is inconsistent, as beyond the limits of criminal regulation, there is the threat of harm to victim's no less valuable benefits and legitimate interests[25]. Thus, during resorting, the threat can be expressed in the use of violence or destruction or damage to property as well as in the dissemination of information dishonouring the victim or his relatives or other information that may significantly violate the rights or legitimate interests of the victim or his relatives. It should be noted that this sort of crime is less dangerous than the disorganization of the work of penitentiary institutions, but it has a legally defined greater impact on the psyche of the victim. It is not very obvious that this type of threat will not lead to the desired effect for the perpetrator.

It should also be clarified that most often in the context of the escape and actions that disorganize the work of correctional facilities, it is used weapons or objects serving as weapons, which should be understood as their deliberate use by a person both for the physical impact and mental impact on the victim in the form of a threat to violence which is dangerous to life or health[26]. According to Art. 392 of the Criminal Code of Ukraine, liability also arises for the threat of violence when there are real grounds for the implementation of that threat as such acts are a form of mental abuse.

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[25] Крашенинников А. А. Угроза в уголовном праве России (проблемы теории и практики правового регулирования). / отв. ред. А. И. Чучаев. Ульяновск, 2002. С. 104.

[26] Зубов Д. О. Деякі питання запобігання пенітенціарній злочинності. *Державна пенітенціарна служба України: історія, сьогодення та перспективи розвитку у світлі міжнародних пенітенціарних стандартів та Концепції державної політики у сфері реформування Державної кримінально-виконавчої служби України, затвердженої Указом Президента України від 8 лист. 2012 р. № 631* : матеріали міжнар. наук.-практ. конф., Київ, 28–29 березня 2013 р. К. : Державна пенітенціарна служба України, 2013. 620 с.

To not descend in the study of murder as a form of violence, the authors mark that negligent homicide can be considered as an attack on the authorities of the institution concerned and, if any required features, it should be qualified by the totality of the crimes provided for in Art. 392 of the CC and the relevant part of Art. 119 of the CC of Ukraine. That standpoint is supported by other researchers, in particular, M.I. Bazhanov, A.Ya. Svetlov, V.I. Tobyugin et al.[27].

CONCLUSIONS

Thus, summarizing the above, the authors conclude that the criminological situation in the penitentiary institutions is still dangerous, tends and is predicted to be increasingly criminogenic one that influences and will influence on the increase of the number of new crimes, which are committed by prisoners.

At the same time, the authors conducted the analysis of violent crime in the penal institutions, based on the data of official statistical recording and registration of its manifestations over the specified period which shows dark prospects.

According to the research, the article confirms with certainty that violence is a complex social phenomenon not only in society but also in penal institutions where the problem concerned is particularly burning. Based on the conducted research, the authors were able to establish that in prisons, in addition to some crimes against sexual freedom, life and human health, there is also violence in penitentiary crimes (Art. 392, Art. 393 of the CC of Ukraine) and can be manifested in three forms:

1) the use of non-life-threatening or health-related violence against a convicted person or an employee of a custodial or confinement facility in connection with the exercise of his official activity;

2) the use of life-threatening or health-related violence against a convicted person or an employee of a custodial or confinement facility in connection with the exercise of his official activity;

3) the threat of violence against a convicted person or an employee of a custodial or confinement facility in connection with the exercise of his official duty.

[27] Уголовное право Украинской ССР на современном этапе. Часть особенная. / отв. ред. А. Я. Светлов, В. В. Сташис. К., 1985. С. 269.

SUMMARY

The article studies the problem of violent crime in penal institutions of the Ministry of Justice of Ukraine from the perspective of criminology. It is marked a high level of violent crime in penal institutions, and public danger of the crimes under consideration is determined. The authors analyse scientific literature in the context the interpretation of the concept "violence" and find out a large number of contradictory ideas of scholars concerning the concept "violence". Based on the analysis, it is proposed the authors' definition of "violence". The paper studies the category "violence" as a feature of the objective aspect of elements of penitentiary crimes. It is proposed three forms during the implementation of malicious disobedience of authorities of the penitentiary institution, the escape from prison or custody and actions that disorganize the work of correctional institutions: the use of non-life-threatening or health-related violence against a convicted person or an employee of a custodial or confinement facility in connection with the exercise of his official activity; the use of life-threatening or health-related violence against a convicted person or an employee of a custodial or confinement facility in connection with the exercise of his official activity; the threat of violence against a convicted person or an employee of a custodial or confinement facility in connection with the exercise of his official duty.

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19. Караулов В. Ф. Стадии совершения преступления : учеб. пособие. М., 1982. 181 с.

20. Акоев К. Л. Место совершения преступления и его уголовно-правовоезначение. Ставрополь, 2000. 68 с.

21. Стерехов Н. В. Ответственность за угрозу по советскому уголовному праву (вопросы теории и практики) : дис. … канд. юрид. наук. Свердловск, 1972. 196 с.

22. Крашенинников А. А. Угроза в уголовном праве России (проблемы теории и практики правового регулирования) / отв. ред. А. И. Чучаев. Ульяновск, 2002. 179 с.

23. Уголовное право Украинской ССР на современном этапе. Часть особенная. / отв. ред. А. Я. Светлов, В. В. Сташис. К., 1985. С. 405.

Information about the author:
Bohatyrova O. I.
Doctor of Law, Senior Research Associate,
Professor at the Department of Criminal Law and Criminology,
University of State Fiscal Service of Ukraine
Bohatyrov A. I.
PhD in Law,
Senior Lecturer at the Department of Criminal Law and Criminology,
University of State Fiscal Service of Ukraine

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CRIMINOLOGICAL SIGNIFICANCE AND CHARACTERISTICS OF WAYS OF CRIME IN THE FIELD OF RESIDENTIAL REAL ESTATE IN UKRAINE

Dykyi O. V., Szewczak Marcin

INTRODUCTION

The process of building a democratic rule of law in Ukrainian society is under the conditions of legal, economic and political reforms that cover all spheres of life. The real estate turnover, which is one of the most important segments of the modern economy, is no exception. The development of housing turnover in Ukraine began after the declaration of independence and took place in the context of transformational transformations of state property in the process of its privatization and privatization. In these circumstances, real estate has acquired the properties of goods and capital[1]. It will be no secret that the processes that take place in this field affect not only the economic but also the social development of society and the state, as this sector of economy closely interacts with other segments of the financial market, namely: capital markets, investment resources, securities and others.

In turn, the process of becoming a residential real estate market is affected by a number of factors, both positive and negative. The latter include criminal encroachments on real estate and rights related to real estate, or the monetary equivalent of its value. Analysis of the criminological situation in the real estate market has alarming symptoms, which are primarily manifested in the rapid criminalization of the real estate market itself, which is a consequence of both the lack of legal certainty of the object of criminal protection and the imperfection of the criminal law itself, which can be considered one of the most effective measures to protect the legal rights of homeowners.

A large number of single crimes and systemic criminal activity form a separate type of crime, which affects the various spheres of society and other types of crime that are generated by it. As a particular system,

[1] Гриценко О. А., Гриценко Л. В., Дарнопих Г. Ю. Основи економічної теорії : підручник / за заг. ред. О. О. Мамулая. Київ: Юрінком Інтер, 2005. 480 с.

residential real estate crime is divided into two major subsystems: rental housing crime and crime in the case of ownership of residential real estate property in the case of other types of civil law transactions (eg sale and purchase), mine, gifts, etc.).

The criminological characterization of the crime of the means of committing crimes in the sphere of turnover of residential real estate will be made on the basis of 240 investigated sentences in criminal cases (criminal proceedings) during the committing of frauds or claiming the ownership of the residential real estate objects, or the proceeds from their sale, or advance payments, etc., which were approved from 2004 to 2015 on the territory of Ukraine. These materials are freely available on the official website of the Unified State Register of Judgments. During the study of 240 convictions in criminal cases (criminal proceedings), 670 episodes of crimes were identified and 433 persons were convicted. The volumes of the processed material testify to the representativeness of the sample survey. Given that the statistics of the Ministry of Internal Affairs of Ukraine are limited in nature, contain only general indicators of fraud and extortion and, as a consequence, do not provide comprehensive information regarding the criminological characteristics of these crimes, we will continue to use the data obtained from our research.

1. Description of the Main Ways of Committing Crimes in the Field of Residential Real Estate

An important role in the study of crime in the field of turnover of residential real estate is played by the study of the crime. In criminological science, the problem remains one of the least researched, although the method of committing a crime is of great practical importance not only in the investigation of crimes of the specified category, but also during preventive activities.

To clarify the meaning of any concept, it is advisable to first refer to the explanatory dictionary. According to the Ukrainian language dictionary, a crime is recognized as a certain action, technique or technique that enables one to do, accomplish something, achieve something[2].

[2] Словник української мови: в 11 тт. / АН УРСР. Інститут мовознавства; за ред. І. К. Білодіда. Київ : Наукова думка, 1970–1980. Т. 9, 1978. С. 578.

Criminologists note that the method of committing a crime is a system of actions for the preparation, commission and concealment of a crime, determined by environmental conditions and psychological qualities of the person associated with the selective use of appropriate means and conditions of the place and time (Yu.V. Gavrilin, M.G. Shurukhnov[3], G.G. Zuikov[4], V.V. Tishchenko[5]). We consider this statement to be fully substantiated and consistent with the substantive essence of this phenomenon.

In the science of criminal law, the method of committing a crime is understood to mean a certain order, method, sequence of motions applied by a person during the commission of a crime and which are combined with the selective use of the means of committing it[6]. In this concept distinguish objective and subjective features: objective and substantive conditions under which the crime is committed (object and object of crime, time, place, situation and means of its commission); human mental activity (intellectual, emotional, volitional, evaluative)[7]. The Legal Encyclopedia draws attention to the fact that the method of committing a crime is a mandatory feature of the objective side of the crime, only when it is clearly defined in the law[8], which is a prerequisite for the proper qualification of the actions of the person who committed the crime.

Investigating how crime is committed in criminological science reveals the motives, goals, life settings, needs of the person committing the crime, and other phenomena that allow us to uncover the problems of determining not only an individual crime but also crime in the sphere of

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[3] Гаврилин Ю. В., Шурухнов Н. Г. Криминалистика: методика расследования отдельных видов пре ступлений : Курс лекций. Москва: Книжный мир, 2004. С. 52.

[4] Зуйков Г. Г. Криминалистическое учение о способе совершения преступления: дис. докт. юрид. наук: 12.00.09. Москва, 1970. С. 205.

[5] Тищенко В. В. Подготовка преступления как объект криминалистического исследования. *Актуальні проблеми криміналістики* : матеріали міжнар. наук.-практ. конференції, м. Харків, 25–26 верес. 2003 р. Харків : Гриф, 2003. С. 96; Тищенко В. В. Корыстно–насильственные преступления: криминалистический анализ : монография. Одесса: Юрид. літ-ра, 2002. 360 с.

[6] Панов Н. И. Основные проблемы способа совершения преступления в советском уголовном праве : дис. ... доктора юрид. наук. Харьков, 1987. С. 68.

[7] Зейдляев А. У. Классификация способов совершения преступлений. *Юристъ–правоведъ*. 2006. № 4. С. 94–95.

[8] Юридична енциклопедія: В 6 т. / відп. ред. Ю. С. Шемшученко. Київ: «Укр. енцикл.», 2003. Т. 5: П-С. 736 с.

residential real estate turnover, and, as a consequence, more effectively prevent it.

The way a crime is committed is an element of criminal behavior and is a system of sequential acts of behavior. It should be noted that the method of committing a crime consists of interrelated and interdependent actions aimed directly at the preparation, commission and concealment of the crime. As S.M. Wilt, these acts of behavior – actions, operations, techniques – are combined in a certain hierarchy and subordination as part of purposeful willful activity. The author is of the opinion that in criminal activity, as any, the performer has his own system of generalized ways of actions aimed at achieving the desired result, and the actual way of committing the crime is directly related to the physical and functional capabilities of the person, due in many ways to the very nature of the crime and the external conditions under which it is committed[9].

The study of criminal cases (criminal proceedings) under Articles 189 and 190 of the Criminal Code of Ukraine showed that the manner of committing crimes in the sphere of residential real estate turnover is repeated. This allowed them to be classified and to determine the typical techniques, means, methods, as well as the procedure for committing crimes and hiding the consequences of its commission. In the future, this will allow the use of the information obtained to develop criminological recommendations for the prevention and prevention of crimes in the field, as discussed in the last section.

As noted earlier, ownership of a residential property is only possible if you acquire the right to property. Based on the provisions of the current Criminal Code of Ukraine, this is possible when committing one of the three offenses provided for in Article 189 (extortion), 190 (fraud) or 192 (causing significant property damage by fraud or abuse of trust in the absence of fraud). However, the hypothesis that in the sphere of residential real estate turnover crimes are committed, which are provided by Article 192 of the Criminal Code of Ukraine, has not been confirmed during the study of the practice of applying this rule. Of course, the acts contemplated in this crime are committed, and the fact that they are not

[9] Зав'ялов С. М. Спосіб вчинення злочину: сучасні проблеми вивчення та використання у боротьбі зі злочинністю : автореф. дис. канд. юрид. наук: 12.00.09 ; Нац. акад. внутр. справ України. Київ, 2005. 19 с.

recorded in official statistics indicates that their numbers are small or they are hyperlatent, making it impossible to carry out qualitative research. Therefore, it is in the future that the crimes set out in Articles 189 and 190 will be given the highest priority, since they are the main ones according to the classification, ie those aimed at taking possession of the property or the right to property of the victim.

First, let's analyze the ways of committing crimes in the sphere of residential real estate turnover, which are provided for in Article 190 of the Criminal Code of Ukraine. From the case law, we can conclude that fraud can be committed in two separate forms: the seizure of someone else's property or the acquisition of the right to it. The first case is typical when the intent of the criminals is to seize money from the sale of property, etc. without encroaching on the ownership of the property. This is the case when the perpetrators, through fraud, are pushing the victim to sell the property due to him or her under the pretext of buying another at an additional cost and taking possession of the funds, or during the conclusion of the rental agreement. Otherwise, criminals, on the other hand, encourage the victim to transfer their property rights to them. This is possible due to legal ignorance and, in some cases, banal credibility of the victims.

In addition, it should be noted that the possession of the right to property is committed, mostly during the conclusion of different types of contracts: sale, gift, lease, etc. Such crimes are committed either by fraud or abuse of the victim's trust, which by criminal law is inherent in fraud. In addition, as explained in the resolution of the Plenum of the Supreme Court of Ukraine No. 10 of 06.11.2009 "On case law on crimes against property" a mandatory feature of fraud is the voluntary transfer of property or property rights. Deception in such a resolution recognizes the communication to the victim of false information or concealment of certain circumstances, abuse of trust – unfair use of the victim's trust used by the offender in order to give the victim confidence in the benefit or obligation to transfer property or rights to him. A.I. Boicov offers a four-way structure of methods of deception, and all varieties, depending on the situation, can be divided into the following groups:

1) deception in relation to the deceiving person or third parties – misleading about the existence, legal status, special properties and qualities of real estate;

2) deception about objects – misleading about their existence, equality, quality, quantity, size, value;

3) fraud in connection with different circumstances and events – if they serve as a basis for the transfer of property to the victim;

4) deception of intent – misleading the victim as to his actions and intentions (promised actions, commitments)[10].

A study of practice material shows that deception, as a way of seizing property or the right to property in the sphere of residential real estate turnover, can relate to various circumstances in which the perpetrator is misled by the victim. All types of fraud used by offenders can be grouped as follows: 1) deception regarding the status of the subject. For example, when a person who does not have the right to enter into agreements with a residential property sells it; 2) deception regarding the characteristics of a residential property (status, location, presence of registered persons, etc.); 3) deception about actions (for example, when criminals, taking advantage of the legal illiteracy of the victims, enter into a donation contract instead of a lifetime detention agreement); 4) deception about the intent of the perpetrators (when the persons seize the right to a residential real estate subject to the obligation, but which they do not intend to fulfill).

Fraud in residential real estate turnover is characterized by a well-thought out, specific way of committing a crime, since fraud during real estate transactions requires considerable time to prepare related to the search for residential real estate, development of actions, production of counterfeit documents, selection accomplices and the like.

On the basis of the conducted research, we will consider the main ways of seizing someone else's property, by deception or abuse of trust, which are used when committing fraud in the sphere of turnover of residential real estate. In total, 240 sentences were investigated for crimes of the specified category, 82 of them in the field of residential real estate leasing and 158 in the course of concluding other civil contracts. Depending on the realm of fraud in residential real estate turnover, there are two major groups: rent fraud and rent fraud in other civil contracts. First, let's analyze a group of crimes that are committed when all civil contracts, except rent, are concluded. Eight such types can

[10] Бойцов А. И. Преступления против собственности. Санкт-Петербург : Юрид. центр Пресс, 2002. С. 337–338.

be distinguished on the basis of the acts perpetrated by the perpetrators, as well as on the basis of the situation that influences the choice of the behavior of the perpetrators[11].

1. In 40 cases, it was found that the perpetrators were forcing the victim to sell the residential property under the pretext of buying a smaller area or in a high-value rural area. In addition, criminals are recommended by members of charities, representatives of real estate companies, and sometimes law enforcement. For the most part, the victims were heavily indebted for utility bills, often abusing alcohol, and quickly agreeing. In addition, victims are constantly brought in food, medicines, alcohol, and other ways of trusting potential victims for the sake of visibility of their rightful intentions. Victims are offered different options for housing that will be purchased for them in the future. The events can then unfold in two directions: the victims themselves enter into contracts for the purchase and sale of residential real estate, and transfer the funds to the perpetrators, or the victims issue a warrant for the perpetrators to sell the property on their behalf. After selling the housing to the victims, the criminals either do not buy any housing for the victims at all, rent the housing for several months, and the victims are informed that it is purchased for them, and they take possession of the money or buy housing, but that does not meet the sanitary requirements. For living, and seize the difference of funds. There are times when victims become aware of the intentions of criminals by the time their residential real estate is sold, such persons are deprived of their liberty by the time the residential real estate is sold.

2. In 31 cases, the crime is characterized by the fact that the perpetrator places an offer to sell the residential property in the media, but in fact has no intention of selling it. For the most part the offender is the owner of the residential property, although there are cases where the perpetrators rent out this home. Under the pretext of high demand for the said object, the offender induces the victim to transfer the funds as confirmation of the intention to purchase it (advance). After taking possession of the money, the undertaking is not fulfilled and the victim is not refunded. In addition, there are cases where the guilty person

[11] Дикий О.В. Кримінологічні засади вивчення і попередження злочинів у сфері обороту житлової нерухомості в Україні : автореф. дис... канд. юрид. наук: 12.00.08, НУ ОЮА. Одеса, 2015. 20 с.

actually has no rights to sell, for example, residential real estate is secured, etc. It also often happens when people are not shown the apartments for sale, but only the photo, the facade of the house.

3. In 26 cases out of the total, the guilty person is the representative of the home seller (mostly the so-called realtors) when entering into various types of residential real estate contracts, as a rule, these are sales and purchase contracts. There are also cases where a person only impersonates such a representative but is not. The above-mentioned method of committing a crime is similar to method # 2 – the guilty person compels the victim to transfer funds as confirmation of intent to buy it, on the pretext of high demand for the specified object. After receiving the money, it does not return it to its principal, but uses it at its own discretion.

4. In 19 sentences, the manner of committing a crime was the seizure of the property right of the deceased's residential real estate and the legal heirs did not inherit. At the initial stage of committing a crime, the perpetrators forge documents: this may be a will, and both the perpetrators and other persons who are not aware of the criminal intentions act as heirs; purchase and sale contracts, power of attorney, other title documents for residential real estate. As a rule, such documents are certified a few days before the owner's death. The perpetrators then register the ownership of the residential property. In addition, it is not a single fact that criminals go to court to declare such contracts valid, and also present false witnesses in court. The residential property is then sold to others. There are occasional cases where the intent of the perpetrators is not to obtain profit in the form of funds but to actually acquire ownership of the residential real estate for personal use.

5. The following method was typical for 17 crime cases. Persons for possession of the right of ownership of a residential real estate object were stolen from the victim identification documents, as well as legal documents for a residential real estate object. After taking possession of these documents, the perpetrators forge them (for the most part, this is done by pasting a photo of another person, usually one of the members of the group). After falsifying the documents, the criminals enter into a contract of sale and purchase of residential real estate, in addition to presenting themselves as property owners. Wherever criminals complicate this mechanism – they steal documents, forge them, and then issue a power of attorney on behalf of the owner for the right to dispose

of all property to an accomplice of the criminal group, or at all to another person who will not know about the criminal intent. The following property is being sold.

6. In 15 cases, criminals forged identity documents as well as documents proving the ownership of residential real estate by persons who have not been living in their own dwelling for a long time for various reasons (have gone abroad for permanent residence, are serving sentences in prisons etc). After falsifying the documents, the perpetrators enter into a contract for the purchase and sale of residential real estate and are represented by the property owners. As in the methods described above, criminals can complicate this mechanism – they go to court to declare contracts valid (purchase and sale) or to establish the fact of cohabitation. The following property is being realized.

7. In 6 cases, the perpetrators suggested that the victims exchange the residential property, as a rule, with an additional payment and with payment of utility bills (if any). The perpetrators rented another apartment, usually for several months, to realize the criminal intentions, and during the examination, the victims were informed that it would be the subject of the exchange. After taking possession of the victims' property, other housing was not provided to them and apartments occupied by the criminals were sold to other persons.

8. In 4 cases, victims of their physical, psychological or other disabilities (but not disability) were unable to fully appreciate the circumstances of the purchase or donation of the residential property (non-language foreigners, visually impaired persons), the elderly, etc.). In such cases, the victim was deceived about the terms of the contract. For example, instead of a life-long lease agreement, a contract of sale or gift of housing was entered into. In this way, criminals usually have the intention of seizing ownership of a residential property.

In the field of residential real estate turnover, there are also other ways of deceiving victims to take possession of their real estate, but, as a rule, such cases are isolated and their occurrence is conditioned by a particular life situation, and therefore it is not appropriate to describe them.

On the basis of the study N.V. Pavlova cites the classification of ways of taking possession of property or the right to property by the content of fraudulent acts during the alienation of private housing: a) renting a house with subsequent sale to a person who is not its owner;

b) use of a fictitious intermediary firm and a fictitious notary office; c) an offer to exchange a smaller living space for a larger one with a surcharge or refusal to provide the victim with other housing; d) misleading the homeowner about the contents of the agreement; e) appropriation of money without fulfilling the conditions stipulated in the contract of sale and purchase of housing; e) sale of housing to several persons simultaneously; g) the sale of the home without the consent of the family members who own it; h) sale of housing that has legal restrictions or outstanding obligations; i) the sale of housing to an address that does not exist; j) recognition of the transaction as invalid and misappropriation of money; j) receiving money before the documents are processed; l) collection of collateral; m) fraud during the calculations[12]. Most of the provisions of this classification are worth agreeing with, but it is not clear that the author of two separate groups actually one way of committing crimes: k) obtaining money before processing documents, l) collecting collateral and e) appropriating money without fulfilling the conditions stipulated in the contract of purchase and sale of housing.

It is worth noting that when committing fraud in this area, fraud is applied not only to the victims, but also to notaries who give power of attorney, certify different types of contracts, state registrars, employees of law enforcement agencies and other persons who commit legally significant acts. (legal acts and deeds) concerning residential real estate.

In the sphere of turnover of residential real estate it is also possible to seize property or the right to property by the actions provided for in Article 189 of the Criminal Code of Ukraine. Extortion is one of the most dangerous criminal offenses in the field of residential real estate. This crime violates the fundamental constitutional rights of citizens to own, use and dispose of their property, and the demands, combined with causing harm to the victim, in addition to mental as well as physical violence, violate the rights to life and health, honor and dignity, integrity and security, provided for in Article 3 of the Constitution of Ukraine. The composition of the crime provided for by Article 189 of the Criminal Code of Ukraine is formal, since the solicitation is a completed

[12] Павлова Н. В. Особливості розслідування шахрайства, пов'язаного з відчуженням приватного житла : дис. канд. юрид. наук : 12.00.09, Дніпропетров. Держ. ун–т внутріш. справ. Дніпропетровськ, 2007. С. 56.

crime from the moment of making a claim combined with threats, violence, damage or destruction of property regardless of the achievement of the purpose set by the guilty person, that is, the formal composition of the crime . A total of 7 criminal cases (criminal proceedings) were examined. In our opinion, such a small number of criminal cases indicates not the low level of claims in the specified sphere, but the high latency of crimes of the specified group. As a rule, the victims are those at risk (persons who abuse alcohol, drugs, lonely, elderly, etc.) who are not able to fully protect themselves.

Analyzing sentences in criminal cases (criminal proceedings), we pay attention: fraud was committed, as a rule, during the conclusion of different types of civil contracts, and during the extortion this situation is not traced. In fact, the victims did not intend to commit the crime at the time of the crime, for example, to sell or donate residential real estate, but after the actions of the criminals are forced to commit them.

In contrast to fraud, when claiming residential real estate rights, there are several ways of committing this socially dangerous act. There is, in fact, one way, but that changes depending on the situation that contributes to the crime or vice versa makes it difficult to bring the criminal intent to an end. It can be described as follows: The perpetrators, threatening violence, require the victims to sell proper residential real estate in order to seize the proceeds of its sale. In the event that victims do not agree to fulfill this requirement, they are mostly deprived of their liberty and, through physical and mental violence, issued a power of attorney for the right to dispose of all the property of the victim. Often there are cases when the injured persons die. For the most part, a power of attorney is issued to one of the criminals, sometimes to others who are unaware of the criminal intent of the perpetrators. The residential property is then sold to others.

In relation to physical violence, it was applied in 4 cases (mental violence in all cases). In the vast majority of the cases we investigated, the violence was applied to the owner of the residential property or his close relatives to suppress the victim's resistance. Related crimes in this category were: intentional grievous bodily harm (Article 121 of the Criminal Code of Ukraine), unlawful deprivation of liberty or abduction of a person (Article 146 of the Criminal Code of Ukraine), violation of privacy (Article 162 of the Criminal Code of Ukraine), abduction, misappropriation, extortion of documents, stamps, seals,

misappropriation or abuse of their position or fraud (Article 357 of the Criminal Code of Ukraine), forgery of documents, seals, stamps and letterheads, sale or use of forged documents, seals, stamps (Article 358 of the Criminal Code of Ukraine).

2. Typical Ways of Preparing for Crime in Residential Real Estate in Ukraine

Attention should also be paid to actions taken by individuals in preparation for fraud or solicitation in the field of residential real estate turnover. The data obtained from the study can be summarized as follows. Consider the typical elements of preparing for a crime. In general, preparation for a crime consists of four basic elements: developing an action plan, searching for residential property or potential victims, choosing the means of influence on the victims, selecting accomplices (only with complicity). Other elements are optional and perpetrated by criminals depending on the particular situation and the mode of crime. Based on our research, we were able to distinguish a logical sequence of actions during the preparation for the crime, it can be argued that in all cases, the persons committed the basic actions first, but only after them optional.

Based on the investigated sentences in criminal cases (criminal proceedings), we have come to the conclusion that there are two typical ways of committing fraud:

1. In 48 cases, the perpetrators placed advertisements for renting residential real estate in the media in the long term. After that, they found other housing and rented it for a short time (1-2 days) in order to further sell it to potential victims. In all cases, the perpetrators informed the victims that they were the owners of the property and encouraged the victims to transfer the funds several months in advance. There have been instances where one residential property has been rented out to several different victims. Sometimes criminals forge identity documents and documents proving ownership of residential real estate, as a rule, these are photocopies of these documents.

2. In 34 cases, as a rule, the realtors were the realtors (but there are also cases when such a crime is committed by other persons who are, for example, owners of residential real estate). As in the previous method, the perpetrators placed in the media advertisements for the rental of residential real estate. But the difference between these methods is that,

in fact, after receiving the funds, the victims are unable to move into the home for various reasons (for example, criminals did not hand in the door keys, etc.).

Of course, this classification is conditional, because, as A.I. Boicov fraudulent methods "are not at all amenable to any classification, since deception is as diverse as human ingenuity"[13].

According to the materials we have investigated, a parallel can be drawn between actions preceding the commission of crimes in the field of rental housing and during the conclusion of other contracts of a civil nature, with one exception – almost never criminals have forged documents certifying the ownership of the object residential real estate (only 2 cases) and only 7 cases (out of 82) forged identification documents. This can be explained by the relative ease of committing this type of fraud in comparison to others in the residential real estate market.

As already noted, in order to realize the intent to seize property or the right to property of victims, as well as to facilitate the commission of major crimes, the perpetrators, as a rule, commit other socially dangerous acts – so-called co-crimes. These delinquent acts, while not aimed at seizing property or the right to property, but do contribute to the commission of major crimes. In some places, it is impossible to carry out criminal plans without committing co-crimes. Based on the study, it can be argued that the following crimes include:

willful grievous bodily harm (Article 121 of the Criminal Code of Ukraine);

unlawful imprisonment or kidnapping (Article 146 of the Criminal Code of Ukraine);

violation of the inviolability of housing (Article 162 of the Criminal Code of Ukraine);

legalization (laundering) of proceeds of crime (Article 209 of the Criminal Code of Ukraine);

abduction, misappropriation, solicitation of documents, stamps, seals, seizure of them by fraud or abuse of office, or damage to them (Article 357 of the Criminal Code of Ukraine);

[13] Бойцов А. И. Преступления против собственности. Санкт-Петербург : Юрид. центр Пресс, 2002. С. 332.

forgery of documents, seals, stamps and letterheads, sale or use of forged documents, seals, stamps (Article 358 of the Criminal Code of Ukraine);

abuse of power or office (Article 364 of the Criminal Code of Ukraine);

official forgery (Article 366 of the Criminal Code of Ukraine).

Of course, this list is not exhaustive and may depend on each individual crime. The listed warehouses of socially dangerous acts occur in at least 10% of cases during the seizure of property or the right to property in the sphere of turnover of residential real estate, that is, they are typical when committing a major crime. We also consider it inappropriate to conduct a criminal characterization of each of these crimes, since they do not have a specific nature, and in the scientific literature there is a fairly large number of works devoted to each of them individually[14].

The choice of the method of committing a crime depends on a significant number of different factors: the moral and value orientation of the offender, his legal knowledge in the field of turnover of residential real estate, the identity of the victim and his behavior, before, during and after committing the crime, the presence of conditions conducive to the commission of the crime etc.

Investigation of ways of committing crimes in the sphere of residential real estate turnover is necessary for the development of crime prevention measures in the sphere of residential real estate turnover. For example, by providing general information to the public on the ways of entering into civil contracts in the sphere of residential real estate turnover, the most common ways of committing crimes in the said sphere, the procedure of applying to law enforcement agencies for protection, responsibility for violation of the law, ways of ensuring compliance with obligations. As well as the actions of a potential victim to prevent or stop committing a crime, it can reduce the level of victimization of potential victims of crime. Such information should be provided through the media and the Internet, it aims not only to direct the behavior of citizens in the legal channel, but also to promote

[14] Дикий О. В. Кримінологічна характеристика особистості злочинця в сфері обороту житлової нерухомості. *Актуальні проблеми держави і права : зб. наук. пр.* 2013. Вип. 70. С. 346–355.

morality, to clarify the content of the rules of the current legislation. In addition, the social status of potential victims and the intended audience should be taken into account. That is, the content of such information should be as close as possible to the interests of the persons to whom it is addressed. The information provided should not be abstract, but specific, with real life examples. In addition, you should describe the procedure to be taken to avoid becoming a victim of crime, or to act when a crime has already been committed. Such information should be contained, for example, in memos, manuals, articles in the media, as well as on official websites of state institutions: the Ministry of Internal Affairs, the Prosecutor General's Office, the State Registration Service of Ukraine, etc.

CONCLUSIONS

Based on the study of the Criminal Code of Ukraine and the practice of law enforcement, it was found that crimes in the sphere of turnover of residential real estate are committed in the forms provided for in Articles 189 (extortion) and 190 (fraud).

Fraud can be committed in two separate forms: seizing or acquiring someone else's property. The first case is typical when the intent of the perpetrators is to seize money from the sale of property without encroaching on the ownership of the property. In the second case, the perpetrators, on the other hand, encourage the victim to give them property rights. The possession of the right to property is done mainly during the conclusion of various types of contracts: sale, gift, lease, etc.

Unlike fraud, the victims did not intend to, for example, sell or donate residential real estate, but were forced to do so when committing ownership of residential real estate.

The crimes in the sphere of residential real estate turnover are characterized by a pre-conceived, specific way of committing the crime, since it requires considerable time for preparation related to the search for residential real estate, development of actions, production of counterfeit documents, selection of accomplices, etc.

On the basis of the actions perpetrated by the perpetrators, as well as on the basis of the situation affecting the choice of the mode of behavior of criminals, there are eight ways of committing crimes during the conclusion of different types of civil contracts (except rent) and two ways of committing crimes in the sphere rental of residential real estate.

It is noted that in the sphere of turnover of residential real estate there are also other ways of deceiving the victims for taking possession of their real estate, but, as a rule, such cases are isolated and their occurrence is conditioned by a specific living situation.

While committing fraud, deception applies not only to victims, but also to notaries who provide power of attorney, certify various treaties, state registrars, law enforcement officials, and other persons who commit legally significant actions (legal acts and acts) regarding residential real estate.

Unlike fraud, there are several ways of committing this socially dangerous act when claiming residential property rights. There is, in fact, one way, but that changes depending on the situation that contributes to the crime or vice versa makes it difficult to bring the criminal intent to an end.

Attention is drawn to actions taken by individuals in preparation for fraud or solicitation of residential real estate. Typical elements of preparation for crime are considered. In general, preparation for a crime consists of four basic elements: developing an action plan, searching for residential property or potential victims, choosing the means of influence on the victims, selecting accomplices (only with complicity). Other elements are optional and perpetrated by criminals depending on the particular situation and the mode of crime. Based on our research, we were able to distinguish a logical sequence of actions to prepare for the crime, we can only say that in all cases, the persons committed the basic actions first, and only after them optional.

In order to carry out the intent to seize property or the right to property of the victims, as well as to facilitate the commission of major crimes, the perpetrators, as a rule, commit other socially dangerous acts – the so-called related crimes. These delinquent acts, while not aimed at seizing property or the right to property, but do contribute to the commission of major crimes. In some places, it is impossible to carry out criminal plans without committing co-crimes.

The choice of the method of committing a crime depends on a significant number of different factors: the moral and value orientation of the offender, his legal knowledge in the field of turnover of residential real estate, the identity of the victim and his behavior, before, during and after committing the crime, the presence of conditions conducive to the commission of the crime etc.

SUMMARY

The article is devoted to the characteristics of the typical means of committing frauds in the sphere of the turnover of housing estate. The research is provided with arguments, that on the bases of actions, which are committed by guilty persons, and on the grounds of situations, which influence on choice of the way of behavior of offenders, it is possible to divide eight means of the committing crimes while concluding different types of civil law contracts (except rent) and two means of the committing crimes in the sphere of the rent of housing estate. Noted that there are another means of fraud in the sphere of the turnover of housing estate of victims with an aim to possess their real estate, but as a rule, such cases are single, and their occurrence are based on the particular life situation.

Attention is drawn to the actions, which are performed by persons while preparing to the commitment of fraud in the sphere of the turnover of housing estate. The typical elements of preparation for the commitment of crime have been analyzed. In general, preparation for crime consists of four main elements: elaboration of an action plan, search for objects of housing estate or potential victims, choice of means of influence on victims and choice of accomplices (only in case of complicity).

Other elements are facultative and are committed by offenders depending on the particular situation and mean of commitment of crime. On the grounds of our research, there was no possibility to establish certain logical order of actions while preparing for commitment of crime, it is possible only to state, that in all cases, individuals firstly committed the main actions, and only after, the facultative ones.

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Information about the authors:

Dykyi O. V.

PhD in Law, Associate Professor,
Acting Dean of Faculty of Cybersecurity and Information Technologies,
National University «Odesa Law Academy»

Szewczak Marcin

doctor habilitowany nauk prawnych, adiunkt Kat. Prawa Administracyjnego i Gospodarczego Wydziału Prawa, Prawa Kanonicznego i Administracji, Katolicki Uniwersytet Lubelski Jana Pawła II (Rzeczpospolita Polska)

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SCENE OF CRIME AS A SOURCE FOR PROOF INFORMATION

Dyntu V., Demchuk A. M.

INTRODUCTION

An investigation as a process of cognition has a retrospective nature, in other words it is an activity which is aimed at establishing the events of the past on the basis of the study of available information in the present. It should be noted that crime information is often not obvious, very often it is obtained by the investigator in an encrypted form, and needs a skilled interpretation. For a qualitative and fast process of cognition of a criminal event a forensic description of crimes is required as a typical model that can be applied to an individual case and provides the investigator with the ability to construct and test the relevant investigative version, determine a set of actions and means, which are aimed at a productive solution to specific investigative tasks.

The emergence of forensic characteristics of crimes, as one of the fundamental categories of crime investigation methodology, is related to the need to accumulate information about typical and unusual properties and signs of a crime. Thus, the emergence of forensic characteristics of the crimes was caused needs of practice in the presence of a single data system about the most typical forensic-significant signs of crime and the interconnections between them, which is formed on the basis of generalization of the corresponding information for rational and effective crime investigation.

The structure of forensic crime characteristics should reflect needs of scientific realization and substantiation of existing elements in its composition, and practical demand when using forensic characteristics of crimes by investigator during investigation.

Between the structural elements of forensic characteristics of the crime are causal, functional, indirect and immediate, unambiguous and probable, correlation links.

1. Crime Scene as an Element of Forensic Characteristics of Crimes

The crime scene is the source of criminalistically important information regarding an event that is the object of knowledge during the investigation. So that the information obtained by the investigator could be accessible to all participants in the criminal proceedings and was used in the process of proof, it must comply with procedural requirements which indicate the order of its receipt, permissible sources and fixing methods. Thus, criminalistically important information for its use in the process of proof must be converted into evidence.

To determine the situation of crime as a source of evidence is expedient to find out the correlation between the process of knowledge and procedural proof.

M.M. Mikheenko noted that non-procedural cognitive activity which precedes the procedure of proof and accompanies it, deprived of legal value since it goes beyond its limits. Establishing the truth in the criminal process, in other words cognition, which results have a legal significance, are carried out only in procedural form. Therefore, when we speak about the epistemological essence of criminal-procedural proof as a special kind of cognition of reality, there must be a sign of equality between proving and cognition[1].

I. Luzgin pointed out that cognition in the broad sense of the word is a process of obtaining knowledge about certain subjects or phenomena, and proving is the justification of the prescribed provisions, the creation of conditions for the knowledge of the same objects in other ways[2].

V.S. Jatieva noted that cognition is an activity "for yourself", and proving is "for the addressee". The purpose of knowledge is to acquire knowledge, and the purpose of proof is the conviction of the addressee about something[3].

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[1] Михеенко М. М. Доказывание в советском уголовном судопроизводстве. К., 1984. С. 8.

[2] Лузгин И. М. Расследование как процесс познания : учебное пособие. М., 1969. С. 21–22.

[3] Джатиев В. С. Общая методология и современные проблемы обвинения и защиты по уголовным делам : автореф. дис. ... д-ра юрид. наук : 12.00.09. Владикавказ, 1995. С. 5.

The content of procedural evidence is the cognition of the crime scene which is carried out by a specially authorized official in a special procedural form and consists of collecting, verifying, and using a combination of evidence for making procedural decision as well as for a legitimate and well-founded decision of the case[4].

We should agree with the position of S.A. Sheifer, which indicates that considering the process of collection of the evidence from the position of the theory of reflection, it should highlight such components, as a source search, extraction of information relating to a crime which is under investigation and procedural fixation (fixing)[5].

From the above it is seen that proving and cognition in the implementation of criminal proceedings are not identical concepts[6], although the proving of the actual circumstances of the case at all stages is in accordance with the laws, inherent in any process of cognition of objective reality[7].

However, cognition of the investigated event is the part of the process of criminal proving. Comprehensive and objective investigation can only be done when will be combined the process of proving and all stages, ways, aspects of cognition as different aspects of the approaching thinking of the investigator to objective reality[8].

Thus, proving as a procedural activity begins to be realized only on the basis of known circumstances although during the period of proving cognition continues, as far as it is well known that the execution of procedural actions of proving is not a simple reproduction, but an increase in knowledge[9].

It should also be noted that today there is no single approach in criminalistics literature to the content of the concept of " evidential

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[4] Сидорова Е. И. Собирание и использование доказательств как элементы процесса доказывания в уголовном судопроизводстве. *Вестник ВИ МВД России.* 2007. № 4. С. 36–37.

[5] Лупинская П. А. Избранные труды в 3-х т. М. : Наука, 1991. Т. 3. Теория судебных доказательств. С. 156.

[6] Рыжаков А. П. Уголовно-процессуальное доказывание : понятие и средства. М. : Инф.-издат. дом "Филинъ". 1997. С. 22.

[7] Карнеева Л. М. Доказательства и доказывание при производстве расследования. Лекция. Горький : НИиРИО ГВШ МВД СССР, 1977. С. 5.

[8] Журавель В. Формалізація розслідування : теоретичні основи і практичні можливості. *Правн. часопис Донец. нац. ун-ту.* 2010. № 1 (23). С. 47; 49.

[9] Лузгин И. М. Расследование как процесс познания : учебное пособие. М., 1969. С. 63.

information". For example, in the opinion of R.S. Belkin and A.I. Wienberg, changes related to the event are evidence and the measure of the correlation of evidence with an event, to which they belong (which is in direct dependence on the quantitative and qualitative content of these changes) is a evidential information[10].

A.M. Grigoriev points out evidential information must be understood reception information in accordance with the established procedure, with aid of which the subject of the investigation establishes the presence or absence of circumstances, which are subject to proof in the course of criminal proceedings, as well as other circumstances relevant to the criminal case[11].

From the V.Ya. Koldina's point of view, evidential information is data that constitutes the meaning of "evidence" in the strict procedural sense and any information about the event being investigated and the circumstances relevant with it which are used in the process of proving in order to identify collection and evaluation of evidence in the process of disclosure, investigation and judicial review of criminal and civil cases[12]. However, aforementioned definition expands the content of evidence, which gives rise to ambiguity in the use of the definition both in the scientific and practical sphere.

We can agree with the opinion of R.S. Belkin and A.I. Wienberg that to the evidential information refers only that information which makes the content of "evidence" in the strict procedural sense[13]. All other information which was received by the investigator and was not included in the content of the evidence, has orientational nature. It is rightly noted by V.O. Obraztsov, that with all the importance of evidential information to reduce the process of searching and cognition to the extraction and usage of this information cannot be done[14].

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[10] Белкин Р. С. Криминалистика и доказывание (методологические проблемы). М. : Юридическая литература, 1969. С. 173; 176.

[11] Григорьев А. Н. Информация и информационное взаимодействие в расследовании преступлений: теоретические аспекты : монография. Калининград : Калининградский ЮИ МВД России, 2006. С. 208.

[12] Колдин В. Я. Информационные процессы и структуры в криминалистике. М. : Изд-ао Моск. ун-та, 1985. С. 39–40.

[13] Белкин Р. С. Криминалистика и доказывание (методологические проблемы). М. : Юридическая литература, 1969. С. 173

[14] Криминалистика / под ред. В. А. Образцова. М. : Юрист, 1995. С. 58.

Thus, the evidential information is a part of the information, which investigator receives in the process of cognition of the crime and, which is used in the process of proving, as the internal content of the substantiation.

We can agree with the opinion of M.M. Stoyanov, that the proof in the criminal procedure is a system of several permanent, interdependent elements. Such elements are information about the circumstances of the case and the procedural form of their receipt[15].

One of the most meaningful sources of e evidential information is precisely the crime scene in which actions to prepare, implement and conceal the crime were taken.

V.G. Tanezevich points out that "… for a purposeful investigation investigator has from each case to imagine what exactly is needed to find out, which are the actual circumstances of the investigated event should be established and in what framework"[16].

The study, analysis and correct interpretation of the information contained in the crime scene significantly contributes to establishing the circumstances which must be proved.

During studying the material environment, social and psychological conditions in which the crime was committed the investigator directly perceives the system of objects and phenomena, in which the process of preparation, implementation and concealment of the crime took place.

It should be noted that for the formation of evidence, must be necessary interaction of two components: the subject of cognitive activity and directly the object which is being known. In the process of investigation the interactions of the investigator and, in particular, the material environment of the crime scene are taking place. The result of aforementioned process from the procedural sources information which is the content of the evidence is revealed

In whatever form, quality, condition matter would be represented, it in any cases inherent characteristics, similar to the sensation the characteristics of the reflection. The phenomena that are not reflected in nature do not exist. This means that any event of the objective world,

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[15] Стоянов М. М. Властивості доказів у кримінальному процесі України : автореф. дис. ... канд. юрид. наук : 12.00.09. 2010. С. 13.

[16] Танасевич В. Г. Значение криминалистической характеристики преступлений и следственных ситуаций для методики расследования преступлений. *Актуальные проблемы советской криминалистики*. М., 1980. С. 84.

any phenomenon, any material thing, thought of the person always associated with the formation of changes in the surrounding reality. Not only the objects themselves change in the process of their creation, being (life, functioning), collapse, disappearance, but also the properties of other objects, which are interacting with them various connections and correlations[17].

It should be noted that the environment itself stores information regarding the event, what happened in it, time and spatial characteristics, traces of the interaction between the crime scene and the method of crime and other circumstances of a criminal offense, which were reflected in the scene of the crime in the form of traces.

2. The Structure of the Elements of Scene of Crime

Information which is correlated with reflection of the event which is learning in the case and is contained in its tracks (mental and materially fixed changes) is the object of search and means of cognition. That its part, which acquires the status of evidence, serves as the basis for the adoption of procedural decisions. In the case when the cognition is carried out in the mode of procedural proving the basis for making legal decisions is evidentiary information[18].

Investigation of the crime scene provides the opportunity to identify, collect, fix and evaluate evidence in order to use it in the investigation of a crime.

As a result of investigating the scene of the crime as an object of evidence the following evidence can be obtained: regarding the essence of the criminal offense and its individual circumstances; regarding the person of offender, circumstances that characterize it; regarding the behavior of the person of the offender, his guilt in committing a criminal offense; forms of guilt; motives and the purpose of committing a criminal offense; regarding the circumstances that are the basis for exemption from criminal liability or punishment; regarding the victim's person, circumstances that characterize it; regarding to the behavior of the victim in the commission of a crime and after its implementation,

[17] Шевчук В. М. Предмет злочинного посягання як елемент криміналістичної характеристики контрабанди наркотичних засобів. *Митна справа : науково-аналітичний журнал.* 2006. № 5. С. 15.

[18] Образцов В. А. Криминалистика: модели средств и технологий раскрытия преступлений. Курс лекцій. М. : Изд-во ИМПЭ-ПАБЛИШ, 2004. С. 58.

about forms of interaction between the victim and the offender; regarding the use of certain tools and means by the offender, their types and fetchers (weapons, explosive devices, poisonous substances, etc.); regarding the object of the crime, circumstances that characterize it; regarding to the existence of the staged event of the crime; regarding the existence of the staging of the crime event, or its particular circumstances; regarding the circumstances that contributed or prevented the commission of a crime; regarding the outcome and consequences of criminal acts.

It should also be pointed out that the crime scene is the primary source for procedural sources of evidence in the form of material evidence, documents, testimonies, expert opinions. Information regarding the scene of the crime provides an opportunity not only to investigate the crime which was committed, but to take actions to control his commission in the form of simulation the crime scene.

On the basis of information regarding the scene of the crime for certain types of crimes it becomes possible to implement such a form of control over the commission of a crime, as a simulation of the crime scene.

Generalized and systematized information regarding the scene of the crime for a certain type of crime gives the opportunity to create a model of the crime scene for the purpose of misinforming the offender and others around for effective and prompt, disclosure of a crime, its termination and identification of the guilty person.

The above form of control over the commission of a crime can be attributed to the form of criminalistics misinformation, in other words is established and regulated by law the activities of authorized persons, which is aimed at misleading a potential offender with a target to prevent, detect and disclose of a grave crimes.

An important property of the crime scene is that it serves as a source of criminalisticly important information. The possibility of a crime scene to serve as a source of information is conditioned by the reflection process.

Reflection is an inalienable property of any interaction process, any motion of material systems. In the process of self-movement of each special, specific system is going to select the best options for reconciling it with a close and individual environment. The result is an active

reflection (fixation, implementation) environment properties in the form of a particular material object[19].

R. S. Belkin pointed out that any crime event is necessarily reflected in the environment, the elements of which are material entities – objects, things, as well as people in whose consciousness the event of the crime is reflected. The environment in which the perpetrator makes the changes it's not something monolithic, not one object, but a complex of objects, processes, phenomena. In the process of display, come up traces of reflection[20]. Due to the general dialectical connection, interdependence and multiplicity of phenomena and processes come out reflection and all the laws of the material world[21].

In the interaction of the crime with other elements of criminalistics characteristics of crime traces of reflection are left in the scene of crime and in the system that interacted with it. "Changing the environment, being a reflection of the crime event, the result of the objects' correlation, participating in the act of reflection is the final phase of this process. … Judge by displaying about reflection, by information about crime, you can only in that case if the mapping is possible to find identify, understand the content of these changes"[22].

I. F. Krylov examines the scene of the crime, as a system, a set of various tracks, which are interconnected by different forms of communication. The more we manage to study the system traces and establish the forms of existing links between them, the more correct it is possible to explain the result of the crime, and the scene in which it proceeded[23].

It should be noted that the system of objects of the material environment and trace mapping system on these objects from interaction with other elements of crime characteristics this is not the same thing. Traces are material consequences, which arise after the interaction of the

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[19] Івакін О. А. Короткий нарис загальної філософії : навчальний посібник для студентів. Одеса : Астропринт, 1999. С. 35–36.

[20] Белкин Р. С. Ленинская теория отражения и методологические проблемы советской криминалистики. М. : Изд-во ВШ МВД СССР, 1970. С. 9–11, 14.

[21] Образцов В. Некоторые проблемы раскрытия преступлений. Свердловск : Среднеуральское книжное изд-во, 1975. С. 27.

[22] Белкин Р. С. Курс криминалистки : учебное пособие для вузов. 3-е изд., доп. М. : ЮНИТИ-ДАНА ; Закон и право, 2001. С. 90; 94.

[23] Крылов И. Ф. Криминалистическое учение о следах. Л. : Изд-во Ленинг. ун-т, 1976. С. 62.

elements of the scene of crime with other objects. The trace is the result of the movement of various objects the only material substance, the consequences of their interaction[24].

If the traces are a confirmation of the interaction of the situation of the crime with other elements of criminalistics crime characteristics then it is possible to assume that their absence may also be a source of criminalistics important information. However, we should distinguish the notion of "missing traces" and "lack of traces"[25].

Missing traces – this is a set of material consequences that are indistinctive of this phenomenon.

Unlike missing traces, which have no logical connection with the event, lack of traces is typical for a certain kind of phenomena becomes the object of cognition. Most often there are lack of traces is manifested after scrutiny and studying the existing traces, that is obvious phenomena. And when determining deviations from the regularity of appearance, development and disappearance of the phenomenon there is a question about the absence of a mandatory element which must manifest itself during the interaction with the scene of the crime in the form of a trace which is absent. The most clearly explored the lack of traces possibly in the analysis of criminalistics crimes characteristics in general, as a system when one of the tracks naturally predetermines the presence of others[26].

By itself, the scene of the crime and the traces of reflection in it are only a source of information, but not particularly information. The person plays an important role in the process of obtaining information, which studies the source of information, i.e. investigator, as a subject of direct investigation of the crime scene. The quality and amount of information that can be obtained from the analysis of the scene of the crime depends on the professional level of the investigator, his level of education, awareness of the general laws of development and degradation of phenomena, their reflection in the material world, as well as professional knowledge regarding regularities of display of elements of criminalistics crime characteristics in the material environment (the

[24] Кузнецов П. С. Отсутствующие следы и отсутствие следов (гносеологический и онтологический аспект). *Российский юридический журнал*. 2009. № 3. С. 185.

[25] Там же.

[26] Там же.

method of crime, the individual properties of the offender, etc.), as well as in identifying the corelations between its elements. Thus, information from the investigation of the circumstances of the crime is acquired through the prism of subjective perception of objective phenomena.

Important for proper understanding of the content of crime scene has a definition of the nature of the origin of its structural elements.

It should be agreed with I.I. Bukayeva's view that the material and physical nature of the elements of crime scene manifested in the form of location of objects, natural and climatic processes, states, temporal correlations, acting as circumstances and conditions which make out the scene of the crime. These include natural objects (mountains, valleys, atmosphere, shelf, nature reserve, etc.) and products of human activity (social): buildings, housing (house, apartment), various kinds of cantonment, phenomena and objects in the sphere of consumption: mode of life, leisure facilities; production (complexes, objects, units, equipment); processes; phenomena; objects of industrial and social infrastructure[27].

Social environment is a set of social conditions in which, having experienced their influence, human activities take place. Among the elements of the social environment include individuals, groups of people, teams, social strata and other communities, various processes, material and spiritual relations, existing in these communities, objects of industrial, aesthetic and other purposes. Thus, the social environment can be defined as the sphere of social existence of the individual[28].

Undoubtedly the social environment plays an important role in criminal activities, starting with the impact on the formation of criminal intent and ending with the stage of concealing a crime. However, its use as an element of the crime scene raises the danger of expanding its interpretation.

Specific situation is a collection of objective factors that through the prism of subjective perception of the person affect his behavior at a particular moment. The situation for the offender can be in the form of reason for committing a crime although objectively it may not contain provocative factors. The corelation between a particular situation and a

[27] Букаева И. Н. Правильная классификация элементов обстановки совершения преступления – помощь в следственной работе. *Следователь.* 2005. № 3. С. 26.

[28] Образцов В. А. О криминалистической классификации преступлений. *Вопросы борьбы с преступностью.* 1980. Вып. 33. С. 92.

behavioral act can be traced. The concrete situation generates a volitional act not by itself, but only in interaction with the personality of a particular person refracting through his interests looks, habits, peculiarities of the psyche and other individual traits[29].

V.M. Kudryavtsev distinguishes two main types of situation during the commission of a crime: the situation of preservation and consolidation of the scene of crime, allows the previous intention of the crime to be left unchanged; a change in the situation, which, in turn, is divided into improvements for a specific situation for the offender; deteriorating it, but not enough to exclude the commission of a crime; a complete deterioration of the situation that impedes the achievement of a criminal plan[30].

The form of interaction between the scene of the crime and the subject of the crime is manifested in the case of committing a criminal offense by any act, both in the form of action and inactivity. Crime is one of the specific types of human activity. It should be noted that the activity (action, inactivity) of a person depends on the psychological ability to perceive the environment and react to its manifestations. The reaction that manifests itself in a variety of stimuli forms a unified system of acts – the behavior of the offender.

S.V. Lavrukhin distinguishes the following stages of criminal behavior: preparation for committing a crime (purpose of behavior – to create conditions for committing a crime); preparation for concealing a crime (purpose of behavior – creation of conditions for concealing a crime); committing a crime (purpose of behavior – achievement of a criminal result); concealing a crime (purpose of behavior – exclusion or complication of crime detection); use of the result of a crime (purpose of conduct – satisfaction of material and other needs of the offender or other persons as a result of the use of the result of a crime); assistance to the investigation (purpose of behavior – assistance to the investigator in gathering evidence); counteraction to the investigation (the purpose of behavior – the exclusion or complication of the investigation of a crime)[31].

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[29] Кудрявцев В. Н. Причинность в криминологии (О структуре индивидуального поведения). М. : Юридическая литература, 1968. С. 15.

[30] Кудрявцев В. Н. Генезис преступления. Опыт криминологического моделирования : учебное пособие. М. : Инфра-М, Изд. Дом "Форум", 1998. С. 137–138.

[31] Лаврухин С. В. Криминалистическая концепция поведения преступника. *Государство и право.* 2004. № 6. С. 62.

Each of the following stages of criminal behavior can only be realized in a particular environment, since any activity is based on objects and phenomena, as an inherent condition of their being. Thus, we can say that the scene of the crime accompanies criminal activity at all stages in the form of a phenomenon that leads to its determination and acts as part of objective reality in which criminal behavior can be realized.

The environment may become a condition that will enable individuals to formulate a decision to commit a crime. Thus, favorable conditions for committing a crime can serve as the basis for the person's intention to fulfill their needs in a criminal way. However, if the conditions did not lead to a decision, As to the commission of a crime, they are only an environment favorable to the commission of a crime. Only after the formation of the intent and decision regarding the commission of a crime, the normal environment is transformed into a crime scene.

Mandatory presence of the volitional and intellectual part of the offender in shaping the scene of the crime is determined by the fact that in the same conditions and under the same circumstances each person decides independently on the lawfulness of his/her conduct. Thus, in order to form the scene of a crime the necessary condition is decision of a person relative to the satisfaction of their needs in a criminal way. And since, any activity can be done only in a certain environment taking into account the purpose and method of its achievement, the environment turns into a crime scene.

As an element of the crime scene it is more appropriate to use the micro-social environment of the offender, that is, the microsystems that represent the immediate social environment of a criminal offense at the stage of its preparation, commission and concealment. These are the direct connections of the offender with different social groups, contact groups and organizations.

However, it should be noted that the micro-social environment is available throughout all human life and only at a certain time, under certain circumstances, transforms into a scene of crime. The indicated conversion can only be realized after the appearance of the intention to realize its needs by generally dangerous, illegal way. Since that time, any microsocial environment, which has a direct or indirect correlation to the process preparation, realization and concealment of a crime, can

be considered an element of the crime scene. The most importance is the criterion of belonging and the relativity of the microsocial environment to a criminal act at any stage of it.

From the above it is seen that microsocial environment is a microsystems that represent the immediate social environment of criminal activity at the stage of preparing, committing and concealing a crime.

Being specific, limited in time and space, an act of behavior, the crime represents the unity of the external and internal sides of the activity. According to the results of the external activities of the offender we are more or less likely to assume the inner side of it. Material environment, gives an opportunity to know also the "internal" factors of the mechanism of crime, in particular, in one way or another, the psychology of the offender[32].

In the structure of the crime scene it is expedient to include the moral and psychological environment in which the criminal event occurred however, limit its time frame to the preparation, commission and concealment of a crime. According to the information obtained on the basis of the investigation of criminal proceedings, most crimes are committed on a domestic basis, where a significant role is played by the moral and psychological environment, that is, the interaction of the offender with other people, which determines the crime he committed. And also the moral and psychological environment in which the crime is committed.

Moral-psychological environment is a combination of psychological and moral states, mood, relationships between people and the offender in the period of preparation, implementation and concealment of the crime.

Creation of the classification system of the elements of the crime scene, will provide an opportunity to study structural components and the links between them, since the origin of an element within a particular system due to the presence of interconnections, with other constituent parts of the inner structure and with the system as a whole. By studying these connections, it becomes possible to derive knowledge of unknown elements from the knowledge of known elements.

[32] Ильченко Ю. И. Тактические приемы исследования материальной обстановки места происшествия : автореф. дис. ... канд. юрид. наук. М., 1966. С. 7.

CONCLUSIONS

Understanding the scene of the crime can be carried out at the theoretical and practical levels. At the theoretical level, the notion of a crime scene is a system of typical data regarding the factors of objective reality, which determine the set of conditions, in which the process of preparation, implementation and concealment of a criminal offense take place, and which are reflected and evaluated in the system of criminalistics characteristics of crimes. At the practical level, the crime scene is the environment in which actions to prepare, implement and conceal the crime were taken which should be investigated analyzed and recorded in order to provide a fast, full and effective investigation of criminal offenses.

The scene of the crime during the pre-trial investigation is the object of cognition, which comes into contact with the subject of knowledge (investigator or authorized person) in order to establish the circumstances of a criminal offense.

The scene of a crime is a source of information that, if it is correctly identified, research, fixation and evaluation, in accordance with the rules of the current criminal procedural law acquires the status of evidence, that is used in the process of proving.

The crime scene is a carrier of a system that consists of certain elements – sources of evidence: testimony, material evidence, documents, expert opinions.

The system of information regarding scene of certain crime and typical its feathers is used to stop preparing the process of crime commitment or committing a serious or especially grave crime through the application of investigative actions

For criminalistics interest is the study of the properties of the person who determine the processes of preparing, committing and concealing the crime, as well as having the property displayed in the environment, that is, when interacting with other elements of the forensic character of the crimes to cause the appearance of the effect of each other.

The scene of the crime and the person of the offender, as elements of a single structure of forensic characteristics of the crime are in mutual dependence and associated with appropriate links at the stage of preparing for a crime, its commission and further concealment.

The environment in which the offender is located which indirectly or directly affects his behavior. The scene of the crime determines the

behavior of the offender, affects the decisions that it takes participates in the formation and change of motive, intent, directs his actions.

In turn, the offender also affects the situation of the crime. During the preparation for a criminal offense person studying and evaluating available the situation of the crime and shapes its model for the future that is, makes a forecast.

If the present scene of the crime and its predicted model meet the requirements for the successful commission of the criminal plan the offender will commit the crime without significant change in the circumstances of the crime.

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

Also, acting in an environment of a crime the offender leaves in it the results of the interaction of what changes its original state. Investigation of the scene of a crime provides the opportunity to receive information regarding the person of the offender, features of his character, criminal qualification, mental health and other information, which make it possible to identify the person who committed the crime.

In shaping the way in which a criminal act is committed, objective factors are of great importance. Objective factor can be called the situation of crime, it directly or indirectly determines the election of a method of crime. Speaking about the factors that influence the choice of crime it should be noted their double character. On the one hand these are external manifestations of reality, that is the situation of the crime, on the other hand this is an internal conviction and the willful decision of the offender, which is mediated by the realities of the environment.

SUMMARY

The article is devoted to the consideration of the importance of information about the scene of the crime in the process of forming evidence. The values of the data on the scene of the crime in the process of investigation and construction of investigative versions were considered. Moreover, the links between the offender and the crime situation are investigated. Their influence on each other is determined.

The structure of the crime scene is established. Interrelation between the elements of the structure of the crime scene is revealed

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Information about the authors:

Dyntu V.
Ph.D.,
Associate Professor at the Criminalistics Department,
National University “Odesa Law Acasemy”

Demchuk A. M.
PhD in Law, Dean of the Faculty of Law,
Lesya Ukrainka Volyn National University

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PLACE OF THE CUSTOMS AUTHORITIES OF UKRAINE IN THE SYSTEMOF SUBJECTS OF PUBLIC ADMINISTRATION IN THE FIELD OF INTELLECTUAL PROPERTY

Khridochkin A. V., Aparov A. M.

INTRODUCTION

Problem formulation. The results of creative intellectual activity of a person occupy an increasingly dominant place in the global value of property value and, therefore, they need for reliable protection against any unlawful encroachments. The strategy chosen by our country for building civilized market relations, ensuring social orientation of the economy and innovative social and economic development based primarily on the activating of our own intellectual potential has created the an urgent need for the formation of an effective domestic mechanism for the protection and protection of intellectual property rights.

During the last decade, an active law-making process in this area was being implemented in Ukraine, and today we can state that in our country a modern legal framework has been created for the protection and protection of intellectual property. The domestic system of legal sources, which consists of constitutional norms, norms of codes, laws, and a number of bylaws, generally complies with the international requirements defined by the Agreement on Trade-Related Aspects of Intellectual Property Rights (hereinafter referred to as the TRIPS Agreement). In particular, the World Intellectual Property Organization (WIPO) has noted significant positive changes in Ukrainian legislation in this area. But a significant amount of counterfeit and falsified products sold in Ukraine, as well as the volume of its distribution, still cause significant damage not only to the economy of our state, but also to the image of Ukraine. Therefore, the international community does not accidentally point out to our state the necessity of applying effective measures of protection and protection of intellectual property, which not only declare but also bring a practical result. And, despite the functioning of a rather ramified system of protection and protection of intellectual property rights in Ukraine, there is a need to find qualitatively new ways to solve the

problem of strengthening the protection and the protection of the rights of intellectual property subjects. A significant part of the powers in the field of protection and protection of right holders are entrusted to bodies that control the movement of goods and goods across the Customs Border of Ukraine of Ukraine.

1. Principles of Interaction of the Customs Authorities of Ukraine with Subjects of Public Administration in the Field of Intellectual Property of General and Sectoral Competence

According to Art. 398 of the Customs Code of Ukraine (hereinafter – the CC of Ukraine) the right holder, if there are reasons to believe that during the movement of goods across the Customs Border of Ukraine violated or may be violating its rights to the object of intellectual property, has the right to apply for the promotion of the protection of these rights[1]. And the central executive body, implementing the state tax policy, the state policy in the field of state customs business, maintains a Customs Intellectual Property Register, which are protected in accordance with the law. After registration of the object of intellectual property rights in the Customs Intellectual Property Registeron the basis of the statement of the legal owner or the authorized person of the customs, on the basis of the information contained in this register, take measures to prevent the movement of counterfeit goods through the Customs Border of Ukraine.

As of July 2018, almost 37,800 intellectual property objects were registered in this register. Most of them are trademarks, but there are also results of scientific and technical creativity (inventions, utility models, industrial designs, etc.), and objects of copyright (various types of works). The list of data of objects of intellectual property included in the Customs Intellectual Property Register is constantly growing. After registration of the object of intellectual property rights in the Customs Intellectual Property Register, which are protected in accordance with the law, the customs authorities, based on the data of such register, take measures to prevent the transfer of counterfeit goods through the Customs Border of Ukraine.

[1] Митний кодекс України: Закон України від 13 березня 2012 р. № 4495-VI. URL: http://www.zakon.rada.gov.ua/laws/show/4495-17.

Every year, taking into account the effectiveness of customs actions to promote the protection and protection of intellectual property rights during the movement of goods across the Customs Border of Ukraine, the number of applications filed by legal owners or their authorized persons to promote the protection of property rights of intellectual property increases. By preventing the circulation of counterfeit goods in the state, through the implementation of measures defined in the CC of Ukraine to promote the protection of intellectual property rights at the customs border, customs create favorable conditions for legal business. However, as practice shows, there are a number of urgent issues that need to be addressed in the activities of the customs authorities regarding the implementation of Section XIV of the CC of Ukraine ("Promoting the Protection of Intellectual Property Rights in the Movement of Goods through the Customs Border of Ukraine"). These problems can be classified into problems of legal support, personnel provision, logistics, organizational activities and interaction of customs authorities with other subjects of public administration in the field of intellectual property.

According to Art. 403CC of Ukraine, while exercising control over the movement of goods containing intellectual property rights through the Customs Border of Ukraine, customs authorities interact with other state authorities authorized in the field of protection of intellectual property rights in the manner prescribed by the legislation of Ukraine. To implement this norm, it is necessary to develop an appropriate mechanism of interaction of customs authorities with other subjects of public administration in the field of intellectual property.

By transforming the achievements of legal science in the mechanism of legal regulation, as well as the theory of legal relations and implementation of the law, the components of the mechanism of interaction of customs authorities with the subjects of public administration in the field of intellectual property, it is expedient to determine the following components: the system of legal norms, which is the legal basis and scope of this activity mechanism (legal component); the subjects of interaction, which are the bodies of all branches of state power and their state power (organizational component); interrelations in the form of a system of legal relations of subjects (organizational and legal constituent).

The subjects of customs and legal relations that arise during the control of the movement through the Customs Border of Ukraine of goods containing objects of intellectual property are, on the one hand, the customs authorities: the central executive body whose activities is directed and coordinated by the Cabinet of Ministers Ukraine and which implements state tax policy, state policy in the field of state customs, state policy on administering a single contribution to compulsory state social insurance, state flight in the field of combating offenses during the application of tax and customs legislation, as well as legislation on the payment of a single payment, customs (a customs authority which, in the area of its activities, ensures the fulfilment of tasks entrusted to bodies of incomes and fees), a customs post (customs authority, which is part of the customs as a separate structural subdivision, and in the area of its activity ensures the fulfilment of tasks entrusted to the customs authorities). The subjects of customs-legal relations are also state bodies, institutions and structures, which are endowed with direct and indirect functions and responsibility in the field of intellectual property, and judicial bodies. The list of such bodies is set out in the "National Strategy for the Development of the Intellectual Property in Ukraine until 2020": executive bodies (Ministry of Economic Development and Trade of Ukraine, Ministry of Internal Affairs of Ukraine, etc.); state bodies with special status (Prosecutor General's Office of Ukraine, the Security Service of Ukraine, Antimonopoly Committee of Ukraine), as well as judicial authorities[2]. And in addition to those, the subjects of legal relations in the interaction of customs authorities with other subjects of public administration in the field of intellectual property are the parliament and government of Ukraine.

The Cabinet of Ministers of Ukraine directs and coordinates the central executive body activities. This authority implements state tax policy, state policy in the field of state customs, state policy on administering a single contribution to compulsory state social insurance, state policy in the field of combating offenses under the time of application of tax, customs legislation, as well as legislation on issues of payment of a single payment. It can also propose to the Verkhovna Rada of Ukraine and the Cabinet of Ministers Ukraine s draft regulations for

[2] Національна стратегія розвитку сфери інтелектуальної власності в Україні на період до 2020 року. URL: http://uba.ua/documents/ip-strategy28082014.pdf.

the settlement of legal gaps or to improve the mechanism of public administration in the field of intellectual property in the movement of goods across the Customs Border of Ukraine of Ukraine. Such relations are subordinated or vertical relations[3].

The dispositive method of legal regulation is characteristic of the relations of interaction of customs authorities with state authorities (without the participation of the parliament and government). This is the legal relationship of free expression of the will and equality of parties, when the customs authorities enter into a legal relationship with state authorities of their level. If it is necessary to apply to a higher body from the above list of state authorities, then the customs, for example, have to file a petition for the need for such a petition to the central executive authority, which ensures the formation and implementation of state tax and customs policy. That, in turn, already enters the corresponding legal relationship with an entity equal in status.

Thus, in addition to the listed entities, it is necessary to remember the existence of intra-administrative administrative relations between subordinates and their heads of customs bodies, relations between hierarchically lower and higher structural subdivisions of this department, and others. Characteristic of these relations is the presence of power and subordination, power inequality of the participants in these legal relationships. Relations within the system between: services and units of different bodies; between them and senior officials; on the line of "subordinate – chief" in the service, the unit theorists of law called internal legal relationships[4].

An important element of the legal relationship being investigated is their object. N. Yu. Golubev object of legal relations calls the material and intangible benefits, about which subjects enter into legal relationships, exercise their subjective legal rights and subjective legal obligations[5]. Some scholars have expressed the opinion that the object of the customs relations is the activity concerning the movement of goods,

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[3] Комаров О. В. Юридичний статус та повноваження суб'єктів митних правовідносин. *Lexportus.* 2017. № 6. С. 75–84. С. 78.

[4] Миколенко О. М. Об'єкт адміністративно-деліктних правовідносин в доктрині адміністративного права. *Науковий вісник Міжнародного гуманітарного університету. Серія: Юриспруденція.* 2018. Вип. 31. С. 52–54, С. 53.

[5] Голубєва Н. Ю. Вимоги до об'єкта зобов'язальних правовідносин. *Наукові праці Національного університету «Одеська юридична академія».* 2013. Т. 13. С. 363–374, С. 364–365.

objects, vehicles into the Customs Border of Ukraine[6]. The subject of customs relations are goods, objects, vehicles moving through the Customs Border of Ukraine.

Partly with this thesis you can agree. Since the totality of objects of legal relations characteristic of customs relations are objects of the material world (things, values, property), as well as certain products of intellectual creativity. In the legal relationship to promote the protection of intellectual property rights during the movement of goods across the Customs Border of Ukraine may be a different object depending on the type of legal relationship. In the regulatory, legal relationship, it is the procedure for the transfer of such goods, the order of entering goods in the Customs Intellectual Property Register, in security relationship there are specific measures of the customs authorities to suspend the customs clearance of such goods, placing them in the warehouse of the customs authority, customs clearance in the prescribed manner, the destruction of such goods.

The interaction of customs authorities with the Department of Intellectual Property of the Ministry of Economic Development and Trade of Ukraine, as a rule, is carried out on the following issues: maintenance of state registers of intellectual property objects; organization of information and publishing activities in the field of legal protection of intellectual property; organization of work on training and retraining of specialists on intellectual property issues; issue of official bulletins on intellectual property issues; studying, generalizing and analysing the experience of foreign countries, as well as the practice of applying Ukrainian legislation in the field of intellectual property, developing and making proposals for the improvement and harmonization of the norms of Ukrainian legislation with the norms of international treaties to which Ukraine is or intends to be a party; issuance of documents for customs control and customs clearance of goods transiting through the Customs Border of Ukraine; implementation of state supervision (control) by observance by the subjects of management of all forms of ownership of the requirements of legislation in the field of intellectual property.

[6] Ніканорова О. Н. Митні правовідносини як різновид правових відносин в Україні. *Митна справа.* 2014. № 6(2.2). С. 463–469, С. 467.

Consequently, the objects of legal relations of interaction in the legal relationship of the listed issues may be: issues related to the administration of state and Customs Intellectual Property Register; questions and forms of participation of officials of customs bodies in the information and publishing activity in the field of legal protection of objects of intellectual property rights; questions and forms of participation of officials of customs bodies in measures for training and retraining of specialists on intellectual property issues; forms of participation in the study, synthesis and analysis of the experience of foreign countries, as well as practices of Ukrainian legislation in the field of intellectual property, the elaboration and introduction of proposals for the improvement and harmonization of the norms of Ukrainian legislation with the norms of international treaties, the participant of which is or intends to be Ukraine; documents for customs control and customs clearance of goods transiting through the Customs Border of Ukraine; issues related to state supervision (control) of observance by the subjects of management of all forms of ownership of the requirements of legislation in the field of intellectual property.

According to scientists, the legal factis the circumstances of life, with which the law links the emergence, change or termination of legal relationships[7]. Consequently, the legal facts of customs authorities' relations with the Department of Intellectual Property of the Ministry of Economic Development and Trade of Ukraine may be actions of officials or events related to the maintenance of state registers of intellectual property objects, information and publishing activities in the field of legal protection of intellectual property, organization of work with training and retraining of specialists on intellectual property issues, issue of official bulletins on intellectual property issues, studying, generalization and analysis of the experience of foreign countries and practice of the law of Ukraine on intellectual property, development and proposals for the improvement and harmonization of legislation of Ukraine with the norms of international treaties which participant is or intends to be Ukraine;

[7] Теорія держави та права: навч. посіб. / Є. В. Білозьоров та ін.; за заг. ред. д-ра юрид. наук, проф. С. Д. Гусарєва, д-ра юрид. наук, проф. О. Д. Тихомирова. Київ: Освіта України, 2017. С. 153.

issuance of documents for customs control and customs clearance of goods transiting through the Customs Border of Ukraine, implementation of state supervision (control) upon compliance by subjects of management of all forms of ownership with the requirements of legislation in the field of intellectual property.

The content of this type of customs relations is traditionally subjective rights and legal obligations of their subjects. Subjective right is a measure of permitted behaviour that is guaranteed by the state, and legal obligations are the kind and extent of the obligated behaviour of the subject of the customs relationship. The subjective right is traditionally characterized by the unity of three elements: the type and extent of the permitted behaviour of the carrier of this right, within which the media itself realize its right; the right to demand from other persons such behaviour which ensures achievement of the purpose of entering into these legal relationships; the right to demand the use by the state, in the person of its authorized bodies, of compulsion to bearer of a counter legal obligation in case of its non-fulfilment or improper fulfilment[8].

Legal duty is a type and measure of the necessary behaviour, which is established by law. The basis of subjective law is the legal provision of opportunity, and the basis of legal obligation is the consolidation of necessity. The bearer of possible behaviour is the authorized person, and the bearer of duty is the person obligated. An authorized person has the right to perform certain actions, but is obliged to perform and provide them[9]. In the legal relationship, the subjective legal obligation corresponds to the subjective right of the counterpart and consists of such elements as: the need for certain actions or abstention from them; the need for the obligated subject to respond to legal requirements that were addressed to him by an authorized entity; the need to be responsible for non-compliance with these requirements (in this case, legal relations will be borne by the officials of these entities); the need not to prevent a counterpart from

[8] Лютіков П. С. Класифікація та характерні ознаки суб'єктивних прав та обов'язків як складових адміністративно-правового статусу юридичної особи: теоретико-правовий аналіз. *Вісник Запорізького національного університету. Юридичні науки.* 2013. № 2(1). С. 125–131, С. 126.

[9] Гаманюк Л. О. Особливості юридичного обов'язку у військовому праві. *Митна справа.* 2015. № 3(2). С. 187–192, С. 187–188.

exercising the right guaranteed to him by the law in the given legal relationship.

The relationship between customs authorities and other entities of public administration in the field of intellectual property are drawn up on the basis of written appeals and correspondence. For example, the Department of Intellectual Property of the Ministry of Economic Development and Trade of Ukraine sends a letter to the State Fiscal Service of Ukraine (hereinafter referred to as the SFS of Ukraine) with a proposal to direct its specialists to the training courses and retraining of specialists on intellectual property issues organized by the Ministry of Economic Development and Trade of Ukraine. The SFS of Ukraine, in turn, sends a response to the list of individuals who will increase their qualification at such courses. The subjective rights and responsibilities of the Department of Intellectual Property of the Ministry of Economic Development and Trade of Ukraine and the SFS of Ukraine arise from the agreement obtained on the basis of correspondence and on the basis of the current legislation of Ukraine. The SFS of Ukraine has a subjective right to upgrade qualifications for its employees. The State Service of Intellectual Property of Ukraine pledges to increase the qualification of employees of the SFS of Ukraine on issues of protection of intellectual property rights. The SFS of Ukraine is obliged to ensure the arrival of its specialists within a specified time and place, as well as to require proper training from these specialists. The Department of Intellectual Property of the Ministry of Economic Development and Trade of Ukraine has the right to demand this from the SFS of Ukraine. From the outside everything looks quite simple. In fact, such simple correspondence is only an external form and the result of a complex system of intra-legal relationships burdened by a significant amount of conciliatory bureaucratic actions. Often, such actions impede the adoption of necessary decisions and reduce the effectiveness of management activities.

It is necessary to develop such a model of interaction of customs authorities with other subjects of public administration in the field of intellectual property, which would ensure the rapid adoption of necessary decisions and increased the efficiency of management activities.

2. Principles of Interaction of the Customs Authorities of Ukraine with Subjects of Public Administration in the Field of Intellectual Property of Special Competence

The theoretical model of the interaction of the Customs Authorities of Ukraine with other subjects of public administration in the field of intellectual property is a reflection of the elements of the system of protection and protection of intellectual property rights, stipulated by the legislation, that provide protection of these rights during the movement of goods across the Customs Border of Ukraine[10]. Given this, it can be assumed that the interconnections, in particular regarding the protection and protection of intellectual property rights, should be built up between the customs and the tax component. For the purpose of legal regulation of such interconnections, it was advisable to adopt the relevant regulatory act. In line with this objective requirement, the Ministry of Finance of Ukraine issued an appropriate order ("On Approval of the Procedure for the Interaction of Customs Units in the Field of Customs Control and Customs Clearance of Goods Containing Intellectual Property Rights")[11]. However, his careful analysis showed that it helped regulate the interaction of elements exclusively within the customs component. Thus, intra-interrelation becomes a form of interaction between the elements of the organizational structure of the state customs system.

The internal communications are clearly traced in the circumstances of the completion (completion) of customs clearance of goods outside working hours (in the second shift of work). In this situation, officials of the customs clearance unit inform the officials of the specialized unit about the necessity of their involvement in the customs clearance of goods before the end of working hours (the first change of work). Copies of the customs declaration and the documents on the basis of which decisions were made by the specialized unit shall be kept in the affairs of the specialized unit in paper and/or electronic form.

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[10] Запобігання митним правопорушенням: охорона і захист прав інтелектуальної власності на митному кордоні України : монографія / за заг. ред. П. В. Пашка. Ірпінь-Хмельницький: ФОП Стрихар А. М., 2017. 323 с. С. 152.

[11] Про затвердження Порядку взаємодії підрозділів митниці при здійсненні митного контролю та митного оформлення товарів, що містять об'єкти права інтелектуальної власності: наказ Міністерства фінансів України від 30 травня 2012 р. № 647. URL: http://www.zakon.rada.gov.ua/go/z1033-12.

The algorithm of intercommunity interaction, that is, the interaction between the specialized unit and the customs clearance unit, regarding the control over compliance with the legislation of Ukraine in the field of intellectual property rights protection during the customs control and customs clearance of goods moved by citizens, covers the actions of officials of the above units, are similar those carried out on the results of customs inspection of goods.

Consequently, internal relations are formed within the organizational structure of customs authorities and for the most part fulfil the functions of providing information flows, directly promoting the protection of intellectual property rights, partially carrying out administrative functions, in particular, control, etc. Instead, external relations ensure the formation of a state customs policy to promote the protection of intellectual property rights, the implementation of a strategic vision in this area, fulfilling a security function in relation to internal interactions in the organizational and legal mechanism to promote the protection of intellectual property rights.

The functioning of the mechanism for promoting the protection of intellectual property rights depends on its qualitative organizational and legal component, that is, on the interconnections between the elements of the mechanism. Such elements in the block of external interaction in the model act above the authorities of different branches of government. The extent of their powers in the field of protection and protection of intellectual property rights depends on the level of inclusion of these subjects of public administration in the process of promoting protection and protection of intellectual property rights[12]. This, in turn, determines the importance, depth and durability of the relationships that arise between these actors as elements of the block of external interaction of the model of interaction of customs authorities with other subjects of public administration in the field of intellectual property.

The practice of customs authorities testifies to the existence of such a problematic issue as the lack of direct interaction between the officials of the relevant customs departments with the Department of Intellectual Property of the Ministry of Economic Development and Trade of

[12] Чередник Н. В. Правовий аналіз рекомендацій Європейської комісії щодо управління інтелектуальною власністю (трансфером знань) та проблеми їх імплементації. *Науковий вісник Ужгородського національного університету. Серія: Право.* 2014. Вип. 28(2). С. 204–206, С. 205.

Ukraine. The essence of the problem lies in the fact that one of the tasks performed by the bodies of revenues and collections, performing customs duties in accordance with Art. 544 of the Criminal Code of Ukraine is "to promote the protection of intellectual property rights, to take measures to prevent the transfer of goods across the Customs Border of Ukraine with violations of intellectual property rights protected by the law, and preventing the transfer of counterfeit goods through the Customs Border of Ukraine". According to Art. 398 of the CC of Ukraine, the rights holder who, if he has reason to believe that during the movement of goods across the Customs Border of Ukraine violated or may be violating his rights to the object of intellectual property rights, has the right to apply to promote the protection of his property rights to the object of intellectual property by entering appropriate information into the Customs Intellectual Property Register, which are protected in accordance with the law.

Based on the statements of the owners the central executive body, whose activities are directed and coordinated by the Cabinet of Ministers of Ukraine and which implements state tax policy, state policy in the field of state customs, state policy on administering a single contribution to compulsory state social insurance, state policy in the field of fighting offenses in the application of tax, customs legislation, as well as legislation on the payment of a single payment, keeps a Customs Intellectual Property Register protected in accordance with the law. After registration of the intellectual property object in the Customs Intellectual Property Register, customs on the basis of data of such register take measures to prevent the movement of counterfeit goods through the Customs Border of Ukraine.

Among the problematic aspects of the organizational and legal mechanism for promoting the protection of intellectual property rights the Customs Authorities of Ukraine several identified groups. The first of these is related to the organization of the work of the employees of the sector on issues of protection of intellectual property rights of the Department for Customs Control. We are talking about: the need to improve the level of customs control through the preservation of human resources, which has a certain experience of such work; the need to address the problem of compliance with certain procedural deadlines by employees of the sector on the protection of intellectual property rights of the Department for Customs Control, in particular, to ensure the

sending of notifications about the fact of presentation of goods containing objects of intellectual property rights; the need to involve the employees of the sector on the issues of intellectual property rights of the Department of Customs Control Organization before carrying out customs inspections (detection of violations of intellectual property rights ("untypical" or "hidden") is more possible in the direct implementation of customs cargo inspections; resolving the issue of placing goods whose customs clearance is suspended.

The second group of problematic aspects of the organizational and legal mechanism for promoting the protection of intellectual property rights by the Customs Authorities of Ukraine is connected with the conduct of the Customs Intellectual Property Register and entering of information, namely, registration of well-known things or registration of "duplicate objects". The famous things have already registered, such as respirator, tablet PC, screw, toothpicks, clothes hanger, cigarette lighters, auto parts, sticks for shish kebab, matches. Taking into account the foregoing, one can register anything and obtain a patent, including a certain thing[13].

At the same time, the presence in the Customs Intellectual Property Register of a considerable number of similar objects of intellectual property similar in character is the actual problem, which complicates the customs control over the protection of intellectual property rights. It is mostly industrial designs, patents for which are granted without qualification examination of the merits of the applicants' applications. In such cases, with almost similar signs of declared goodsto goods entered into the Customs Intellectual Property Register, officials of customs are required in the conditions of certain time standards, in accordance with their competence, to determine clearly whether all the essential features of industrial designs used in the given goods are used, entered in the Customs Intellectual Property Register. The presence of several different patents for the same industrial design, which was registered in the customs register, leads to complication and confusion in the event of a decision to suspend the customs clearance of such goods in terms of informing the right

[13] Свирида В. А. Організаційно-правовий механізм реєстрації митними органами України прав на об'єкти інтелектуальної власності. *Бюлетень Міністерства юстиції України*. 2013. № 11. С. 204–210, С. 207–208.

holder about the fact of presentation of these goods to customs clearance (taking into account that several owners).

In accordance with the current legislation, an industrial design is the result of human creative activity aimed at achieving the decorative appearance of the product. An industrial design must satisfy both the aesthetic and ergonomic needs of the consumer. That is the product must be external and at the same time be capable of performing its intended function. The scope of the legal protection of an industrial design is determined by the set of essential features of the industrial design, which are presented in the image (images) of the product (its layout, figure)[14]. It should be noted that the signs refer to the essential if they affect the appearance of the product, which has aesthetic and ergonomic features. Legal protection is given to an industrial design that does not contradict the public interests, the principles of humanity and morals. According to Art. 461 of the Civil Code of Ukraine, an industrial design is considered suitable for the acquisition of intellectual property rights to it, if it is new in accordance with the law[15]. In this case, the industrial design is considered new if the set of its essential features has not become public in the world before the date of filing an application for it, or if the priority is claimed prior to the priority date.

Unfortunately, recently, the tendency to enter the customs register of such industrial designs is increasing. At the time of registration they were well-known. A set of essential features of such industrial designs prior to the date of registration by the State Intellectual Property Service of Ukraine and, accordingly, has become publicly available in the Customs Register in the world.

Indeed, in accordance with the procedure for registration in the Customs Intellectual Property Register, the registration of industrial designs in the Customs Intellectual Property Register is carried out including on the basis of a document confirming the property rights to the object". The Ukrainian patent for industrial design, issued by the Ukrainian Institute of Intellectual Property for Industrial Design, is such

[14] Бондаренко О. О. Основні напрями удосконалення національного законодавства у сфері охорони промислових зразків в Україні. *Науковий вісник Міжнародного гуманітарного університету. Серія: Юриспруденція.* 2015. Вип. 15(2). С. 4–7, С. 5.

[15] Цивільний кодекс України: Закон України від 16 січня 2003 р.№ 435-IV. URL: http://www.zakon.rada.gov.ua/go/435-15.

a document. You can continue to blame the Ukrainian Institute of Intellectual Property, which, without conducting a substantive examination, without examining the novelty of the file submitted for the registration of an industrial design, issues patents for all industrial designs without exception, without taking into account the consequences that such registration may entail. Nevertheless, the formal examination of industrial designs is an international practice and one can hardly hope for changes in the national legislation on the protection of rights to industrial designs, including the order of their state registration.

Thus, it is advisable to amend the Procedure for Registration in the Customs Register Objects of Intellectual Property Rights to protect intellectual property rights during the movement of goods across the customs border and to avoid delays in customs clearance associated with ambiguous interpretation of the legislation on the protection of intellectual property rights for industrial designs.Theserights are protected in accordance with the law, having established the possibility of registering only those industrial designs that have received legal protection in accordance with the Hague Agreement Concerning the International Registration of Industrial Designs, as Ukraine is a party to the Hague (1960) and the Geneva Act (1999) of the Hague Agreement for International Registration of Industrial Designs, concluded in 1925.

Another group of problematic aspects of the organizational and legal mechanism for promoting the protection of intellectual property rights by the Customs Authorities of Ukraine is the issue of realization of property rights bylegal owners and their representatives: the need to involve the right holders in conducting expert assessments; the need to resolve the issue of untimely return of samples of goods, which is a violation of the norms of customs legislation; the need to address the issue of returning to the practice of providing the holder with a pledge or an equivalent guarantee for the reimbursement of costs associated with customs actions to promote the protection of intellectual property rights[16]; the need to address the issue of unification of information about official importers of goods and enterprises that may violate intellectual property rights; the final solution to the problem of the deliberate

[16] Филь С. П. Адміністративна відповідальність за переміщення товарів через митний кордон України з порушенням прав інтелектуальної власності. *Право і суспільство*. 2016. № 5(2). С. 129–134, С. 129–130.

complication of customs clearance by representatives of legal owners, due to the fact that the multiple implementation of measures to suspend the customs clearance of goods permanently imported by the same subjects of foreign economic activity by the same foreign economic agreements[17]; eliminating the practice of "pulling" the customs into a competitive struggle bearing signs of attempts to use the public-law resource in private interests and essentially serving as a form of abuse of the law.

Therefore, there are a number of problems that impede effective and high-quality work of the system of security and protection of intellectual property rights. In order to eliminate and optimize the work of the customs, promptly introduce changes to the regulatory legal acts that regulate the intellectual property, promote business development, accelerate external trade, etc., it is necessary, first of all, to reduce the time for decision making by the Customs authorities regarding the implementation of customs clearance, which are transferred through the customs border, or their suspension or execution of other customs procedures provided for by law. In addition, it is advisable to develop a qualitatively excellent model of interaction of Customs authorities with other actors promoting the security and protection of intellectual property rights. The main characteristic of this model should be the minimum number of hierarchically complex interconnections, the absence of dubbing in internal interactions, the possibility of direct interaction of customs with other subjects of security and protection of intellectual property rights. In addition, it seems advisable that such information be directly received by an official of the customs clearance unit, and not by the intermediary of an official of the specialized unit. This approach allows to eliminate another unnecessary interconnection of the internal communication – sending information about the introduction of new objects of intellectual property rights into the customs register from a specialized unit in the customs clearance unit.

As mentioned above, the domestic practice of interaction between customs and other bodies of state power has the character of subordination. This situation leads to very slow solution of problems that

[17] Берлач Н. А., Филь С. П. Сутність митної діяльності, спрямованої на сприяння захисту прав інтелектуальної власності в Україні. *Наука і правоохорона*. 2017. № 1. С. 20–27, С. 22.

require an operational approach. The ability to solve urgent issues with a minimum amount of bureaucratic formalities would ensure a much better functioning of the system of security and protection of intellectual property in Ukraine and bring our country closer to the EU standards.

CONCLUSIONS

As of today, Ukraine has already formed the legal framework and the system of subjects of public administration in the field of intellectual property. This thesis is confirmed by the fact, that Ukraine is a member of the World Trade Organization (WTO). It was a necessary condition for the mandatory compliance of national legislation with the provisions of the TRIPS Agreement. At the same time, legislation in the field of protection and protection of intellectual property needs further elaboration when moving the relevant goods through the customs border. The methodological support to the activities of customs authorities related to the promotion of the protection and protection of intellectual property in the movement of goods across the customs frontier also requires further development. And in order to improve the level of protection of products containing intellectual property, it is necessary to undertake a deep legal analysis of international experience and legislation to expand the competence of customs authorities in this matter. It is also reasonable to see the systematization of legislation regulating the protection and protection of intellectual property in order to establish a unified and integrated system in Ukraine. A strategic direction is the creation of units on protection and protection of intellectual property in customs authorities. And in order to carry out customs control of goods containing objects of intellectual property rights, it is necessary to carry out thorough preparation and advanced training of specialists of customs bodies and equip customs laboratories with new equipment at the appropriate level. According to Art. 258CC of Ukraine customs authorities interact with other subjects of public administration in the field of intellectual property, in the order determined by the legislation of Ukraine. We believe that cooperation is needed not only at the state level, it is necessary to establish close and mutually beneficial relations with foreign and international bodies and organizations. The cooperation between the State and business structures in the field of protection and intellectual property protection should be mutually beneficial and effective.

SUMMARY

The place of the Customs Authorities of Ukraine in the system of subjects of public administration in the field of intellectual property was determined. The administrative-legal status of theCustoms Authorities of Ukraine as subjects of public administration in the field of intellectual property wasanalysed. The principles of interaction of theCustoms Authorities with subjects of public administration in the field of intellectual property with general, branch and special competence were considered. The problems of legal, personnel support and logistics as well as organizational activity and interaction of customs authorities with other subjects of public administration in the field of intellectual property were described. We separately identified the prospective directions of cooperation between the Customs Authorities of Ukraine and the Intellectual Property Department of the Ministry of Economic Development and Trade of Ukraine. We also identified the problematic issues of the algorithm of intra-internal relations within the organizational structure of customs bodies as subjects of public administration in the field of intellectual property. The problematic aspects of the organizational and legal mechanism for promoting the protection and protection of intellectual property rights by the Customs Authorities of Ukraine were analysed. The ways of improvement of the administrative and legal status of the customs bodies of Ukraine as subjects of public administration in the field of intellectual property of special competence are offered.

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Information about the authors:
Khridochkin A. V.
PhD in History, Associate Professor,
Head of the Department of General Law Disciplines,
Dniprovskii University of the Humanities
Aparov A. M.
Doctor of Law, Professor,
Professor at the Department of Law
and Methods of Teaching Jurisprudence,
Sumy State Pedagogical University
named after A.S. Makarenko

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STRUCTURE OF INFORMATION RELATIONS IN ADMINISTRATIVE LAW

Korniyenko M. V., Dębiński Antoni, Szewczak Marcin

INTRODUCTION

Legal relations that arise in the public sphere of society and the state during the receipt, use, distribution and storage of information, are characterized by considerable dynamism and instability of legal regulation. By providing diverse social processes, certain groups of these relations, as a result of the transformation of the model of relations between public authorities and citizens over time, lose their relevance and undergo radical changes. Thus, constantly changing and adjusted, the system of public needs in the information sphere contributed to changes and adjustments of administrative law. This, in turn, leads to the emergence of new or renewed social relations in the power and management sector (especially in the sphere of information circulation).

Such changes are especially noticeable in the course of fundamental updates of the power and management model, as the normative maintenance of its work is carried out mainly using the rules of administrative law. The need for streamlining and regulation of information relations requires the improvement and further legal consolidation of the legal status of their participants. In particular, it is a question of separating and fixing in the state management of the following areas: ensuring information sovereignty of Ukraine, regulation in the field of communication and informatization; realization of the state policy in the spheres of organization of special communication, information security, telecommunications and use of radio frequency resource of Ukraine; realization of the state policy in the field of informatization, e-governance, formation and use of national electronic information resources, development of the information society; realization of state policy in the field of television and radio broadcasting, information and publishing sphere, etc. Consequently, the scientific search for answers to the questions arising in the process of administrative-legal regulation of information relations within the limits of the science of administrative law, through constructive use of

knowledge from the general theory of law, constitutional, administrative law emphasizes the importance and relevance of the chosen topic of research.

1. Actors of Information Relations in Administrative Law

Actual and important for realization of our research is an analysis of the subjective structure of information relations. A thorough study of the latter requires a detailed elucidation of a number of theoretical issues. First of all, this relates to the definition of the legal structure of "actors of information legal relationships, the establishment of its relationship with other related concepts and the resolution of other issues related to the science of administrative law and practice management. The practical significance of this question is that its proper solution will determine the circle of persons entering into the information legal relations and acts of which, subject to the regulatory influence of the rules of administrative law, have legally significant consequences. Consideration of this issue will also help not only to create the basis for further in-depth study and classification of the relevant actors, but also to determine adequately the modern requirements of the functions of the authorities, optimization of their quantity and quality.

The actors of legal relations in the global information network are: services of the technical part; actors producing and distributing information on the Internet; consumers of information from the Internet; business entities engaged in e-commerce. For example, there are three groups of entities that operate on the Internet: 1) developers of cross-border information networks and other technical means that make up the Internet infrastructure; 2) specialists who produce and distribute information on the Internet, and providers of various services; 3) various consumers (citizens, organizations, etc.)[1].

Based on a definite model of systematization of actors of information legal relations, scientists distinguish groups of actors, the key feature of which is the special information legal personality, which is the general precondition of the participation of individuals and legal entities in information legal relations, namely: producers, or creators of

[1] Швець М., Калюжний А., Гавловський В., Цимбалюк В. Інформаційне законодавство України: концептуальні основи формування. *Право України*. 2001. № 7. С. 50–53.

information, including authors; owner of information (information objects); consumers of information. Developing this classification, some scientists believe that owners and producers of information can be conditionally united, on the basis of which distinguishes two groups of actors: users and producers of information[2], supporting this concept, L. P. Kovalenko notes that the carriers and consumers of information also coincide[3].

This model of the division of actors of information relations has become more widely interpreted in the writings of O. I. Yaremenko, which suggests to distinguish the individual specific features that determine the status of participants in the studied relations. Thus, studying information relations as a subject of legal regulation, the author states that, as social relations, which are regulated by law, arise, develop and cease to operate in the information space between the actors of law, which are endowed with information rights and obligations . In other words, the actors of information and legal relations are primarily their participants who have information legal personality, which includes two legal qualities: information capacity, which is the ability to have information rights and responsibilities; informational capacity, that is, the ability to acquire information rights and create obligations by their actions[4].

Since information legal relations – this is not the only form of implementation of law, norms defining the place of the subject of information law, implemented, defining the legal status. Such rules establish the actor's status, his/her potential. However, this does not mean that all potential opportunities will be realized in specific legal relationships. As defined by the Law of Ukraine "On Information", everyone has the right to information that provides for the free acquisition, use, distribution, storage and protection of information necessary for the realization of their rights, freedoms and legitimate

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[2] Адміністративне право : підручник / Ю. П. Битяк, В. М. Гаращук, В. В. Богуцький та ін.; за заг. ред. Ю. П. Битяка, В. М. Гаращука, В. В. Зуй. – 2-ге вид., переробл. та допов. Харків : Право, 2013. С. 22

[3] Коваленко Л. П. Предмет і методи інформаційного права України. *Вісник Харківського національного університету імені В. Н. Каразіна. Серія «Право».* 2014. № 1137. Вип. 18. С. 83–86.

[4] Концепція створення та функціонування інформаційної системи електронної взаємодії державних електронних інформаційних ресурсів. *Офіційний вісник України.* 2012. № 67. Ст. 2753.

interests. At the same time, not all of these potential rights will be implemented in specific legal relationships, although the legal capacity to implement them is the legal status of a person, because the presence of the appropriate legal status of the information law actor – a necessary condition for his participation in information legal relationships.

Taking into account the above, we conclude that the obligatory participants in the information relations in the administrative law are the subjects of authority: state authorities, other state bodies, local self-government bodies, bodies of power of the Autonomous Republic of Crimea, other actors carrying out power management functions in accordance with the legislation and decisions of which are obligatory for execution. It is the state and its bodies act as the main actors of information and legal relations. Based on the above considerations, we can conclude that among the actors of information relations governed by the norms of administrative law, belong to: a) subjects of power; b) individuals; c) legal entities; d) representatives of the public. Subjects of authority are participants in information relations in all spheres of economic, political and cultural life. Such entities are state authorities, local self-government bodies, and other entities exercising power management functions in accordance with the legislation, including for the implementation of delegated powers.

Also among the subjects of power authorities it is worth noting the Comissioner of the Verkhovna Rada of Ukraine on human rights. This is evidenced by the annual reports on the state of observance and protection of human rights and freedoms in Ukraine, which pay more and more attention to the protection of citizens' information rights. In addition, in order to ensure the independence of the authorized body for the protection of personal data, as required by the Council of Europe Convention on the Protection of Individuals with regard to Automatic Processing of Personal Data, the authority to control compliance with the legislation on the protection of personal data is entrusted to the Commissioner of the Verkhovna Rada of Ukraine on human rights In order to ensure fulfillment by the Commissioner of the functions of control over the implementation of legislation in the field of personal data protection, the Department for Protection of Personal Data was created in the Secretariat of the Commissioner of the Verkhovna Rada of Ukraine on Human Rights. The Department, in accordance with the task assigned to it: monitors the observance of human rights in the field of

protection of personal data, submits proposals to the Commissioner for taking measures to control compliance with the requirements of the legislation on the protection of personal data; carries out consideration of appeals of citizens on questions of protection of personal data and prepares proposals on the results of their consideration; prepares proposals for the opening of proceedings in cases of human rights violations and implements open procedures; carry out outgoing and non-visa, scheduled, unscheduled inspections of the owners or personal data managers in the manner prescribed by the Commissioner; organizes and provides interaction with structural subdivisions or responsible persons organizing work related to the protection of personal data, etc.

Regarding the direct involvement of the Cabinet of Ministers of Ukraine in the information legal relations, it is conditioned by its status as a supreme body in the system of executive power bodies. However, the Constitution of Ukraine and the Law of Ukraine "On the Cabinet of Ministers of Ukraine", which defines the main tasks of the Government of Ukraine, do not contain any indication on the information sphere or on the implementation of this body of state policy in this area.

Based on the interpretation of the above norms, it can be argued that the Cabinet of Ministers of Ukraine: implements the information policy of the state, ensures the implementation of the Constitution and laws of Ukraine in the information sphere; takes measures to ensure the information rights and freedoms of man and citizen; develops and implements nationwide programs in this area; ensures equal conditions for the development of all forms of ownership, manages the objects of state property in this field; elaborates a draft law on the State Budget of Ukraine and ensures the execution of the State Budget approved by the Verkhovna Rada of Ukraine and submits to the Verkhovna Rada of Ukraine a report on its implementation, in particular, with regard to financing of the information sphere; carries out measures to provide information security and fight against crime in the field of information and informational and infrastructural relations; directs and coordinates the work of ministries, other bodies of executive power in the information sphere, etc.[5].

[5] Залізняк В. Удосконалення інформаційного законодавства України: методологічні засади. *Інформаційне право*. 2010. № 2. С. 59–60.

On December 2, 2014, Ukrainian authorities in accordance with the resolution number 1008 on the formation of a new Cabinet of Ministers of Ukraine have initiated the establishment of the Ministry of Information Policy[6] (hereinafter – MIP) within the structure of the Cabinet of Ministers of Ukraine. In accordance with the Regulation "On the Ministry of Information Policy of Ukraine", the Ministry of Information Policy of Ukraine is a central executive body whose activities are directed and coordinated by the Cabinet of Ministers of Ukraine. It is MIP that is the main body in the system of central executive authorities in the field of ensuring information sovereignty of Ukraine, in particular, regarding the dissemination of publicly important information in Ukraine and abroad, as well as ensuring the functioning of state information resources.

Also, the Ministry of Education and Science of Ukraine acts as a participant in information relations by the authorities. To his tasks as the main body in the system of central executive authorities on the implementation of state policy in the field of scientific and scientific and technical information, in accordance with the provision on it, includes the promotion of the functioning of the national system of scientific and technical information.

The next participants in public-legal information legal relationships are individuals who enter into administrative information relations with the state, with state authorities and local self-government bodies, legal entities, associations of citizens.

Legal entities act as participants in information legal relations, when their constituent documents provide information activities as the main ones (news agencies, printed mass media, publishing houses, television and radio companies, libraries, archives, etc., as well as state bodies for which statutory and legal acts establish management, regulatory or other functions in the information sphere).

Representatives of the public take an active part in the work of consultative and advisory bodies; in public discussions in the information sphere; in the study of public opinion. Also, these entities have the right to send information requests and complaints to public authorities in the field of information circulation in the course of public control over their

[6] Про інформацію : Закон України від 2 жовтня 1992 р. № 2657-XII. *Відомості Верховної Ради України*. 1992. № 48. Ст. 650.

activities, as well as complaints and applications for information administrative offenses in the process of public control over compliance with the rule of law in the information sphere; to send to the bodies of state administration in the information sphere applications (petitions) on satisfaction of rights and legitimate interests in this sphere[7].

The participation of these entities in the work of advisory bodies in the field of information is primarily aimed at providing expert-analytical and normative-project support to the activities of the relevant state bodies, the representation and creation of conditions for taking into account the interests of the public and business sectors, providing feedback in the process of public administration in the information sphere.

In view of the above, we can say that the key role in determining the nature of information relations in administrative law belongs to their parties. Such parties are the actors of administrative law, that is, the media provided by the administrative and legal norms of rights and responsibilities in the field of information circulation, which can implement these rights, and the duties assigned to perform. The range of such actors is quite wide, and their classification is branched, which is explained by the special nature of the information sphere, its place in the life of society, individuals and the state. In information relations in the public sphere, their participants are given subjective rights and duties, which in the future determine the actors' behavior.

2. The Object of Information Relations in Administrative Law

The decisive issue is the outline of the object of information relations in administrative law and its in-depth consideration, from which the correct solution depends on the further effectiveness of this scientific study. A proper definition of the general theoretical aspects of the chosen issue is one of the most important steps in the field of administrative law, since it will help to optimize the influence of the norms of administrative law on the further development of information relations. On this occasion, one can consider the expression existing in different peoples: "Having determined in the concepts, humanity will solve half of its problems."

[7] Інформатизація управління соціальними системами. Організаційно-правові питання теорії і практики : навч. посіб. / В. Д. Гавловський, Р. А. Калюжний, В. С. Цимбалюк та ін. ; заг. ред. М. Я. Швеця, Р. А. Калюжного. Київ : МАУП, 2003. С. 125.

That is why in various branch sciences quite a lot of attention is paid to the interpretation of the corresponding constructions of concepts, categories, terms, their normative consolidation on the principles that provide communication between people.

Expansion of the horizon of scientific knowledge of state-legal phenomena, the inclusion in the scientific picture of the legal world of new general categories and concepts, the development of fundamental legal terms and constructions of a methodological significance for jurisprudence, are carried out precisely by such science as the theory of state and law. That is why, for the correct definition of the legal category "object of information relations in administrative law", it is necessary first of all to find out exactly how the concept of "object of legal relations" is interpreted in the theory of law and the theory of administrative law. At the same time, we note that the problematic issue is one of the most difficult and most debatable. Thus, among the points of view of the representatives of the theory of state and law there are significant differences regarding the understanding of the essence of the concept and its interpretation. As V.S. Tsymbalyuk rightly emphasizes, everything doubts whether it is necessary to have such a category as "the object of legal relations", and ending with the question of what exactly to be understood under this concept[8].

Detailed acquaintance with a number of scientific works of scientists allows to distinguish two main approaches (monistic and pluralistic) to understanding the term "object of legal relationships" and to its interpretation. The first of these is based on a monistic concept, according to which a single common object is inherent in all types of legal relationships. Proponents of this concept explain the object of legal relationship as an action or behavior of the subject, aimed at certain material goods[9].

The basis of the second approach to understanding the concept of "object of legal relations" is the pluralistic concept, the basis of which is

[8] Цимбалюк В. С. Проблеми кодифікації норм правовідносин щодо інформації. *Актуальні проблеми правового регулювання суспільних відносин у сфері інформаційно-телекомунікаційних технологій (ІКТ)* : матеріали круглого столу, м. Ірпінь, 28 вересня 2006 р. Ірпінь, 2006. С. 129–133.

[9] Положення про Міністерство інформаційної політики України : Постанова Кабінету Міністрів України від 14 січня 2015 р. № 2. URL : http://zakon3.rada.gov.ua/laws/show/2-2015-%D0%BF.

the recognition of diversity, plurality of objects that reflect the entire palette of ordered social relations. Within the framework of this concept, the object of legal relations are the phenomena (values) of the material and intangible world, about which there is a legal relationship and which are directed subjective rights and legal obligations, "material and intangible benefits that can meet the needs of subjects"[10].

In the vast majority of modern works on administrative law, scholars tend to think that the object of relations of administrative law are actions, behavior of people: this is the one for which there arises legal relationships (actions, refraining from actions); These are social relations that embody the nature of the activity of individual actors of law (their actions or inaction), legal consequences of their behavior, certain legal interests, including property or non-property nature, etc. Ye. V. Kurinnyy rightly notes that the above positions need to be substantially refined.

Indeed, the object of administrative-legal relations is the one for the sake of which (according to what) they arise; in the basis of actions (inaction) of the participants of the legal relationship are certain interests. However, one can not accept that the object of administrative-legal relations is only the action (inaction), the behavior of the actors of administrative relations. If so, what then was the basis of another mandatory element of the relationship of administrative law – legal facts?

In administrative legal relations, public needs and interests, if necessary, dominate the interests of an individual actor, and there is nothing discriminatory. If a citizen is law-abiding, his relations with the authorities take place in the usual managerial regime, then, in realizing his own needs, it will necessarily be with respect and responsibility to address the needs and interests of other members of society[11].

The generic object is a group of public needs and interests that are embodied in the same administrative law with the same functional purpose. On this basis, the generic object is divided into two parts: 1) a set of public needs provided by the sphere of power and management activities; 2) a system of public interests in the field of administrative and

[10] Європейський досвід нормативно-проектного забезпечення розвитку інформаційного суспільства: висновки для України : аналіт. доп. Київ : НІСД, 2014. С. 47.

[11] Легеза Ю. О. Інформація як об’єкт правовідносин. *Науковий вісник Юридичної академії Міністерства внутрішніх справ.* 2003. № 2 (11). С. 68–72.

legal protection. Species object is derived from generic. This is a separate group of public needs implemented within the framework of the same type of administrative-legal relations – state administration, communal administration, administrative liability, administrative justice, etc.

The direct object is the parts of the species object, the individual public needs and interests that are provided or protected in specific areas of government-management or administrative-legal protection (for example, the passport system, administrative and jurisdictional activity of general courts, etc.).

In our opinion, the object of information relations is a specific object of administrative-legal relations. However, for a more in-depth conclusion, what exactly is the essence of the object of information relations, one should turn to the works of supporters of the existence of information law.

Thus, from a legal point of view, certain information may exist and be subject to legal regulation only if it is used in a society, that is, we can speak about the relevant socially-regulated information right[12]. This approach reaffirms our thesis that information can not exist separately from the mechanisms of its transmission, that is, means of communication, and that in the information sphere formed an appropriate relationship that becomes the subject of legal regulation.

The value of one and the same information will be different in different types of society, because they have different possibilities of its use. Such opportunities are directly related to the level of development of society and the level of development of means of public communication. Any recent news will not matter in a state that does not have a mass media system. Clearly, any commercial information is valuable only if it is possible to receive it in a timely manner and respond in a timely manner to it as well.

Information is multidimensional: it exists in inanimate nature, cybernetic (managerial) systems, living organisms (genetic information), circulates in society (social information), etc. This property, in particular, led to various interpretations of the essence of information in the scientific literature, where the term itself is quite common and is a

[12] Жиляєв І. Б. Інформаційне право України: теорія і практика : монографія. Київ : Парлам. вид-во, 2009. С. 22–23.

category that is used in various fields of knowledge. In the legal literature distinguish the following main features of information:

1) systematic information – information not only acts as a means of systematic organization of existence, but also systemically organized, characterizing the degree of organization of this being;

2) selectivity of information – the principle of choice is compared in the theory of information with the concept of uncertainty: the acts of choice, creating in its totality the selection processes necessary for the formation of words and expressions, eliminating some kind of "share" of uncertainty in some pre-existing or conditionally set of elements and groups of elements or relationships, isolating and forming formations with those or other (for example, linguistic) structures;

3) physical dependence – without certain material carriers there is no information;

4) continuity of information – without developed continuity there is no developed structure of development processes, because they then have little isolated and differentiated phenomena of "historicity" and "internal orientation";

5) inexhaustible information – information can have unlimited number of users and thus remain unchanged;

6) the mass of information having two aspects – high-quality, which reveals the mass of information as information public, general for all, and quantitative, which provides information disseminated to a wide network of consumers, users of information;

7) the possibility of transforming information – the independence of the content of information from the form of fixation and presentation;

8) the ability of information to restrict: the higher the level of organization of the system, the higher the degree of restriction of information;

9) universality of information – the content of information can be any;

10) the quality of information is considered as a set of properties of information that characterizes the degree of its compliance with the needs (goals, values) of users (automation tools, personnel, etc.).

Information of any kind and purpose, created, used or distributed in the legal system, has certain properties that give rise to certain legal consequences when dealing with information. The same properties and peculiarities are fixed in the norms of law and are realized in the

information legal relations in the peculiarities of the behavior of actors, in their rights, duties and responsibilities on the facts of conduct[13].

The peculiarities and legal properties of information are revealed in the information processes, which ensure the implementation of the basic information rights and obligations of the relevant actors in order to ensure the guarantees of information rights and freedoms proclaimed by the Constitution of Ukraine.

Objects of information legal relations, as O. O. Gorodov proves, are "the benefits that exist in the forms of information, documented information and information systems, about which the activities of participants in these legal relationships arise and are carried on. At the same time, information is a blessing of a special kind, and documented information and information systems – the goods of the material". On the one hand, the scientist emphasizes that the object of information relations is information as a benefit of a special kind. The peculiarity of the latter at the same time lies in its direct connection with the material carriers and the physical field and the impossibility of existence outside of them, that is, beyond them, information exists only in abstraction. On the other hand, as the scientist argues, the specificity of information as a good of a particular kind manifests itself not only in the objects of the material world, but also in the ideal products of human intellectual activity.

Ending the consideration of the subject of the information relations in administrative law, we conclude that in the role of its basic basis there must be public needs and interests that are implemented through the norms of administrative law in the process of power and management activities in the information sphere or administrative- legal protection of information rights of citizens. Such a position, in the conditions of its further weighty processing, will allow to develop generalized features that will distinguish objects of information relations, which are regulated by the norms of administrative law, from the objects of civil-law relations, as well as significantly specify the objects of information relations in the administrative law, to organize their system by means of the appropriate classification, to develop effective schemes for the full

[13] Чубарук Т. В. Конституційні засади правового регулювання інформаційної сфери. *Правова інформатика*. 2010. № 3(27). С. 61–65.

and timely implementation of public needs and interests in the information sphere.

Thus, under the notion of "object of information relations in administrative law" we propose to understand the social relations regulated by administrative law in the form of actions based on satisfaction of the general (public) needs of citizens and society in the information sphere on the basis of creation, development and use of information systems, networks, resources and information technologies, as well as providing information services.

3. Content of Information Relations in Administrative Law

The study of the essence and structure of administrative and legal relations in the information sphere is impossible without disclosing their content. Formation of legal relations consists in the establishment of a purposeful, mutual arrangement of their participants by providing the latter with significant subjective rights and legal responsibilities. According to O. Rubanets, in any legal relationship the transition of the general established legal norms (objective law) into concrete (subjective) rights and legal obligations of the participants of social relations, which are analyzed as elements interacting between itself within the framework of certain legal relationships[14]. Consequently, the essence (content), that is, those without which there can not be any legal relationship, there are subjective rights and legal obligations[15,16]. The information relations subject to administrative regulation are not an exception: they also can not exist without subjective rights and legal obligations, which are directly determined by the relevant norm of administrative law. In the theory of law, the meaning of the legal relationship is understood as "subjective rights, duties, powers, responsibilities of subjects of legal relationships", "legal status of the entities, which determines, shapes their behavior through corresponding rights and obligations for the sake of satisfaction of their interests ".

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[14] Рубанець О. М. Інформаційне суспільство: когнітивний креатив постнеокласичних досліджень : монографія. Київ : ПАРАПАН, 2006. 420 с. С. 147.

[15] Горбулін В. П., Биченок М. М. Проблеми захисту інформаційного простору України : монографія. Київ : Інтертехнологія, 2009. С. 97.

[16] Кохановська О. В. Теоретичні проблеми інформаційних відносин у цивільному праві : монографія. Київ : Київ. ун-т, 2006. С. 109.

Subjective rights – this is granted and guaranteed by the state by means of fixing in a legal norm the measure of the possible (permissible) behavior of this person. Yes, according to Art. 5 of the Law of Ukraine "On Information", everyone has the right to information, which provides for the possibility of free reception, use, distribution, storage and protection of information necessary for the realization of their rights, freedoms and legitimate interests.

Signs of the presence of information relations in the administrative law of subjective rights can be called: the possibility of certain behavior in order to meet their interests in the information sphere (the applicant has the right to contact the administrator of information with a request for information, etc.); presence of legal personality; possibility of realization of behavior in information legal relations (the possibility of the subject of information relations to demand the elimination of any violations of his/her right to information, etc.); the limited conduct of the boundaries of administrative-legal norms, the exit of which is a violation of legal requirements.

The opposite of subjective rights is subjective (more precisely, legal) responsibilities. These categories are inextricably linked and can not exist without one, since the right of one person can not, as a rule, be realized outside of the duty of another person. For example, Art. 19 of the Law of Ukraine "On Access to Public Information" stipulates the right of the applicant to contact the information manager with a request for information, regardless of whether this information is personally related to him or her, without explaining the reason for the request. At the same time, Art. 14 of the aforementioned law establishes the duty of the information manager to provide and disclose accurate, accurate and complete information, as well as, if necessary, verify the accuracy and objectivity of the information provided and update the disclosed information.

Under legal obligation, representatives of legal science understand the prescribed measure of the necessary behavior, which subject must comply in accordance with the requirements of legislation in order to meet his/her interests[17], as well as the measure of proper or necessary

[17] Баранов О. А. Об’єкт правовідносин в інформаційному праві. *Інформатика і право.* 2013. № 9. С. 15–23.

behavior. Moreover, their implementation in administrative law is ensured by the possibility of using state coercion.

Both subjective rights and obligations enshrined in the legal rule are of a legal nature, and therefore they are more accurately called "subjective legal rights and obligations". But given the tautology in the combination of "legal (i.e., legal) rights," the definition of "subjective rights and obligations" was common. Although for the characterization of subjective responsibilities, often use the definition of "legal obligations"[18].

In the field of administrative-legal regulation, subjective rights and responsibilities have both common and distinctive features. It unites their common administrative and legal nature, the existence in administrative legal relationships, the existence of limits in behavior, the affiliation of persons having administrative capacity and administrative capacity, the presence of state guarantees. The differences consist in the fact that rights are realized in the interests of their owner, and duties – in the interests of other persons; law is a measure of possible behavior, and responsibilities are a measure of proper behavior. Both subjective legal rights and subjective legal obligation have their own structure.

The structure of subjective law – is its structure, which is expressed in terms of elements – the legal opportunities provided to the subject.

Lawfulness – an integral part of the content of subjective law, which constitutes a specific legal opportunity, which is provided to a legal entity in order to meet its interests. Significant elements of subjective law are such powers.

1. Lawfulness to own positive actions (legal use), otherwise: the right of positive behavior of the lawful, that is, the possibility to make the subject itself actually and legally meaningful actions.

2. Lawfulness to other people's actions (law enforcement), otherwise: the right to demand appropriate behavior from the person liable, that is, the possibility of the person concerned to demand from the obligated subject of performance of the duties assigned to him/her.

3. Eligibility of harassment, otherwise: the right to protection, that is, the opportunity to apply for support and protection of the state in the

[18] Арістова І. В. Державна інформаційна політика: організаційно-правові аспекти : монографія / за заг. ред. О. М. Бандурки. Харків : Вид-во Ун-ту внутр. справ, 2000. С. 191.

event of violation of the subjective right of the person liable. This right is triggered by a state apparatus – compulsion if the other party fails to perform his/her duties.

It is not necessary to identify the subjective right and authority, since the subjective right: may be before the emergence of power, to exist regardless of its implementation. Eligibility is a consequence of subjective law. For example, everyone has the right to information, but not everyone addresses the administrators with the relevant request. However, they are not deprived of the right to access information, although they do not use it; is wider than a specific power. Subjective right is exercised through specific powers. For example, the subjective right to information is exercised through the following powers: the right to free access, the right to use, the right of distribution, the right of storage and the right to protect information.

The structure of subjective legal obligation is the reverse side of subjective legal law and consists of three elements: the need for the entity to perform certain actions – active responsibilities (for example, the obligation of the information manager to disclose information about their activities and decisions made) or abstain from them – passive duties; necessity of the obligated subject to respond to the legitimate requirements of the authorized party (for example, the duty of the information manager to satisfy the request for information); the need to be legally liable in the event of refusal to perform legal obligations or improper performance of them, contrary to the requirements of the legal norm.

Component content of information relations is also the responsibility of subjects of legal relations. Yes, Art. 24 of the Law of Ukraine "On access to public information" provides for liability for violation of the legislation on access to public information for committing the following violations: 1) failure to provide a response to a request; 2) failure to provide information upon request; 3) groundless refusal to satisfy the request for information; 4) non-disclosure of information in accordance with Article 15 of this Law; 5) the provision or disclosure of inaccurate, inaccurate or incomplete information; 6) untimely provision of information; 7) unreasonable assignment of information to restricted information; 8) failure to register the documents; 9) deliberate concealment or destruction of information or documents.

In the sphere of administrative law, two non-uniform types of responsibility are distinguished – negative (or retrospective) and positive (or promising). The first type of liability is always associated with the commission of an unlawful act and is accompanied by negative consequences for it in the form of certain sanctions. The second type of responsibility is expressed in the duty to properly carry out certain "positive" actions in any regulatory legal relationship. For example, to obtain the consent of the subject of personal data for the processing of his/her personal data in the event of his non-receipt.

CONCLUSIONS

Realizing that the issue of the object of information relations is one of the key and at the same time controversial in legal science, various scientific concepts concerning the definition of such an object were analyzed. The basis for understanding the object of information relations in administrative law should be the public needs and interests that are implemented through the norms of administrative law in the process of power and management activities in the information sphere or administrative and legal protection of information rights of citizens. In this case, information relations are transformed into information administrative legal relations.

Under the notion of "object of information relations in administrative law" it is proposed to understand the social relations regulated by administrative law in the form of actions, which are based on satisfaction of the general (public) needs of citizens and society in the information sphere on the basis of creation, development and use of information systems, networks , resources and information technologies, as well as provision of information services.

The content of information administrative legal relations forms administrative subjective rights, legal obligations and responsibilities, which are established and ensured by the norms of administrative law. During their implementation between the actors there is a connection, which is called the legal relationship.

SUMMARY

The general characteristic of information relations in administrative law has been realized. The essence and peculiarities of informational relations that are subject to administrative-legal regulation have been

revealed. The administrative and legal principles of information relations, which are subject to administrative-legal regulation, have been described. The genesis of information relations in administrative law is considered. The structure of information relations in administrative law is analyzed. The subjects of information relations in the administrative law have been determined. The object of information relations has been characterized, which is based on satisfaction of public needs of citizens and society in the information sphere on the basis of creation, development and use of information systems, networks, resources and information technologies, and also provision of information services. The content of information relations in the administrative law has been disclosed. The ways of improvement of the mechanism of administrative-legal regulation of information relations have been offered. The foreign experience of legal regulation of information relations and possibilities of its use in Ukraine have been considered. The problematic issues of the administrative-legal regulation of information relations have been identified. The prospects of development of the mechanism of administrative and legal regulation of information relations in Ukraine have been determined.

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14. Про інформацію : Закон України від 2 жовтня 1992 р. № 2657-XII. *Відомості Верховної Ради України.* 1992. № 48. Ст. 650.

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16. Цимбалюк В. С. Проблеми кодифікації норм правовідносин щодо інформації. *Актуальні проблеми правового регулювання суспільних відносин у сфері інформаційно-телекомунікаційних технологій (ІКТ)* : матеріали круглого столу, м. Ірпінь, 28 вересня 2006 р. Ірпінь, 2006. С. 129–133.

17. Чубарук Т. В. Конституційні засади правового регулювання інформаційної сфери. *Правова інформатика*. 2010. № 3(27). С. 61–65.

18. Швець М., Калюжний А., Гавловський В., Цимбалюк В. Інформаційне законодавство України: концептуальні основи формування. *Право України*. 2001. № 7. С. 50–53.

Information about the authors:
Korniyenko M. V.
Doctor of Law, Professor,
Professor at the General Legal Disciplines
Department, Dniprovskii University of the Humanities
Dębiński Antoni
doctor habilitowany nauk prawnych,
ksiądz profesor, rector,
Katolicki Uniwersytet Lubelski Jana Pawła II
(Rzeczpospolita Polska)
Szewczak Marcin
doctor habilitowany nauk prawnych, adiunkt Kat.
Prawa Administracyjnego i Gospodarczego Wydziału
Prawa, Prawa Kanonicznego i Administracji,
Katolicki Uniwersytet Lubelski Jana Pawła II
(Rzeczpospolita Polska).

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SIMPLIFIED TAXATION SYSTEM IN UKRAINE. LEGAL REGULATION VECTORS

Kravchuk O. O.

INTRODUCTION

The simplified taxation, accounting and reporting system of small business often became and continues to be the subject of consideration by scholars of law and economics. It often was considered and is still considered in business literature, and it was often criticized at the level of government officials and received completely opposite estimates – from very positive to extremely negative ones.

Various simplified approaches to taxation of small business are widespread in many countries around the world. Classifying the simplified taxation systems available in different countries, M. Lipych includes to them the following ones: systems based on gross turnover (Ukraine, Kazakhstan, Kyrgyzstan, Uzbekistan, Azerbaijan, Romania, Tanzania, Russia), based on indicative values (Spain, Italy, Argentina), based on patenting (Bulgaria, Belarus, Kosovo, Egypt, Czech Republic, Croatia, Hungary, Lithuania, Macedonia, Moldova) and contractual systems (Syria, Israel, Benin)[1]. Analysing the domestic and foreign experience of application of the simplified taxation systems, L. Ambryk points out that the European Union (EU) has no simplified taxation, accounting and reporting system similar to the domestic one, while preferences for small and medium-sized businesses exist, but they operate within the limits of the general taxation system. Alternative taxes, as the author mentions, exist in Austria, Luxembourg, Slovakia and Romania [2].

The simplified taxation, accounting and reporting system of small business appeared in Ukraine in the late 90's, and its availability is

[1] Ліпич М.А. Міжнародний досвід застосування спрощених систем оподаткування. *Моделювання регіональної економіки.* 2012. № 1. С. 334–344. URL: http://nbuv.gov.ua/UJRN/Modre_2012_1_39 (дата звернення: 09.06.2019).

[2] Амбрик Л.П. Вітчизняний та зарубіжний досвід функціонування спрощених систем оподаткування. // *Інвестиції: Практика та досвід.* 2015. № 15. С. 28–33. URL: http://nbuv.gov.ua/UJRN/ipd_2015_15_8 (дата звернення: 09.06.2019).

reasonably considered one of the main causes of rapid economic growth and formation of a rather tangible "middle class" in Ukraine within the decade 1999 – 2008.

Among the Ukrainian scientists, V. Demydenko and L. Demydenko[3], Yu. Kozachenko[4], P. Kolomiiets[5], S. Yushko[6] positively evaluate implementation of the simplified taxation system.

At the same time, development of the simplified system took place in such a way that the state always sought and strives to complicate this simplified system. In this article we **aim** to show the public benefits of actually simplified taxation, accounting and reporting system, the shortcomings of modern approaches to its legal regulation under the tax legislation of Ukraine and the relevant tax administration practice, and to describe main directions for improving public policy in this field. The hypothesis of this article is that the simplified taxation, accounting and reporting system from the state's point of view shall not be considered as something negative; on the contrary, the vector of the state policy shall be its promotion and support, rather than implementation of new and new restrictions every time.

1. History of the Simplified Taxation, Accounting and Reporting System in Ukraine. Two Separated Taxation Systems

What tendencies and approaches are inherent in the development of legal regulation of the simplified taxation, accounting and reporting system in Ukraine?

The simplified taxation system appeared in Ukraine in the form of payment of a single tax in 1998 after delivery of the Decree of the President of Ukraine "On Simplified Taxation, Accounting and Reporting System for Small Business Entities" №727/98 as of July 03,

[3] Демиденко Л. М. Демиденко, В. І. Єдиний податок для суб'єктів малого підприємництва: протиріччя та перспективи. *Финансовые услуги*. 2017. № 6. С. 12–15. URL: http://nbuv.gov.ua/UJRN/finu_2017_6_5 (дата звернення: 07.06.2019).

[4] Козаченко Ю. П. Єдиний податок як фінансова основа наповнення місцевих бюджетів в Україні. *Держава та регіони. Сер. : Державне управління.* 2013. № 4. С. 23–27. URL: http://nbuv.gov.ua/UJRN/drdu_2013_4_7 (дата звернення: 01.06.2019).

[5] Коломієць П.В. Щодо деяких шляхів удосконалення податкового законодавства. *Бюлетень Міністерства юстиції України*. 2014. № 9. С. 145–151. URL: http://nbuv.gov.ua/UJRN/bmju_2014_9_35 (дата звернення: 07.06.2019).

[6] Юшко С.В. Спрощена система оподаткування для фізичних осіб – підприємців: історія й перспективи застосування. *Фінанси України*. 2011. № 4. С. 38–46. URL: http://nbuv.gov.ua/UJRN/Fu_2011_4_4 (дата звернення: 07.06.2019).

1998[7]. By Decree of the President №746/99 as of June 28, 1999 this act was published in a new version that remained in force with no further specific amendments till 2012[8].

Since the tax legislation has not been applied with regard to the entities which paid a single tax, it was presumed that two separate taxation systems existed – general (as the system of rules regulating the system of taxes and charges and the procedure for their payment), and simplified (as a separate system of the relevant rules).

The simplified taxation system envisaged payment of a single tax and exemption from payment of a number of taxes and charges. Namely, Article 6 of the Decree of the President №727/98 envisaged the list of taxes and charges that shall not be paid by single tax payers (not being the payers of such taxes and charges). Such taxes included VAT (unless the legal entity-single tax payer chose the option of paying a single tax with simultaneous payment of VAT), corporate tax, income tax, land tax, etc. Article 2 of the Decree also envisaged that an individual entrepreneur paying single tax, shall be exempted from the obligation to accrue, pay and transfer to the state trust fund the charges, related to payment of salary to the employees, having labour relations with him/her, including members of his or her family.

Pursuant to the Decree of the President №727/98, the simplified taxation, accounting and reporting system was applied with regard to the individual entrepreneurs who during a year had labour relations with not more than 10 persons, including members of their families, and whose total revenue from sale of products (goods, works, services) did not exceed UAH 500 thousand for a year. The simplified system was also applied with regard to legal entities of any legal form of organization and form of ownership, where average number of listed employees did not exceed 50 persons for a year, and total revenue of which from sale of products (goods, works, services) did not exceed UAH 1 million for a year. Such entities could choose to pay a single tax instead of a number of taxes and charges (such entities were exempted from payment thereof).

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[7] Про спрощену систему оподаткування, обліку та звітності суб'єктів малого підприємництва. Указ Президента України від 03.07.1998 №727/98. URL: https://zakon.rada.gov.ua/laws/show/727/98 (дата звернення: 09.06.2019).

[8] Про внесення змін до Указу Президента України від 3 липня 1998 року № 727 "Про спрощену систему оподаткування, обліку та звітності суб'єктів малого підприємництва". Указ Президента України від 28.06.1999 № 746/99. URL: https://zakon.rada.gov.ua/laws/show/746/99 (дата звернення: 09.06.2019).

Since Article 2 of the Decree envisaged direction of a part of a single tax to the Pension fund, the entrepreneurs did not pay pension contribution and other charges for themselves, as well.

For the entrepreneurs the rate of a single tax was monthly set, fixed and depended on business activity area, and could be increased in case of availability of the employees, by 50% for each employee. For some time, the simplified system was actually simplified and basically the single tax payer did not pay any additional taxes and charges and did not file any additional reports.

It is worth mentioning that the above took place at about the same time when the Decree of the President of Ukraine No.652/98 "On Fixed Agricultural Tax" as of June 18, 1998 was delivered[9]. The Decree basically envisaged an alternative (separate) taxation system for its payers, exempting them from payment of a number of other taxes and charges. This Decree was effective only for a short time – in December 1998 the Law of Ukraine "On Fixed Agricultural Tax" (effective since January 01, 1999), envisaging almost the same approaches, was adopted. This Law, unlike the mentioned Decree of the President No.727/98, while being in force (till 2010), has undergone much greater changes and amendments. Further, after adoption of the Tax Code in 2010 (effective in 2011) and introduction of fundamental amendments thereto, the fixed agricultural tax was transformed into one of the groups of a single tax, which gives additional grounds to refer it to the simplified taxation system since its appearance in 1998[10].

Short historical explication why the simplified taxation system was regulated not by the law, but by the Decree of the President, is also worth mentioning. It is related to the constitutional regulation of authorities of the President of Ukraine. Pursuant to Article 25 of the Constitutional Agreement between the Verkhovna Rada of Ukraine and the President of Ukraine on the main principles of organization of the public and local authorities in Ukraine for the period before the adoption of new Constitution of Ukraine as of June 08, 1995, the President was authorized to issue decrees on the issues of economic reform, not

[9] Про фіксований сільськогосподарський податок. Указ Президента України від 18.06.1998 № 652/98. URL: https://zakon2.rada.gov.ua/laws/show/652/98 (дата звернення: 09.06.2019).

[10] Податковий кодекс України від 02.12.2010. URL: https://zakon.rada.gov.ua/laws/show/2755-17 (дата звернення: 09.06.2019).

regulated by the current legislation of Ukraine, which had to be effective till the adoption of the relevant laws[11]. A bit more specialized standard was stipulated in clause 4 of Chapter XV "Transitional Provisions" of the Constitution of Ukraine, adopted on June 28, 1996. Pursuant to this clause, the President of Ukraine, within three years after entry into force of the Constitution of Ukraine was entitled to issue decrees, approved by the Cabinet of Ministers of Ukraine and signed by the Prime Minister of Ukraine, on economic issues that have not been regulated by the laws, with simultaneous submission of the relevant draft law to the Verkhovna Rada of Ukraine, on accordance with the procedure, stipulated by Article 93 of this Constitution. Such Decree of the President of Ukraine became effective, if within 30 calendar days upon submission of the draft law (except for the days of intersessional period), the Verkhovna Rada of Ukraine failed to adopt the law or reject the submitted draft law by the majority of its constitutional composition, and had to be effective until the law adopted by the Verkhovna Rada of Ukraine on these issues became effective[12]. By the level in legal system of Ukraine such decrees are usually referred to regulatory legal acts, having force of the law. Some of such decrees are still effective in Ukraine (as for 2019). The most popular among them is Decree of the President No. 436/95 "On Imposition of Penalties for Breach of Cash Turnover Regulation Standards" as of June 12, 1995[13]. In one of the articles we have mentioned that this document is extremely outdated and it does not meet the terms of doing modern Ukrainian business and its demands; in some cases, it envisages unreasonably severe liability for merely technical or inexistent violations. That is why this Decree shall be annulled[14].

[11] Конституційний договір між Верховною Радою України та Президентом України про основні засади організації та функціонування державної влади і місцевого самоврядування в Україні на період до прийняття нової Конституції України від 08.06.1995. URL: https://zakon.rada.gov.ua/laws/show/1к/95-вр (дата звернення: 09.06.2019).

[12] Конституція України від 28.06.1996. URL: https://zakon.rada.gov.ua/laws/show/254к/96-вр (дата звернення: 29.05.2019).

[13] Про застосування штрафних санкцій за порушення норм з регулювання обігу готівки. Указ Президента України від 12.06.1995 № 436/95 URL: https://zakon.rada.gov.ua/laws/show/436/95 (дата звернення: 09.06.2019).

[14] Кравчук О. Фінансово-правове регулювання готівкових касових операцій: (не)сучасні тенденції. *Публічне право.* 2018. №1. С. 93–102. URL: http://nbuv.gov.ua/UJRN/pp_2018_1_14 (дата звернення: 09.06.2019).

Bureaucratic hurdles (historical ones). It could not be said that regulation of the simplified taxation system by the Decree of the President No.727/98 faced no difficult or bureaucratic issues. Thus, for example, under Decree the administrative practice on its application basically envisaged annual filing of the statement on application of the simplified taxation system and receiving the relative certificate of the right to pay a single tax. This annual filing was liquidated only since 2012. For individual entrepreneurs and legal entities separate forms of such certificates and procedures for their issue were approved (orders of the State Tax Administration of Ukraine No.476 as of October 13, 1998[15], No.533 as of November 10, 1998[16]), which even at that time complicated the ideas of simplification, set forth in the Decree of the President. These procedures and forms were further repeatedly changed and amended. Only individual entrepreneurs who used the simplified taxation system were exempted from the use of electronic controlling cash registers (unlike legal entities). At the same time, these individual entrepreneurs were obliged to maintain stock accounting and it meant possible questions and problems during tax inspection.

However, in general, during the first several years the simplified taxation system was really rather simple, and vector of the economic growth of the decade 1999-2008 is traditionally associated with its introduction. It is generally assumed that those entrepreneurs who worked illegally in the mid-1990s, had no grounds for that anymore, so they actively passed into the legal field, choosing the simplified taxation, accounting and reporting system.

Complication of the simplified procedures. To our mind, the simplified taxation system was mostly hit by the implementation of the compulsory pension contributions since 2004 for single tax payers. After a while, with reforming of the state social insurance, after adoption of the Law No.1058-IV "On Obligatory State Pension Insurance" as of July

[15] Про затвердження Свідоцтва про право сплати єдиного податку суб'єктом малого підприємництва – юридичною особою та Порядку його видачі. Наказ Державної податкової адміністрації України від 13.10.1998 №476. URL: https://zakon.rada.gov.ua/laws/show/en/z0688-98 (дата звернення: 09.06.2019).

[16] Про затвердження свідоцтва про сплату єдиного податку суб'єктом малого підприємництва – фізичною особою та порядку його видачі. Наказ Державної податкової адміністрації України від 10.11.1998 №533. URL: https://zakon.rada.gov.ua/laws/show/z0733-98 (дата звернення: 09.06.2019).

09, 2003[17] and other laws on state social insurance, the contribution to obligatory state pension insurance was introduced instead of a duty on obligatory state pension insurance and it was envisaged that this contribution was not included into the taxation system. It has raised a question of separate payment by entrepreneurs and legal entities – single tax payers of the contribution to pension insurance for the employees (and for the entrepreneurs – for themselves, as well) and contributions to other social insurance funds in addition to the amount of a single tax. It led not only to the increase of tax burden (the author considers the relevant contributions as taxes) for single tax payers, but also to the significant increase of the number of different reporting (and the necessity of systematic filing of reporting on different charges has conditioned complication of accounting). For this reason, starting from these years (from the mid-2000s), the most taxpayers could not afford an opportunity to do business without a qualified accountant for maintaining accounting and reporting.

It is worth mentioning that the reason for implementation of such restrictions in literature was namely involvement of the individual entrepreneurs in taxation optimization[18]. At the same time, referring to analytical data O. Bondarenko and H. Slipenchuk point out that even under existing circumstances two thirds of the entrepreneurs of Ukraine carry out their business activity on legal grounds only thanks to a single tax. Therefore, according to the authors, liquidation of such kind of taxation system will result in mass shifting of small and medium business entities to shadow economy or will lead to dissolution of businesses[19].

At the same time, complexity of taxation and reporting remained and remains one of the most important problems in modern Ukrainian business[20].

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[17] Про загальнообов'язкове державне пенсійне страхування. закон від 09.07.2003 №1058-IV. URL: https://zakon.rada.gov.ua/laws/show/1058-15 (дата звернення: 09.06.2019).

[18] Юшко С.В. Спрощена система оподаткування для фізичних осіб – підприємців: історія й перспективи застосування. *Фінанси України*. 2011. №4. С. 38-46. URL: http://nbuv.gov.ua/UJRN/Fu_2011_4_4 (дата звернення: 09.06.2019).

[19] Бондаренко О.М., Сліпенчук Г.В. Системи оподаткування для малого бізнесу: їх переваги та недоліки. *Проблеми системного підходу в економіці*. 2015. № 53. С. 3–10. URL: http://nbuv.gov.ua/UJRN/PSPE_print_2015_53_3 (дата звернення: 09.06.2019).

[20] Вишня Т.В. Вплив оподаткування на діяльність підприємств малого і середнього бізнесу. *Вісник Кам'янець-Подільського національного університету*

Thus, the simplified system ceased to be simplified accounting and reporting system, and it remained only the simplified taxation system. Further (even after the adoption of the Tax Code of Ukraine and its relevant chapter on the simplified taxation system) there were no fundamental changes in relation to simplification of accounting and reporting, and it must be admitted that the simplified system has only simplified taxation, without simplified accounting and reporting.

It is important that in some aspects the simplified taxation system was not and is not simplified to the extent that the entrepreneurs and legal entities were not and are not exempted from payment of income tax while paying revenue to individuals (that is, from performing functions of revenue agent). Despite the fact that the nominal payer of such tax is individual receiver of revenue, the revenue agent is involved in rather complicated procedures of fiscal management, so he/she spends time and money (transaction expenses) for account keeping, maintaining, payment, filing of reporting on this tax.

Besides, for legal entities-single tax payers the issue of withdrawal of the funds from the legal entity (payment of dividends) in favour of its founders was and remains in no way simplified. Establishing a small business as the legal entity paying a single tax, the investors would like to have an opportunity to easily withdraw money from it, but it is prohibited and restricted by the necessity to apply the same procedures for working with cash which are typical for big business. Thus, payment of dividends to the investors by legal entity-single tax payer was and is subject to income tax, and spending of money for financing personal needs of individuals involves collection of such tax by the legal entity itself.

Are simplified taxpayers optimizers? The next approach typical for regulation of the simplified system is its estimation by the state as a means of tax optimization. The state nearly always considered the availability of the simplified system as the legal means to minimize taxation. Moreover, such estimation was made (and is often made) in extremely negative context. As if large business frequently splits into small ones in order to be entitled to use the simplified system. Also, as if

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імені Івана Огієнка. Економічні науки. 2012. Вип. 6. С. 345–349. URL: http://nbuv.gov.ua/UJRN/vkpnuen_2012_6_90 (дата звернення: 09.06.2019).; Бузак Н.І. Актуальні аспекти організації обліку суб'єктів малого підприємництва. *Проблеми теорії та методології бухгалтерського обліку, контролю і аналізу*. 2013. Вип. 2 (26). URL: http://pbo.ztu.edu.ua/article/view/30613 (дата звернення: 09.06.2019).

large enterprises frequently used and use entrepreneurs-simplified tax payers to withdraw cash.

Consequently, the state policy on regulation of the simplified taxation system was and obviously is focused on complication and restriction of its use. Thus, particularly, corporation of legal entities with individual single tax payers paying fixed amount of tax was restricted (procurement of services was prohibited, procurement of goods was only allowed). In addition, the cases where single tax payers are allowed not to use the cash registers (cash-register machines, etc.) are restricted (and restrictions continue to be implemented). It is clear that the use of such cash registers for small business is unwanted not only because it allows avoiding full taxation of revenue, but also because the procedures, with the help of which the process of use of cash registers is administered, are extremely complicated and are never free of charge for the entrepreneurs and enterprises. It is about the same transaction expenses. In one of the articles we analysed this issue in detail, we pointed out that the use of cash registers for business means extremely high complexity of accounting and reporting, high risk of penalties (including high penalties for minor technical violations)[21]. That is why having cash registers, the enterprise or entrepreneur should involve a qualified accountant under the terms of almost daily work (it is required by the necessity to program each item name, train personnel or the entrepreneur itself, who work with cash registers, systematic control of its use). And payment of systematic work of a qualified accountant, along with the cost of a cash register itself, exceeds the transaction expenses by several thousands (and sometimes several dozens of thousands) UAH for a month.

2. Current State of the Simplified System

The current state of legal regulation of the simplified taxation, accounting and reporting system of small business entities is based on the provisions of Chapter 1 of the Tax Code of Ukraine, contained in Section XIV “Special Tax Regimes”. After inclusion of this Chapter into the original version of the Tax Code of Ukraine, adopted in November

[21] Кравчук О. Проблеми фінансово-правового регулювання відносин у сфері застосування реєстраторів розрахункових операцій. *Підприємництво, господарство і право*. 2017. № 8. С. 139–144. URL: http://pgp-journal.kiev.ua/archive/2017/8/30.pdf (дата звернення: 09.06.2019).

2010, a number of protest actions took place, which resulted in imposition of veto to the Code by the President of Ukraine in December 2010[22]. The Code was re-adopted by the Parliament with suggestions of the President in December 2010 not to include this Chapter, and as a result the President signed it[23].

It is interesting that while the Parliament was re-adopting the Code, the chapters and articles numbering had not been changed, and the original official version of the Code (effective since January 01, 2011) mentioned as follows: "Chapter 1 is excluded". That is, it was envisaged that sooner or later it would appear there. And in a year, a new version of Chapter 1 of Section XIV was included to the Code by Law No. 4014-VI as of November 04, 2011[24].

This Chapter on the simplified system became effective on January 01, 2012. Further it was repeatedly amended and currently it stipulates four groups of a single tax. Moreover, the third and fourth groups have several options for its payment.

Nowadays, the maximum amount of revenue giving the ground for being registered as a single tax payer (the third group) is UAH 5 mln. However, for the first and second groups such amount of revenue is even more limited. For the first group it equals to UAH 0.3 mln., and for the second group – UAH 1.5 mln. A number of restrictions in the right to use the simplified system is envisaged for each group.

Pursuant to clause 177.10 of the Tax Code of Ukraine, individual entrepreneurs should maintain income and expenditure ledger and have supporting documentation on the origin of goods. The form of income and expenditure ledger and the procedure for its maintenance are approved by the Order of the Ministry of Revenue and Duties of Ukraine No.481 as of September 16, 2013[25]. However, this ledger (we shall call

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[22] Лавренюк С. Президент накладає вето. *Голос України*. 2010. URL: http://www.golos.com.ua/article/121898

[23] Картка законопроекту № 7101-1: Податковий кодекс України. Верховна Рада України. Офіційний веб-портал. URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=38590 (дата звернення: 09.06.2019).

[24] Про внесення змін до Податкового кодексу України та деяких інших законодавчих актів України щодо спрощеної системи оподаткування, обліку та звітності. Закон України від 04.11.2011 №4014-VI. URL: https://zakon.rada.gov.ua/laws/show/4014-17 (дата звернення: 09.06.2019).

[25] Про затвердження форми Книги обліку доходів і витрат, яку ведуть фізичні особи – підприємці, крім осіб, що обрали спрощену систему оподаткування, і фізичні особи, які провадять незалежну професійну діяльність, та Порядку її ведення. Наказ

it Ledger No.1) is referred only to the entrepreneurs, who do not use the simplified taxation system. For the entrepreneurs, who use the simplified taxation system, two income and expenditure ledgers are already approved (the first one (we shall call it Ledger No.2) is for the entrepreneurs, who are VAT taxpayers, and the second once (we shall call it Ledger No.3) is for those who are not VAT taxpayers). Their forms and procedures for their maintenance are determined by the Order of the Ministry of Revenue and Duties of Ukraine No.579 as of June 19, 2015[26]. The regulatory body is obviously sure that when the system itself is simplified, something should be complicated therein, and the entrepreneur, starting to work or use the simplified system, should initially decide which ledger to choose.

Moreover, pursuant to clause 177.10 of the Tax Code of Ukraine, ledgers of all forms are subject to registration with tax authority. For registration of income and expenditure ledger individual entrepreneurs shall file the example of the Ledger to the regulatory body at the place of registration in case of choosing the form of maintaining the Ledger in hard copy.

Use of cash-register machines. The mentioned clause of the Tax Code also envisages that individual entrepreneurs shall use cash registers according to the Law of Ukraine "On Use of Cash Registers in Trade, Catering and Services Field"[27].

Pursuant to clause 296.10 of the Tax Code of Ukraine, the cash registers shall not be used by single tax payers of the first group and payers of the second-fourth groups (individual entrepreneurs), notwithstanding the chosen business activity, the total revenue from which does not exceed UAH 1 mln. during a calendar year. In the event that the total revenue exceeds UAH 1 mln. during a calendar year, the use of the cash register for such single tax payer is obligatory. The use of the cash register shall begin from the first day of the month of the quarter, following the occurrence of such excess, and shall last in all

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Міністерства доходів і зборів України від 16.09.2013 № 481. URL: https://zakon.rada.gov.ua/laws/show/z1686-13 (дата звернення: 09.06.2019).

[26] Про затвердження форм книги обліку доходів і книги обліку доходів і витрат та порядків їх ведення. Наказ Міністерства фінансів України від 19.06.2015 № 579. URL: https://zakon.rada.gov.ua/laws/show/z0800-15 (дата звернення: 09.06.2019).

[27] Про застосування реєстраторів розрахункових операцій у сфері торгівлі, громадського харчування та послуг. Закон України від 06.07.1995 № 265/95-ВР. URL: https://zakon.rada.gov.ua/rada/show/265/95-вр (дата звернення: 09.06.2019).

following fiscal periods during registration of business entity as a single tax payer. The Law No.1791-VIII as of December 20, 1016 has amended clause 296.10 of the Tax Code of Ukraine with the provision, according to which the provisions of this clause shall not cover single tax payers, who sell technically complex household goods, which are subject to warranty repair. Such individual entrepreneurs were forced to start using the cash register after the Resolution of the Cabinet of Ministers of Ukraine No.231 as of March 16 2017 approved the List of groups of technically complex household goods, which are subject to warranty repair (service) or warranty replacement for the purpose of use of the cash registers. This List included enormously wide number of goods which, at first sight, are not considered household[28].

Revenue or not revenue – what is the question? Pursuant to the Tax Code, legal regulation of the simplified taxation system has also special procedure for the revenue recognition. Pursuant to clause 292.6 of the Tax Code of Ukraine, revenue of single tax payers shall be recognized by the cash method (not at the date of shipment of goods but at the date of receiving money). There is also a list of revenue which are not considered as the revenue subject to taxation with a single tax (clause 292.11 of the Tax Code of Ukraine).

The amount of revenue is important for single tax payer because of two aspects. The first one is that it serves as a limit for using the simplified taxation system. Having exceeded this limit (depending on the group of payer) such payer shall lose the right to use the simplified taxation system. The second aspect is the amount of a single tax (for the payers of the third group) to be paid. Since the third group payers shall pay a single tax at the rate of 3% (plus VAT) or 5% (net of VAT) of the amount of revenue (clause 293.2 of the Tax Code of Ukraine). There is a number of clarifications (for example, letter of the Main Department of the State Fiscal Service of Ukraine in Kyiv as of March 25, 2016 No.2516/K/26-15-13-02-15) and the administrative practice, pursuant to which the revenue of a single tax payer shall include personal funds of

[28] Про затвердження переліку груп технічно складних побутових товарів, які підлягають гарантійному ремонту (обслуговуванню) або гарантійній заміні, в цілях застосування реєстраторів розрахункових операцій. Постанова Кабінету Міністрів України від 16.03.2017 № 231. URL: https://zakon.rada.gov.ua/laws/show/231-2017-п (дата звернення: 09.06.2019).

the entrepreneur deposited to the bank account[29]. At first sight it is non-sense but the regulatory bodies explain their position with the fact that the list of types of revenues, not included to the composition of revenue, stipulated by law, doesn't include such transaction as depositing personal funds. Therefore, if the individual entrepreneur must pay off the debt (for example, to the counteragent or even to the budget) and deposits personal funds to the bank account, it will result in the fact that during the inspection it will be charged with additional 5% of this amount as a single tax. There are also attempts to recognize the cases of transfer of the funds from one banking account of a person to its another banking account as revenue of the entrepreneur.

The judicial practice on this issue is ambiguous. In general, a single tax payer stands a good chance to carry his/her point but only in the court (for example, Resolution of the Supreme Administrative Court of Ukraine as of January 24, 2017 in case No. 810/4627/13-a[30]). For this purpose, he/she will have to spend time and funds for legal assistance in two or even three court instances. Having no intention to argue with the tax inspectors and litigate in court, the entrepreneurs search for the alternative methods. Frequently, in order to conceal these transactions, they conclude false agreements – loan agreements, due to which someone of relatives or friends borrowed them these funds. Since, according to the law the borrowed funds (reimbursable financial assistance) shall not be included into the composition of revenue of a single tax payer if it is reimbursed within a year (sub-clause 3 of clause 292.11 of the Tax Code of Ukraine). There are also other methods, the majority of which are false, since they do not reflect the real content of business transaction. Basically, the entrepreneurs are incentivized by the state to such falsifications.

Evaluating rather negatively the mentioned restrictive administrative practice we should emphasize that personal funds deposited by the owner of business, from the economic point of view,

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[29] Лист ГУ ДФС у м. Києві від 25.03.2016 №2516/К/26-15-13-02-15. Територіальні органи ДФС у м. Києві. Офіційний портал. URL: http://kyiv.sfs.gov.ua/baner/podatkovi-konsultatsii/konsultatsii-dlya-fizichnih-osib/67453.html (дата звернення: 09.06.2019).

30 Ухвала Вищого адміністративного суду України від 24.01.2017 у справі № 810/4627/13-а. URL: http://www.reyestr.court.gov.ua/Review/64293183 (дата звернення: 09.06.2019).

are not and may never be recognized as the revenue or income, since it is direct investments. If the legislator had such purpose, he/she would have equated such funds with revenue, having clearly set it in the law. And currently we have only a restrictive administrative practice which restraints development of investments. Even having "alternate routes", the entrepreneurs (small business in general) receive a signal. This signal consists in restriction by the state of direct investments into own business. Undoubtedly, declaring the course on increase of the investment attractiveness of the Ukrainian economy, the state should stop this practice.

State statistical classifiers as quasi laws. Talking about bureaucratic restrictions which remained in regulation of the simplified taxation system according to the current Tax Code of Ukraine, we shall also dwell on long-standing fascination of the authors of the text of the Ukrainian laws with diverse state classifiers.

In late February 2019, the draft law No.10094 was published on the website of the Verkhovna Rada of Ukraine. It envisaged implementation of the fifth group of a single tax for individual entrepreneurs carrying out activity only in the field of information technology. Such entrepreneurs included: activity on production of computer games and other software, computer programming services, consulting and related activities, data processing, publishing of information on the websites and related activities, as well as web portals (with the respective references to codes of economic activity (Classifications of economic activity according to the State Classifier 009:2010[31]). The terms for being in such group of taxation are going to be the following: such entrepreneurs shall not use labour of employees, and their total revenue during a year shall not exceed UAH 7.5 mln. Moreover, it is planned that such individual entrepreneurs during and for the purpose of carrying out the abovementioned activity may use for a certain fee or free of charge technical and/or software utilities, information systems and any other tools of production (including premises), which belong to individual entrepreneurs or legal entities, in favour of which such activity is being carried out.

[31] Національний класифікатор України. Класифікація видів економічної діяльності ДК 009:2010. Наказ Державного комітету України з питань технічного регулювання та споживчої політики від 11.10.2010 № 457. URL: https://zakon.rada.gov.ua/rada/show/vb457609-10 (дата звернення: 09.06.2019).

Does the Classifier of economic activities regulate economic activity? Talking about inclusion of the references to codes of economic activities into the text of the mentioned draft law, we should mention that it is not the first draft law where such codes are mentioned. The legislator a long time ago has envisaged dependence of the right to use the simplified taxation system on the types of economic activity. But he made it in rather specific way. If earlier we spoke about cancellation of certain bureaucratic elements of a single tax in the development of legislation on the simplified taxation system, we mentioned the fact that the procedure of annual filing of statement on using the simplified taxation system and receiving the certificate of the right to pay a single tax was liquidated. Instead the Register of Single Tax Payers remained. Why we need this separate register if there is open register – the Unified State Register of Legal Entities and Individual Entrepreneurs, where it was enough to make a respective mark (since there are marks on registration of legal entity or individual entrepreneur with regulatory bodies as the taxpayer and payer of unified social contribution). Thus, the legislator envisages the obligation to make entries on legal entities and individual entrepreneurs not only in the Unified State Register, but also in the Register of Single Tax Payers (for this purpose in certain cases filing of a separate application is required by subclause 4 of clause 298.3.1 of Tax Code). Moreover, in case of receiving revenue from carrying out activity, the codes of which are not included into the Register of Single Tax Payers, the entrepreneur shall lose the right to tax this income within the simplified taxation system (subclause 3 of clause 293.5, subclause 7 of clause 298.2.3 of Tax Code).

Consequently, the Classification of economic activities, being only the statistical book, shall not be deemed the regulatory legal act, and it a priori may not regulate social relations, and it acquires the notion of quasi regulatory legal act. Recently, in one of the article we wrote that the state should not indirectly give regulatory importance to the documents, which do not have elements of regulatory legal acts (not accepted by the competent body and according to proper procedure (without required appraisals), not published according to the provided procedure, not registered with the Ministry of Justice)[32]. The situation

[32] Кравчук О. О. Проблеми формулювання найменування посади як істотної умови трудового договору в контексті реалізації громадянами конституційного права на працю. *Бюлетень Міністерства юстиції України*. 2013. № 4. С. 44–51. URL: http://nbuv.gov.ua/UJRN/bmju_2013_4_9 (дата звернення: 09.06.2019).

when the rules of law are contained in the state classifier means lack of proper legal certainty. Many kinds of activity may be with any certainty referred simultaneously to different codes of economic activity. It is explained by the fact that the classifier is structured in such a way that its positions are ambiguous, duplicative. In many cases their use requires statistical methodology, and not only formal logics. Certainly, the state is not entitled to require and expect from each entrepreneur (business entity) to know perfectly statistical methodology.

As a result of a situation concerned, the entrepreneur, instead of carrying out business, providing employment opportunities and finally added value, should at first estimate whether this activity meet the codes, specified with regard to him/her in the Register of Single Tax Payers. Since in case if such revenue is received, the entrepreneur will have to either set higher price (since taxes on such revenue will be quite different), or at first make changes in the Register of Single Tax Payers or refuse from relations with this counteragent. Moreover, an entrepreneur and a legal entity-single tax payer should create and keep records on all their revenues (about every contract) to have a proof of correspondence between revenue and those statistical codes.

Pursuant to subclause 7 of clause 291.6 of the Tax Code of Ukraine, in case of carrying out the activity not mentioned in the Register of Single Tax Payers, – from the first day of the month, following the fiscal period, when such activity was carried out, the single tax payers should shift to payment of other taxes and charges, provided for by this Code that is, in case of receiving income from the activity not mentioned in the Register, an individual shall lose his/her right to use the simplified taxation, accounting and reporting system. This rule also creates the situation of uncertainty, since if receipt of income from other activities for example in June 2019 is revealed during the inspection in July 2020, the fiscal body would affirm that since July 01, 2019 and till the moment of inspection the single tax payer was not entitled to use it, and it will charge him/her with additional taxes and charges for this year in full. In general, such situation may destroy someone's specific business. Especially considering the following.

The situation when the entrepreneur believes that his/her economic activity is classified according to certain statistical code (in general or in certain contract) and the tax inspector will affirm the contrary, that this

entrepreneur received revenue from the activity according to another code of economic activity, is quite possible.

Basically, in such situation we have the rule envisaging the sanction which establishes punishment (forfeiture of the right to use the simplified taxation system) for carrying out activity by the entrepreneur perhaps even on legal grounds and receiving income from such activity. Only such bureaucratic hurdle as lack of certain code in the Register of Single Tax Payers, or different estimation of any economic activity by an entrepreneur or a tax inspector may result in extremely negative legal consequences for the entrepreneur. This position may be considered disputing, someone may believe that it is referred not to the sanction, but only to the change of procedure for income taxation. Although such change of procedure for income taxation results in forfeiture (deprivation) of the right to be a single tax payer. We believe that any deprivation of the right as a result of performing some legally significant acts is a common sanction. In such case it should be understood that the state considers receiving by the entrepreneur of revenue from another activity than the one mentioned in the Register of Single Tax Payers as legal offence. What is the social danger or damage from such legal offence? It is a mystery. Consequently, it is rather difficult to answer the question about the purpose pursued by the legislator, establishing liability for it, as there is no object of legal relations. That is why we think that in absolute majority of cases the activities of the entrepreneur-single tax payer have no legitimate significance, except for creation of bureaucratic hurdles for the development of business.

Receiving of income by the entrepreneur from other activity may have legal significance only in the cases when the local government body established different rates of a single tax for different economic activities (first or second group of single tax payers). And in our opinion, receiving of such income should result only in additional charge of a single tax of higher rate. If it is referred to the individual entrepreneur, whose type of activity does not influence the rate of a single tax (the third group of single tax payers), the types of activity should make no difference.

3. Actual Content of the State Policy

As seen from the above, the main approaches in the state policy on regulation of the simplified taxation system is its complication,

restriction of use, extension of obligation of use of cash registers, as well as lack of significant simplification of accounting and reporting.

We believe that such approaches do not contribute to the development of business. We think that the state policy in regulation of the simplified taxation system should consider the following approaches.

Single tax shall actually be single. The idea of a single tax (for which it was implemented in Ukraine in late 90s) should be maintained to the full extent. Even if the state for a certain reason does not consider the unified social fee as the tax (with what the author disagrees), for the purposes of actual simplification of carrying out business it is quite efficient to develop the simplified taxation system in such a way that small business could have the only tax, which would be calculated under actually simplified procedure (on the basis of one rather simple criteria), including each and all taxes and charges (as well as contributions), provided for by the law.

Actual simplification of accounting and reporting. The mentioned one tax (single tax) shall provide for submission of only one rather simple report which shall be rather clear so as to be drawn up by a person without any special training (having no accounting education and/or experience). Single tax payer should be exempted from any other forms of obligatory reporting that shall be clearly set forth in the law. In any case, single tax payer should not file any reporting more frequently than once a year.

Procedures for the work with cash should also be dramatically simplified – legal entity-single tax payer should be exempted from using the obligatory forms of cash documents (cash receipts, cash books, etc.). It is worth mentioning that in one of the articles we considered the outdated nature of such obligatory forms of cash documents, and pointed out the necessity to cancel them for all legal entities, and not only for the simplified payers[33].

Simplification of use of cash registers by small business Talking about simplification of work with cash, we cannot avoid the issue of use of the cash registers. Current state policy on this issue envisages extension of the scope of use of cash registers. However, it is necessary to work

[33] Кравчук О. Фінансово-правове регулювання готівкових касових операцій: (не)сучасні тенденції. *Публічне право*. 2018. № 1. С. 93–102. URL: http://nbuv.gov.ua/UJRN/pp_2018_1_14 (дата звернення: 09.06.2019).

seriously over decrease of number of technical standards, their simplification, reform of penalties for their violation, cancellation of different forms of books and reports. Namely, it is appropriate to allow single tax payers to use previous programming of items names by groups (without programming of each item name). Moreover, in case of extension of the scope of use of cash registers, it is necessary to think over the state programs of compensation of their cost to the entrepreneurs.

The necessity to work in this direction was emphasized in the scientific literature. Thus, for example, the necessity to actively implement the complex of measures, which would incite business to voluntarily use cash registers, decrease their cost in any possible ways – both organizational and technical, implement online services is emphasized by L.P. Tkachyk and O.Ia. Beshko[34].

For the entrepreneurs, using cash registers, it is necessary to cancel obligatory use of income and expenditure ledgers and their obligatory registration with tax offices.

Popularization and incentives to use the simplified system. It is obvious that the state should stop considering the simplified taxation system as some threat to economic legal order. It is appropriate to presume that the simplified taxation system is useful not only for the taxpayers themselves, but it results in a large number of positive impact for society and economy in general. We will explain why.

First of all, it is clear that adhering to the above mentioned approaches, according to which small business shall be charged with taxes very easy (single tax is actually single, and accounting and reporting are actually simplified, as well), should shape the understanding in existing and potential business entities that it is easy not only to pay taxes, but also to carry out business. Such understanding certainly results in the increase of the investment activity both owing to national and foreign sources. Increase of the investment activity will result in typical increase of economic activity in general, and potential increase of tax revenue owing to increase of the number of taxpayers (both those who use and those who do not use the simplified system), as well as owing to increase of volumes of their activity. Moreover, even if

[34] Ткачик Л.П., Бешко О.Я. Спрощена система оподаткування як інструмент агресивного податкового планування. *Молодий вчений.* 2018. № 2. С. 758–763. URL: http://nbuv.gov.ua/UJRN/molv_2018_2%282%29__75 (дата звернення: 09.06.2019).

a part of single tax payers is really involved in the schemes of taxation optimization, it is necessary to understand that the relevant funds have been received in a lawful way, and while being spent they also get into the economic system, and are charged with taxes on other stages of goods turnover, resulting finally in certain increase of GDP. That is why the opportunity to use the simplified taxation system as the optimization scheme has positive features.

Saving on transaction expenses. Next, the state should understand that in case if a single tax is actually single, not only business saves on transaction expenses, but the state itself. Since the single tax payers basically shall not be controlled (with some exceptions). Consequently, the state saves on the procedures for administration of taxes, on the procedures for processing forms of excessive numerous reporting, in-house and on-site fiscal inspections. And the last, the need of the state in certain number of personnel of regulatory bodies is decreased (both performers – tax inspectors, and the relevant number of managerial personnel).

Consequently, such two dependences will be observed: direct dependence: the simpler the simplified taxation, accounting and reporting system is, the less the state spends on administration of taxes. The inverse dependence will also be correct: the greater number of single tax payers, the less number of tax inspectors are needed, and the less the state spends on administration of taxes.

Given this, the state should not complicate and restrict the use of the simplified taxation, accounting and reporting system, but simplify it and popularize its use among the entrepreneurs.

Recently, in one of the articles we wrote that it is appropriate to provide for the opportunity to use the simplified taxation system not only by the entrepreneurs, but also by other self-employed persons – including notaries, lawyers, insolvency receivers[35].

Moreover, it was mentioned in literature (Iu. Kozachenko) that a single tax is significant source of revenue for local budgets[36].

[35] Кравчук О. О. Три види правового статусу фізичної особи. *Вісник НТУУ «КПІ». Політологія. Соціологія. Право : збірник наукових праць.* 2017. № 1/2 (33/34). С. 194–200. URL: http://ela.kpi.ua/handle/123456789/25226 (дата звернення: 09.06.2019).

[36] Козаченко Ю. П. Єдиний податок як фінансова основа наповнення місцевих бюджетів в Україні. *Держава та регіони. Сер.: Державне управління.* 2013. № 4. С. 23–27. URL: http://nbuv.gov.ua/UJRN/drdu_2013_4_7 (дата звернення: 09.06.2019).

V. Demydenko and L. Demydenko mention that in 9 years the specific weight of s single tax in revenue of local budgets (not including inter-budget transfers) has increased from 2.2% in 2008 to 10.1% in 2016, first of all, owing to increase of revenue from individual private entrepreneurs and inclusion of fixed agricultural tax to s single tax in 2015[37]. A.Tomashevskaya evaluates existing simplified taxation system in Ukraine as giving unlimited possibilities for investors[38]. So there are no reasons for restrictions or cancelation of such a system. We'd better to develop it and to make it more and more simplified.

CONCLUSIONS

The legislation of Ukraine, starting from 1998, envisages the simplified taxation, accounting and reporting system of small business in the form of payment of a single tax for the purpose of exemption from payment of some other taxes and charges. At the same time, this tax is not basically single (it is only called so). The payer of this tax in fact pays a lot of other taxes, charges and contributions, on each of which he/she should keep accounting and file reporting. One of the main features of the simplified taxation system is that single tax payers are not exempted from charging and payment of income tax while paying revenue to individuals (that is, from performing of the functions of revenue agent). He/she shall accrue and pay unified social contribution for the salaries of employees. In addition, an individual entrepreneur shall pay unified social contribution for himself (as for the person insured according to the obligatory state social insurance). So, the simplified system basically has only partially simplified taxation, without simplified accounting and reporting.

Actually, the vector of the Ukrainian state policy as regards the simplified taxation, accounting and reporting system is its restriction and complication, up to cancellation. The legislator restricts activities, giving the ground for payment of a single tax, establishes obligation of use cash-register machines for retail trade, administration of which is very complicated and expensive. Payment of dividends by legal entity-single

[37] Демиденко Л. М., Демиденко В.І. Єдиний податок для суб'єктів малого підприємництва: протиріччя та перспективи. *Финансовые услуги*. 2017. № 6. С. 12–15. URL: http://nbuv.gov.ua/UJRN/finu_2017_6_5 (дата звернення: 09.06.2019).

[38] Tomashevskaya A. The country of unlimited possibilities. URL: http://kievbusinesscentre.com.ua/accounting/faq/3233/ (дата звернення: 11.06.2019).

tax payer to its members is complicated. As a result, transaction expenses of single tax payers (both individual entrepreneurs and legal entities) are unreasonably increasing and carrying out this type of activity in some cases becomes unprofitable for the entrepreneur.

The state should stop considering the simplified taxation system as some threat to economic legal order. It is appropriate to presume that the simplified taxation system is useful not only for the taxpayers themselves, but it results in a large number of positive impact for society and economy in general. First of all, it is clear that adhering to the above-mentioned approaches, according to which small business shall be charged with taxes very easy (single tax is actually single, and accounting and reporting are actually simplified, as well), should shape the understanding in existing and potential business entities that it is easy not only to pay taxes, but also to carry out business. For the purposes of actual simplification of carrying out business it is quite efficient to develop the simplified taxation system in such a way that small business could have the only tax, which would be calculated under actually simplified procedure (on the basis of one rather simple criteria), including each and all taxes and charges (as well as contributions), provided for by the law.

There were a lot of specific directions to improve the legal regulation of simplified taxation system in Ukraine pointed out above.

SUMMARY

Nowadays the vector of the Ukrainian state policy as regards the simplified taxation, accounting and reporting system is its restriction and complication, up to cancellation. The legislator restricts activities, giving the ground for payment of a single tax, establishes obligation of use cash-register machines for retail trade, administration of which is very complicated and expensive. Payment of dividends by legal entity-single tax payer to its members is complicated. As a result, transaction expenses of single tax payers (both individual entrepreneurs and legal entities) are unreasonably increasing and carrying out this type of activity in some cases becomes unprofitable for the entrepreneur.

The state should stop considering the simplified taxation system as some threat to economic legal order. It is appropriate to presume that the simplified taxation system is useful not only for the taxpayers themselves, but it results in a large number of positive impact for society

and economy in general. First of all, it is clear that adhering to the above-mentioned approaches, according to which small business shall be charged with taxes very easy (single tax is actually single, and accounting and reporting are actually simplified, as well), should shape the understanding in existing and potential business entities that it is easy not only to pay taxes, but also to carry out business. For the purposes of actual simplification of carrying out business it is quite efficient to develop the simplified taxation system in such a way that small business could have the only tax, which would be calculated under actually simplified procedure (on the basis of one rather simple criteria), including each and all taxes and charges (as well as contributions), provided for by the law.

A lot of specific directions to improve the legal regulation of simplified taxation system in Ukraine are pointed out by the author.

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Information about the authors:

Kravchuk O. O.

Doctor of Law (Dr.Hab.),

Professor at the Department of Businness Law and Administrative Law,

Igor Sikorsky Kyiv Polytechnic Institute

37, Peremohy Ave., Kyiv, 03056, Ukraine

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PRINCIPLES OF REGULATORY ACTIVITY OF PUBLIC ADMINISTRATION BODIES AS THE BASIS FOR PROTECTION BUSINESS ENTITIES' RIGHTS AND INTERESTS

Kravtsova T. M., Yarmysh O. N.

INTRODUCTION

In accordance with the Association Agreement between Ukraine and the European Union, a Sustainable Development Strategy[1] (hereinafter referred to as the Strategy) was developed in our country, which defined the goal, main directions and top priorities of the social and economic, political and legal conditions for the formation and development of our State. The main objective of the Strategy is to introduce European standards of life in Ukraine and its entry into the leading positions in the world. One of the main priorities is the restoration of macroeconomic stability, ensuring sustainable growth of the economy in an environmentally friendly manner, creating favorable conditions for conducting economic activity.

Thus, in today's situation, the improvement of the State regulatory policy in the field of economic activity (hereinafter – regulatory policy) plays an important role. The mechanism of regulatory activity of public administration bodies, defined by the Law of Ukraine "On the Principles of State Regulatory Policy in the Field of Economic Activity", should create the best conditions for improving the business climate in our country. Preventing the adoption of economically inexpedient and ineffective regulatory acts, and thereby reducing government interference in the activities of business entities, will contribute to further deshadowing of the economy and development of entrepreneurship.

[1] Про Стратегію сталого розвитку «Україна – 2020»: Указ Президента України від 12 січня 2015 р. № 5/2015 / Президент України. Офіційний вісник Президента України. 2015. № 2. С. 14. Ст. 154.

A prerequisite for the effective implementation of regulatory policy is unconditional compliance by the public administration bodies with its principles and drawing on the foreign experience to improve the mechanism of legal regulation of economic relations, as well as administrative relations between public administration and business entities in Ukraine. The current state of compliance and implementation of the principles of regulatory policy in the activities of public administration bodies needs to be improved.

Scientific literature contains numerous opinions of scientists. Having analyzed them, it is possible to conclude that the principles are the foundations that characterize any pattern of activity. Scientists distinguish between the following features of the principles: regulatory consolidation; implementation through a legal enforcement mechanism; determination of the content or mechanism for the implementation of legal norms.

Thus, the principles of regulatory activity of the public administration bodies are the fundamental provisions, the basic legal ideas contained in the norms of the legislation on regulatory policy. They determine the procedure for carrying out regulatory activities and are aimed at protecting the rights and interests of business entities from inappropriate and ineffective public administration interference in economic activities.

The principles of regulatory activity of the public administration should be considered at several levels or, in other words, one should identify general principles and special ones among them. The first are the principles specific to the activities of the public administration as a whole. These should include such principles as the rule of law, legality, democracy, publicity, public opinion, etc. The second group consists of the principles that are manifested during the implementation of regulatory activities by the public administration. This group will consist of the relevant principles of State regulatory policy – reasoning of State regulation of economic relations; relevance of State regulation of economic relations to the need of solving the existing problem; efficiency of the regulatory act; balance of the interests of business entities, citizens and the State; predictability of regulatory activities of the public administration; transparency and attention to the shape of public opinion.

1. General Principles of Public Administration Regulatory Activities in the Field of Economic Activities

The general principles are basic that fulfill the system-forming and system-oriented function of regulatory policy legislation, affect the content of legal relationships that arise in the process of preparing, adopting, monitoring performance and revising regulatory acts by the public administration, reflect the most important essential features of the public administration institution in general, and at the same time permeate all aspects of regulatory activities. These are the general legal principles, characteristic of the law as a whole, and determine the qualitative features for all the legal norms of the national legal system of Ukraine. They operate in all areas of law, reflecting universally accepted ideas and values.

A special place in the system of the abovementioned principles is occupied by *the rule of law*, defined in Art. 8 of the Constitution of Ukraine and aimed at upholding the law as a factor of progressive, democratic, and humanistic development of the society and the State. This principle is primarily associated with the priority of human rights in the society, their consolidation at the legislative level, legal equality, domination in state and public life of such laws that express the will of the majority or the entire population of the country, embodying universal human values and ideals by way of mutual responsibility of a person and the state[2].

The Constitutional Court of Ukraine in one of its decisions presented the definition of the rule of law. The rule of law, according to the decision of the Constitutional Court of Ukraine dated November 2, 2004 (the case on the imposition of a lesser penalty by the court), is the rule of law in society. The rule of law requires the State to translate it into law-making and human rights activities, in particular, into laws, which in their content should be imbued primarily with ideas of social justice, freedom, equality, and the like. One of the manifestations of the rule of law is that law is not limited only by legislation as one of its forms, but includes other social regulators, such as moral norms, traditions, customs, etc., which are legitimized by the society and conditioned by historically achieved cultural level of the society. All

[2] Державне будівництво і місцеве самоврядування в Україні : підручник / за ред. С.Г.Серьогіної. Харків: Право, 2005. 256 с. С. 57.

these elements of law are united by a quality that corresponds to the ideology of justice, the idea of law, which to a certain extent has been reflected in the Constitution of Ukraine[3].

The principle of the rule of law is the principle of natural law as an aggregate of ideal, spiritual and just concepts of law. Justice, good, humanism as components of the rule of law are moral categories, elements of public consciousness. Recognition of the constitutional principle of the rule of law means that the laws of the State, as well as their application, must conform to law as a measure of universal and equal liberty and justice for all. In addition, the laws should reduce the discretion of both individuals, legal entities, and the State for the common good[4].

Public administration in regulatory activity is guided by the principle of the rule of law, according to which a person, his rights and freedoms are recognized as the highest values and determine the content and direction of the State. That is, the public administration entities recognize the law as the highest value that ensures the rights and freedoms of individuals, including business entities, and the public interest in the development of the economy and ensuring national security in this area.

Another principle of regulatory activity is *legality*. This principle is of particular importance in the administrative relations of business entities with the public administration. In this case, the regime of legality ensures the possibility of exercising the constitutional right to business activities not prohibited by law, and remains the responsibility of each entity and aim of state regulation to act within the established limits. Acting on this basis, the public administration carries out regulatory activities exclusively within its authority. That is, despite the fact that, in general, the entities of public administration are endowed with broad powers of independent lawmaking and law enforcement, they are independent only within the limits outlined by law.

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[3] Рішення Конституційного Суду України від 2 листопада 2004 року № 15-рп/2004 у справі за конституційним поданням Верховного Суду України щодо відповідності Конституції України (конституційності) положень ст. 69 Кримінального кодексу України (справа про призначення судом більш м'якого покарання) /Конституційний Суд України. Вісник Конституційного Суду України. 2004. № 5. С. 38–45.

[4] Голубєва Н.Ю. Поняття та система принципів цивільного процесуального права. Актуальні проблеми держави і права. 2010. № 1. С. 103–114.

Proceeding from the general rule of legal acts, the public administration entity acts not only within the limits of its competence, but also in the prescribed manner, in the established legal forms. Therefore, given the need to protect the rights and take into account the interests of business entities in the implementation of state regulation, the procedure for the implementation of regulatory actions of public administration should be governed by the rule of law and be legal in nature. This will be of great importance for the respect for legality during the regulatory activities of the public administration, since it can be ensured only when the implementation of the norms of substantive law is carried out in compliance with the legal regulations that determine the procedure for law enforcement. The legal nature of the regulatory activity of the public administration is an important point in its legal status. The public administration entity must strictly observe the requirements of the Constitution of Ukraine and the laws, abide by them and, within its competence, contribute to their implementation by others.

According to Art. 19 of the Constitution of Ukraine "the legal order in Ukraine is based on the principles according to which no one shall be forced to do what is not envisaged by legislation. Bodies of state power and bodies of local self-government and their officials are obliged to act only on the grounds, within the limits of authority, and in the manner envisaged by the Constitution and the laws of Ukraine". That is, the State must guarantee not only the proper implementation of a citizen's as well as a business entity's rights and interests, envisaged by legislation, but also prevent unlawful interference in the activity of the business entity and the compulsory influence on it. In other words, the State must ensure protection from arbitrariness, lawlessness, abuse and discretionary decisions on the part of public authorities and local governments or their officials. At the same time, public authorities, local self-government bodies, and their officials must act only within the limits defined by the laws of Ukraine. Consequently, the Constitution of Ukraine states that the influence (especially coercion) on the part of the State on a person and society as a whole should be minimal, which is possible only if the bodies of state power and local self-government act exceptionally within the limits of the law[5].

[5] Коментар до Конституції України. Київ, 1998. 63 с.

So, legality in regulatory activities should be embodied in the following aspects:

– unity of understanding laws and bylaws, which consolidate the foundations of the functioning of the legal system of the State, legislate the regulatory activity of a separate entity of the public administration;

– equality of all subjects of legal relations, the party of which is the public administration entity, before the law;

– the rule of law that states the compliance of regulatory acts issued by the public administration entity with the Constitution of Ukraine, the Convention on the Protection of Human Rights and Fundamental Freedoms, the Law of Ukraine "On the Principles of State Regulatory Policy in the Field of Economic Activity" and other legislative acts;

– guaranteeing rights and taking into account the interests of business entities while carrying out regulatory activities;

– establishment of administrative and legal liability for violation of the requirements of the Law of Ukraine "On the Principles of State Regulatory Policy in the Field of Economic Activity".

Therefore, the principle of legality in regulatory activity is a requirement for the public administration entity to strictly and unswervingly observe, in the exercise of its powers, the Constitution of Ukraine, the laws and subordinate regulatory acts.

The principle of democracy. Democracy is one of the most important political and legal principles. Art. 1 of the Constitution of Ukraine states that Ukraine is a sovereign and independent, democratic, social, law-based State. Moreover, the decisive feature of the State is reduced to the most important principle of its activities.

The word "democracy" is known since the times of ancient Greece, and in the Greek translation means "power of the people". In the early period of its existence in ancient Greece, democracy was understood as a special form or kind of state organization, in which not one person was vested with the ultimate power (as in monarchy or tyranny), and not a group of people (as in aristocracy or oligarchy), but all citizens who exercise equal rights to govern the State[6].

[6] Скакун О.Ф. Теория государства и права : учебник. Харьков: Консум, 2000. С. 160.

The modern definition of the principle of democracy in society consists in the fact that the power belongs to people and people participate in the exercise of power. This is the relationship between society and the State. Under the Constitution, power in Ukraine belongs directly to its people as the primary source of power and, moreover, to the entire people, and not to any part of them, since the people of Ukraine are citizens of all nationalities and objectively all social groups[7]. So, Art. 5 of the Constitution of Ukraine fixes the provision that the people of Ukraine being the only source of power in Ukraine, can exercise power directly and through bodies of state power and bodies of local self-government; Art.38 of the Constitution of Ukraine assigns the citizens the right to participate in the administration of state affairs; Art.140 of the Constitution of Ukraine states that local self-government is the right of a territorial community – residents of a village or a voluntary association of residents of several villages into one village community, residents of a settlement, and of a city – to independently resolve issues of local character within the limits of the Constitution and the laws of Ukraine.

In the EU member states, there is a consensus model of governmental culture that presupposes the existence of an agreement between citizens on public decision-making mechanisms, as well as on the main problems facing the society, and the means of their solution. However, such activities are based on public participation in the decision-making process[8].

The democratic nature of regulatory activity of the public administration implies the active participation of broad layers of citizens and their various associations, primarily business structures and associations of business entities, in the preparation of regulatory acts, their initiative, free, broad and business discussion of proposed regulatory decisions on the regulation of economic relations. Such an effective dialogue between the government and market participants is needed in order to ensure maximum fairness and predictability of the regulations. The components of this dialogue are the transparency of the regulatory activities of the public administration (in particular in the

[7] Конституційне право України / за ред. В.Ф.Погорілка. Київ: Наукова думка, 1999. С. 185.

[8] Адміністративне право України. Повний курс : підручник / В. Галунько, П. Діхтієвський, О. Кузьменко, С. Стеценко та ін.; за заг. ред. В. Галунько. Херсон: ОЛДІ-ПЛЮС, 2018. С. 43.

planning and adoption of regulatory acts) and its responsibility for the implementation of the tasks set.

Thus, the principle of democracy of the regulatory activity of the public administration is manifested in the establishment and rigorous implementation of a free, truly democratic way of preparing and approving regulatory acts, ensures the active and effective participation of the general public in law-making, taking into account the needs of the country's social and economic development in new regulatory decisions and interests of various segments of the population.

Recommendations to improve the participation of associations in the public decision-making process from the participants of the Civil Society Forum contain the following basic requirements:

– transparency in public access to all documents, projects, decisions and conclusions that are relevant for the participation process;

– impartiality on the part of NGOs, since they have the right to act independently and to argue divergent positions to the authorities;

– openness and accessibility, since participation processes should be open and accessible to all on the basis of agreed limits of participation;

– responsibility and effectiveness, in which participation must be result-oriented in order to have a real influence on the content; besides, authorities must be responsible to the public for the course of the consultation processes and report on their results;

– no discrimination;

– equal treatment and openness, namely equal access for all, including meeting the needs of minorities, disadvantaged people, vulnerable or socially excluded people or groups of people who wish to participate;

– independence of associations, in particular, refusal to impose NGOs' obligations to participate in decision-making processes or to uphold certain positions[9].

[9] Участь громадськості в процесі ухвалення рішень. Огляд стандартів та практик у країнах-членах Ради Європи. Рекомендації щодо сприяння участі об'єднань у процесі ухвалення державних рішень від учасників Форуму з питань громадянського суспільства, організованого в межах Додаткової наради 2015 р. з питань гуманітарної галузі, присвяченої свободі мирних зібрань та свободі об'єднань. URL: http://ecnl.org/wp-content/uploads/2016/08/Overview-ofparticipation-standards_Ukr.pdf

The principle of publicity involves ensuring the availability of discussing certain public decisions based on broad awareness and public opinion. Publicity includes true, timely and broad information about the actual state of affairs in the State, it is an expression of trust and respect for people, their ability to understand current events, work out the right decision, and consciously participate in its implementation.

Publicity is an integral element of democracy, the political life of a free society. It includes the following activities of the controlling entity[10]:

1) objective, comprehensive information about the state of the economy, social sphere, public relations, about the internal and foreign policy of the State at a given time;

2) regular publication of official documents, analytical reports, statistical data, results of sociological surveys and other materials characterizing the activities of state bodies of all levels;

3) public discussion of the draft target programs of the government, political commitments outlined by the leadership, as well as planned ways and methods of their implementation;

4) openness of control over the activities of governing bodies, involvement of the public (interested in various decisions) in the analysis and evaluation of the results, the consequences of the implementation of programs and plans.

2. Some Features of the Implementation of State Regulatory Policy Principles in the Public Administration Regulatory Activities

Principles of state regulatory policy are the principles underlying the implementation of public administration by the economy, which determine the basic requirements for the content and quality of regulatory activity of public administration entities in the field of economic activity. According to Art. 38 of the Law of Ukraine "On the Principles of State Regulatory Policy in the Field of Economic Activity" the principles of state regulatory policy are reasoning, relevance, effectiveness, balance, predictability, transparence and attention to the shape of public opinion.

[10] Зеркин Д.П. Игнатов В.Г. Основы теории государственного управления : курс лекций. Ростов на Дону: «МарТ», 2000. С. 148.

The principle of reasoning presupposes the reasonable need for state regulation of economic relations in order to solve the existing problem. Consolidation of this principle in the legislation allows solving a multidisciplinary problem of overregulation of relations between government and business. Its essence lies in the fact that state regulation of economic relations should proceed from the State and dynamics of the market itself, the level of its development, as well as the protection of the rights and interests of all actors in the market.

When developing a regulatory act, it is important to make the most of foreign and domestic experience, the results of economic, sociological and other studies, statistical information, various types of references, memoranda and other materials. There should be no rush in work, in making precipitate and inappropriate decisions. Wise and systematic development and discussion of prospective regulatory decisions is the key to the effectiveness of regulatory activity, its compliance with the requirements of life, social practice, modern social and industrial relations[11].

With state regulation of economic relations, it is undoubtedly necessary to take into account the basic principles of a market economy: the inviolability of private property and the economic freedom of market players. It is the protection of property rights and ensuring economic freedom that are the main objectives of the rule of law, an integral part of the economic system, which is based on the relevant legal norms. However, the excessive freedom of action of an individual should be limited when the freedoms of other people, the constitutional system and morality are violated, and be reflected in legal norms. In this context, in our opinion, legal rules regarding regulatory activity must establish relations between a business entity and public administration that would be aimed at ensuring the priority of human and citizen's rights and freedoms, including the right to entrepreneurial activity. The international experience shows that in those countries where the existing public administration system does not contradict market relations, a more rapid and gradual economic growth is observed.

[11] Кравцова Т.М. Державна регуляторна політика у сфері господарської діяльності: організаційно-правові засади реалізації : монографія. Харків: Видавництво НУВС, 2004. С. 51.

According to *the principle of relevance,* regulatory activity should be responding to the existing problem and market requirements taking into account all acceptable alternatives to socio-economic development, its objective laws.

The principle of relevance implies the use of various alternative regulatory solutions, the study and synthesis of one's own experience in solving an existing problem, an objective realistic assessment of the consequences of decisions made in order to identify and apply all the positive things that have justified themselves in practice, as well as to use creatively domestic and foreign experience in solving identical questions.

In the process of drafting a regulatory act, it is important to ensure a professional objective assessment of its provisions from the standpoint of common interests, help bring to the notice of the authorities issuing the act the reasons for business practice, and also take into account in regulatory decisions private, group, corporate interests to the extent that they do not contradict the interests of other social groups and society as a whole[12].

Thus, the content of the principle of relevance implies investigation of socio-economic development patterns, the identification of ways and means of applying the laws of economics by a public administration entity in order to ensure optimal legal regulation of economic relations, an equilibrium of public and private interests, and the use of regulatory influence tools that match market needs and the specific existing problem in the country's economy.

The essence of *the principle of efficiency* is to achieve the goals of state regulation of economic activity in ways that are less resource-intensive for both business entities, citizens and the State.

Public administration in any social sphere, be it economy, education, culture, security, defense, internal affairs, etc., is connected with material and spiritual values, financial and human resources. Proceeding from this, the regulatory acts of the public administration are called upon to achieve the most useful results for citizens, society and the State in a timely manner and at the lowest cost, to benefit the country, which will justify the tangible and intangible costs caused by its

[12] Кравцова Т.М. Державна регуляторна політика у сфері господарської діяльності: організаційно-правові засади реалізації : монографія. Харків: Видавництво НУВС, 2004. С. 53.

existence. This also concerns the regulatory activity in the economic sphere, which, like any socially useful public administration activity, must be exercised rationally and efficiently.

Efficiency is an indicator of how the efforts (resources) spent by the governing entity and society to solve the problems raised are taken full advantage of in socially valid output[13]. Efficiency criteria used in practice usually include costs, time-bound targets, payback periods, etc. Evaluation of the public administration efficiency is necessary both for state authorities and for society. It allows the society to control the quality of state institutions activities, while managers and government employees need it for self-control and for improving the management process. The problem of evaluating efficiency is the problem of analyzing management activity and decisions taken[14].

The requirements of the principle of efficiency are to optimize regulatory decisions, that is, to develop various solutions, compare them and select the best option from all possible alternatives to achieve the goal. The task of the public administration is to identify and investigate solutions that are more likely to work on attaining the objectives if there are resources at the disposal of business entities, citizens and the State. In addition, these options should take into account external and internal conditions, possibly a larger range of stimuli of the functioning environment on the public administration system of the economy, social implications of a decision, as well as the interests of business entities, citizens and the State as a whole.

Thus, efficiency is an important principle of state regulation of economic relations, regulatory activity, which ensures the optimal functioning of the system of public administration of the economy, contributes to solving problems related to the development of market relations. The main characteristics of such a process in the economic and social spheres are predictability, consistency and responsibility for the ultimate effects of the management decisions made – regulatory acts.

The principle of balance as the principle of the State practice, all its institutions and officials. It is enshrined in Art. 3 of the Constitution of Ukraine, which states that human rights and freedoms and their

[13] Зеркин Д.П. Игнатов В.Г. Основы теории государственного управления : курс лекций. Ростов на Дону: «МарТ», 2000. С. 240.

[14] Там же. С. 242.

guarantees determine the essence and orientation of the activity of the State. To affirm and ensure human rights and freedoms is the main duty of the State. Thus, this article enshrines the humanitarian dimension in the exercise of state power, including regulatory activities. According to the content of this article, the observance of human rights is a fundamental constitutional basis in Ukraine, which, consequently, directs the entire set of social and political relations.

The ultimate goal of activities of the State in general and its modern and enshrined in the Constitutions of most countries, including Ukraine, criterion of its activity is ensuring human rights and freedoms and decent living conditions. Therefore, regulatory activity of the public administration should be based on universal values, international human rights standards, and the creation of conditions and mechanisms for their implementation in society and the State[15].

This principle implies that regulatory activity of the public administration is aimed at ensuring a balance of interests of both business entities and their counterparties – consumers of their goods and services, as well as the State. The State in the process of exercising the rights and freedoms of every person reconciles the selfish interests of individual members of society, the contradictions between the private, the individual and the general (public), taking legal action. An independent element of the outcome of the public administration activity is the common good.

The concept of the common good refers to the fundamental ideas and principles of the entire European social, political and legal culture. The concept of the common good presents the legal model of identifying, agreeing on, recognizing and protecting various interests that are in many ways conflicting with each other, the pretentions, and the will of the members of this community as their benefit, possible and acceptable from the standpoint of a single law for all. The common good expresses the objectively necessary general conditions for the possible coexistence of all members of the community as free and equal entities, and thus at the same time – the general conditions for the expression and protection of the good of each. In this concept, the common good is not

[15] Кравцова Т.М. Державна регуляторна політика у сфері господарської діяльності: організаційно-правові засади реалізації : монографія. Харків: Видавництво НУВС, 2004. С. 56.

separated from and not opposed to the welfare of everyone[16]. Thus, if a State that is not a law-abiding one prioritizes its own interests as opposed to the interests of civil society and the individual, then a completely different system of priorities exist in the rule of law. According to it, law is intended to ensure and protect primarily the interests of the individual and civil society and only after that – the needs of the State machinery[17]. Thus, the common good is not the negation of various interests, pretentions, will, goals, etc. of separate entities, but the general condition of their potential.

Interests are objective factors that determine a person's social engagement in all types of activities, including economic activity. The laws of functioning and development of economic relations are the necessary persistent interdependence of interests – private and public – of the participants in these relations. Based on this, we believe that the regulation of these relations mutually adapts and balances all three groups of interests on the part of the State, civil society and business entity.

The principle of predictability requires a sequence of regulatory activities, compliance with its state policy objectives, as well as with plans for drafting regulatory acts that allow business entities to plan their activities.

As evidenced by the world experience of economic development, the "market mechanism" of social production can function only if there is stable and predictable legal space of economic and political relations. If a business entity does not know or does not understand the legal rules under which the economy functions, and cannot predict its development trends more accurately, it will never invest its capital in this economy[18].

The unpredictability and inconsistency of the legal environment as a result of frequent changes in legislation cause a high degree of risk and uncertainty of business entities and create conditions for the unprofitability of their investments. Predictability of legislation as a principle of the existing legal system can be violated only in case of

[16] Нерсесянц В.С. Философия права : учебник. Москва: Издательская группа НОРМА – ИНФРА*М, 1998. С. 71.

[17] Бачинин В.А. Философия права и преступления. Харьков: Фолио, 1999. С. 77.

[18] Кравцова Т.М. Державна регуляторна політика у сфері господарської діяльності: організаційно-правові засади реалізації : монографія. Харків: Видавництво НУВС, 2004. С. 57.

economic emergency or political crisis in the country that could not be foreseen. In general, public administration entities are called upon to scheduled planning and development of legal acts in accordance with the goals of state policy and with plans for the preparation of draft regulatory acts.

The principle of transparency and attention to the shape of public opinion in regulatory activities of public administration is a reflection of the general principle of publicity, which has certain features of its manifestation in the field of public administration of the economy.

Publicity in regulatory activity consists in its openness, free and business discussion of draft regulatory acts by all stakeholders. It allows citizens, business entities to see the mechanism of formation and implementation of state-governing impact on economic activity and the course of all processes of public administration in the field of economic activity.

The introduction of the principle of transparency in the regulatory activity of public administration began with the legal consolidation of the Institute for public discussion of draft regulatory acts. Now, no regulatory act that directly or indirectly regulates economic activity will not be able to enter into force without prior and broad public discussion and expertise in the State Regulatory Service of Ukraine.

Public opinion reflects the views (assessments, judgments) of the most of the active population regarding the effectiveness, usefulness and correctness of public decisions. It is an array of information for public administration. Accounting for public opinion is a feedback channel in the public administration system, using the information array to develop and make the most reasonable and effective government decisions[19].

CONCLUSIONS

Summing up, it should be noted that the principles as basic rules, requirements, foundations of the public administration regulatory activities in Ukraine are combined into a single system due to the fact that each of them separately and all together serve the common goal of protecting business entities' rights and interests from inappropriate and ineffective interference of public administration in economic activity.

[19] Кравченко Ю.Ф. Свобода як принцип демократичної правової держави : монографія. Харків: Видавництво НУВС, 2003. С. 207.

Characteristic features of the public administration regulatory principles are:

ideological orientation – the principles are based on a certain idea of the expedient and effective interference of public administration in economic relations, which is a prerequisite for their emergence and is predetermined by the social and legal factors of public life;

systematic nature – the principles of regulatory activity represent a certain system that consists of general principles of public administration and the principles of state regulatory policy that maintain relations among each other, and form the appropriate integrity and unity;

formal certainty – the principles are manifested in the rule of law through their textual normative consolidation in the Law of Ukraine "On the Principles of State Regulatory Policy in the Field of Economic Activity" as a separate article;

autonomy – the content of one principle should not duplicate the content of other principles of regulatory activity;

democracy – the principles of state regulatory policy in the field of economic activity is an element of human culture, ideological ordering of values, such as the rule of law, civil society, equality, independence and freedom;

effectiveness – public administration entities take into account the principles of state regulatory policy at all stages of regulatory activity, when preparing, adopting, monitoring performance, and reviewing regulatory acts;

progressiveness – the principles confirm the fundamentals of public administration behavior in relations with business entities that are ideal for the conditions of the modern developing economy of Ukraine.

SUMMARY

The scientific article carries out a scientific and theoretical study of the principles of the public administration regulatory activity in the economic sphere in the current circumstances, proceeding from the needs of the development of society, State and law. Based on the main priorities of State development of Ukraine, which are to restore macroeconomic stability and ensure sustainable economic growth, the state regulatory policy in the economic sphere plays an important role in creating favorable conditions for doing business, ensuring the rights of economic entities. The principles of regulatory activity of public

administration bodies are fundamental provisions, fundamental legal ideas contained in the norms of legislation on regulatory policy and which determine the procedure for carrying out regulatory activities. The article analyzes the system of principles of regulatory activity and defines their purpose – protection of rights and interests of economic entities from unreasonable and ineffective interference of public administration in economic activity. The following characteristic features of the regulatory principles of public administration are defined: ideological orientation, systematic nature, formal certainty, autonomy, democracy, effectiveness and progressiveness of the public administration regulatory activity.

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Information about the authors:

Kravtsova T. M.
Doctor of Law,
Professor at the Department of Justice,
Sumy National Agrarian University

Yarmysh O. N.
Doctor of Law, Professor, Corresponding Member
of the National Academy of Legal Sciences of Ukraine,
President of the International Association of Historians of Law,
Senior Research Associate of the Legislation Institute
of the Verkhovna Rada of Ukraine

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MAIN CONCEPTUAL APPROACHES TO DETERMINATION OF NATURE AND CONCEPT OF ADMINISTRATIVE JUSTICE IN FOREIGN LEGAL LEGISLATION

Lehka O. V., Szewczak Marcin

INTRODUCTION

Ukraine, as a state that is in the active phase of European integration processes, conducts reforms in virtually all branches of state activity. In conducting reforms in public administration, it is necessary to take into account international standards, theoretical positions, doctrines and positive practical world experience. That is why in this article the main doctrinal approaches of lawyers concerning the definition of the nature and concept of administrative justice in foreign legal law are analyzed and summarized; its main tasks, features, mechanisms, models and concepts. It was clarified that in foreign legal legislation, administrative justice is considered in a broad and narrow sense. It includes a set of legal and procedural tools to protect all private individuals (both physical and legal) from bodies that carry out public administration; should be considered as a special direction of the judicial authorities, aimed at resolving disputes in which one of the parties is the state, its bodies and officials. At the same time, administrative justice is always aimed at protecting the subjective rights and legitimate interests of citizens. Theoretically, it is substantiated that: the implementation of the principle of accessibility of administrative justice is closely linked to the right to a fair trial, enshrined in the basic international human rights instruments; the mechanisms of administrative justice apply to administrative decisions taken by various state bodies and other entities possessing public authority; in the foreign legal doctrine there is a unique position that the tasks of the system of administrative justice should include ensuring the adoption of appropriate (legitimate, substantiated and fair decisions by public authorities, ensuring the functioning of the mechanisms of compensation in cases when such bodies make incorrect decisions or incorrectly handle as well as reducing the likelihood of making such false decisions in the future.

Formulation of the problem. Integration of Ukraine into the European legal space requires a full-fledged reform of the legal system based on the principles and standards that have been developed at the pan-European level. In conducting reforms in public administration, it is necessary to take into account international standards, theoretical positions, doctrines and positive practical world experience. The administrative and judicial reform launched in Ukraine, the creation of a system of administrative courts in Ukraine, and the development of a regulatory framework for the regulation of administrative proceedings are taking place in line with international standards of administrative justice. Their compliance is a prerequisite for Ukraine's integration into the European legal space, as well as for the acquisition of the features of a law-governed state.

Adaptation of the Ukrainian legislation is the first stage of a long process of approximation of the national legal system, including legal culture, doctrine and judicial and administrative practice, to the system of law of the European Union in accordance with the criteria put forward by the European Union regarding the states which intend to join it.

The presence of various bodies that protect the rights and freedoms of citizens creates a mechanism without which the functioning of the rule of law is impossible. The judicial mechanism for the protection of human rights, which allows the elimination of arbitrariness on the part of the authorities, ensures the implementation of the principle of responsibility of the authorities for their activities before a person, called "administrative justice".

In most European countries, administrative justice is represented by specialized administrative courts or specialized departments within the courts of general jurisdiction.

It should be noted that administrative justice is one of the constituent parts of modern administrative law, an integral institution of the rule of law, designed to protect subjective rights and legitimate interests in the field of public administration, as well as to resolve administrative legal disputes. It acts as one of the important guarantees of the legality of administrative activities. Administrative justice serves as a prerequisite for the existence of administrative law, namely, administrative law is impossible to imagine without administrative proceedings. The establishment of a full-fledged institution of

administrative justice is a very important step in the context of the administrative and judicial reform that continues in our country.

On the eve of the introduction of the European model of administrative justice in Ukraine, theoretical and applied developments in this field, including comparative studies based on in-depth study of foreign experience, become especially relevant.

There are many reasons for the existence of the institute of administrative justice and the need for its further development. In the context of the objective conditionality of the growth of the regulatory weight of legislation, the need to improve the system of administrative justice and, more broadly, the system of resolving conflicts and disputes between private individuals (citizens and organizations), on the one hand, and state authorities and administrations, on the other hand, is growing significantly and progressively, as well as between various government agencies.

It should be noted that administrative justice is not a new legal phenomenon, but for several centuries there have been discussions about its concept and content. The ambiguity in its understanding, in the opinion of law-enforcers, is due to the presence of many models of administrative justice, as well as the difference in their application.

Very relevant, in the conditions of administrative reform, in our opinion, is the study of foreign experience in the formation of the institute of administrative justice. In the first place, this is necessary for the implementation of effective experience of the leading countries, a critical reassessment of its own legislative framework, regulating the resolution of public-law disputes.

In a modern democratic state, the system of administrative justice is, on the one hand, an essential component of proper public administration and, on the other, a key component of the justice system.

A generally acknowledged foreign legal doctrine is the position that the system of administrative justice exists, first of all, in order to facilitate the resolution of disputes between private individuals and public authorities, as well as to ensure control over the various types of decisions taken by these bodies. At the same time, attention is drawn to the fact that, ideally, it should consider the needs of individuals who seek protection of rights and legitimate interests as the main ones, to provide an opportunity to appeal against illegal decisions of public

authorities and to demand compensation for the damage, to carry out their activities openly and independently[1].

One of the key features of the system of administrative justice abroad is the fact that it simultaneously performs both functions of the judiciary and executive. There is even a kind of duplication in some states of the respective functions of the two branches of government mentioned above, since administrative courts are sometimes only formally part of the judicial system, but in fact they exercise their powers within the executive branch. This peculiar situation is reflected in typical examples of a number of administrative justice models: administrative courts have the right to issue administrative acts (for example, the State Council in France)[2].

Mechanisms of administrative justice, as a rule, apply to administrative decisions taken by various public authorities and other entities with public authority. The main object of its attention should be the degree and nature of the impact of the individuals concerned on the rights and legitimate interests.

In essence, according to R. Crack and J. McMillan, administrative justice is a philosophy in which within the framework of administrative decisions, the rights and interests of individuals should be adequately protected[3].

I.L. Borodin, L.A. Nikolaeva, G.E. Petukhov, P.P. Serkov, N.G. Salischeva, Y.N. Starilov, A.A. Soloviev, A.K. Solovyova, and N.Y. Hamaneva, M.A. Shtanina and other lawyers have devoted their works to studies of administrative justice, on the basis of foreign experience several dissertations were defended (N.S. Bocharova, O.V. Krivelskaya, E.V. Muratova, I.V. Shmelevova and others). However, the question of a comprehensive study of the basic conceptual approaches to the definition of the concept of administrative justice in foreign countries virtually left out of attention. That is why the purpose

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[1] Зеленцов А. Б. Административный иск как средство защиты нарушенного публичного права. *Роль административной юстиции в защите прав человека* : международный экспертный семинар, 14–15 декабря 2009 года. М.: Права человека, 2010. С. 2.

[2] Ершов В. В. Приветствие. *Роль административной юстиции в защите прав человека* : международный экспертный семинар, 14–15 декабря 2009 года. М.: Права человека, 2010. С. 6.

[3] Лапина М. А. Административная юрисдикция в системе административного процесса : монография. Финансовый университет, 2013. С. 35–38.

of the article is to study the main conceptual approaches to the definition of the nature and concept of administrative justice in foreign legal law.

1. The Concept, Features and Main Tasks of Administrative Justice in Foreign Law

In foreign legal law, administrative justice is considered in a broad and narrow sense.

In the narrow sense, administrative justice is considered as the organization of activities (a set of powers and procedures) of the judicial authorities, which exercise the basic control over the compliance of the implemented public management with legal standards[4].

In a broad sense, administrative justice, according to foreign authors, includes:

– the process of making administrative decisions (the notion of "decision" is interpreted widely and includes various legal acts, actions and omissions of state authorities and administrations, officials, as well as other entities, which have public authority) by public authorities that can influence the rights and interests of individuals (the term "private person" includes both private individuals and private individuals);

– procedural and substantive legal rules according to which such decisions are made;

– procedures after making decisions;

– a system for resolving disputes (consideration of complaints and appeals) regarding decisions[5].

However, the most common among foreign lawyers is the approach to understanding administrative justice in the narrow sense – both at the legislative level and in the scientific environment. In particular, R.S. Franch defines administrative justice as the application in specific legal situations of the basic postulates of a legitimate, just and rational behavior that citizens and legal entities can expect from all actors involved in public administration and possessing authority, including not only officials of executive bodies, but also judges. The mechanisms and

[4] Лапина М. А. Административная юрисдикция в системе административного процесса : монография. Финансовый университет, 2013. С. 35–38.

[5] Марку Ж. Структура административной юстиции: опыт применения различных моделей. *Роль административной юстиции в защите прав человека* : международный экспертный семинар, 14–15 декабря 2009 года. М.: Права человека, 2010. С. 2.

legal consequences of such behavior may vary, but the extent to which it is realized is a measure of the implementation of the principle of the rule of law in modern society[6].

It also deserves attention to the definition proposed by the professor of comparative administrative law at the University of Paris, Sorbonne J. Marc. In his opinion, administrative justice is a judicial procedure that is carried out by a judicial body that makes decisions on complaints against acts passed by administrative bodies or on the actions of administrative bodies, provided that such decisions are made on the basis of material and procedural rules, in whole or in part different from the norms commonly used by courts in resolving disputes between individuals. It is not excluded that separate disputes, which appear to involve the administrative authorities, are entirely in the field of general law[7].

The above definition is based on the statement that although the dualism of judicial institutions is officially established only in individual states, it is nevertheless to a certain extent also in other countries. This is due to the special nature of material and procedural rules applicable to disputes involving public authorities.

In all countries, the establishment of administrative justice in this sense took place gradually, which allowed to ensure compliance with the requirements of the law and the rights of persons under their authority. Models of administrative justice differ in organization, the nature of disputes and, in their combination, with other ways of securing rights[8].

Administrative justice includes a set of legal and procedural tools for protecting all individuals (both physical and legal) from bodies that carry out public administration. It should be considered, including as a special line of activity of the judiciary, aimed at resolving disputes in which one of the parties is the state, its bodies and officials. At the same time, administrative justice is always aimed at protecting the subjective rights and legitimate interests of citizens[9].

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[6] Соловьев А. А. Зарубежный опыт организации административной юстиции : монография. М., 2014. С. 25.

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[8] Там же. С. 10.

[9] Старилов Ю. Н. Административная юстиция. Теория, история, перспективы : монография. М.: Норма, 2001. С. 156.

Particular attention should be paid to the fact that administrative justice is the most common manifestation of the rule of law, as well as one of the most effective ways of realizing basic human rights and freedoms[10].

Accordingly, key elements of the implementation of the rule of law principle apply also to the institution of administrative justice. These include, in particular, the transparency of the dispute settlement procedure, the opportunity to be heard and the availability of adequate remedies.

Thus, in a modern democratic state, the system of administrative justice is, on the one hand, an essential component of proper public administration and, on the other, a key component of the justice system.

Among the main characteristics of administrative justice, foreign authors also include the possibility of its implementation exclusively within the framework and with the help of appropriate specialized institutions.

Since the existence of administrative justice is a fundamental requirement for a society based on the rule of law, the state and its authorities must act within the limits of certain and limited powers of authority.

Administrative justice provides for the possibility of obtaining protection by private individuals in the event that their rights, freedoms and legitimate interests are negatively affected by public administration bodies in connection with the performance of their duties illegally or in an improper manner. Such legal protection by itself provides for the possibility of initiating administrative proceedings before the relevant court or tribunal.

The main features of administrative justice are the mandatory consideration of the interests of a wide range of people affected by administrative decisions taken, as well as society as a whole, the effectiveness and timeliness of decision-making, as well as its accessibility and acceptability to those seeking protection.

The implementation of the principle of availability of administrative justice is closely linked to the right to a fair trial, enshrined in the basic international human rights instruments, in particular the Council of

[10] Фулей Т. І. Сучасні загальнолюдські принципи права та проблеми їх впровадження в Україні : автореф. дис. ... канд. юрид. наук: 12.00.01. К., 2003. 18 с.; Хаманева Н. Ю. Административная юстиция и административно-правовые отношения: теоретические проблемы. *Административные правоотношения: вопросы теории и практики.* 2009. № 1. С. 49.

Europe's Convention for the Protection of Human Rights and Fundamental Freedoms (Rome, 04.11.1950).

At the same time, special attention is paid to Art. 6 of the said Convention (the right to a fair trial), which includes the following provisions:

– Everyone in the event of a dispute over his civil rights and obligations or in establishing the validity of any criminal charge has the right to a fair and public hearing of the case within a reasonable time by an independent and impartial tribunal established by law. A judgment is pronounced publicly, but the press and the public may not be allowed to attend court hearings throughout the whole or part of a proceeding on grounds of morality, public order or national security in a democratic society, or when the interests of minors are required or to protect the private life of the parties, or (to the extent that, in the opinion of the court, it is strictly necessary) in special circumstances, when publicity would violate the interests of justice;

– Everyone charged with a crime is considered innocent until his or her guilt is established in a lawful manner;

– Everyone accused of committing a criminal offense has the right:

a) be immediately and fully informed in a language understandable to him about the nature and cause of the prosecution against him;

b) have enough time and opportunity to prepare their defense;

c) To defend himself or herself, or through a chosen defense counsel, or, in the event of insufficient funds to pay for a defense counsel, to use the services of a lawyer appointed by him free of charge, when required by the interests of justice;

d) interrogate witnesses who testify against him or have the right to have these witnesses interrogated and have the right to challenge and question witnesses who testify in his favor under the same conditions as witnesses against him;

e) to use the translator's free assistance if he does not understand the language used in court or does not speak the language[11].

The right to a fair trial also relates to the right to use effective remedies, in turn, also provided for in international human rights instruments, since it provides for the establishment of appropriate

[11] Adler M. A. Socio-legal approach to administrative justice. *Law and policy.* 2003. № 25. P. 323. Australian institute of administrative law annual conference. P. 15–16.

judicial and administrative mechanisms to deal with complaints in accordance with the requirements of national law.

In the foreign legal doctrine there is a unique position that the tasks of the system of administrative justice should include ensuring the adoption by the public authorities of appropriate (legitimate, justified and fair decisions, ensuring the functioning of harm compensation mechanisms in situations where such bodies make incorrect decisions or behave incorrectly as well as reducing the likelihood of making such false decisions. It should be noted that the system of administrative justice should be ruined, first of all, to meet the needs of its users.

Mechanisms of administrative justice are defined as legal procedures that ensure the implementation of the principle of justice in the form of restoration of violated rights or providing compensation when making illegal decisions by public authorities[12].

2. Principles and Models of Administrative Justice

Administrative justice must be ensured in accordance with the principles that society considers to be fair and legitimate in certain historical contexts.

Let's illustrate, for example, the principles of administrative justice that the Council of Administrative Tribunals of Canada established as the basis for ensuring proper public administration in this area and the effective functioning of the system of administrative justice bodies:

– independence of the administrative justice bodies in matters of management and decision-making;

– impartiality and freedom of the administrative justice bodies from any outside influence or interference;

– prevention of conflict of interests in the process of functioning of administrative justice bodies;

– high level of qualification and professionalism of judges and other employees of administrative justice bodies;

– dignity, respect, courtesy;

– accessibility of administrative justice, including financial, intelligibility and correspondence to the capabilities and needs of its users;

[12] Administrative justice in Scotland – the way forward : A Summary of the final report of the administrative justice steering group. *Consumer Focus Scotland*. 2009. P. 7.

– transparency and accountability;

– implementation of administrative justice on the principles of natural law and justice;

– -prompt consideration of disputes and decisions;
- availability of opportunities for informal peaceful settlement of disputes;

– minimizing risks for process participants who do not have professional representatives;

– ensuring the uniformity of law enforcement practice[13].

In our view, these principles are universal and can be applied to any system of administrative justice.

Interestingly in foreign countries there is also a conceptual approach to questions about the models of administrative justice and the concept of its understanding. In particular, if we talk about real models of administrative justice, which are implemented in practice, then, first of all, it is necessary to turn to the experience of European states.

As for administrative justice in European countries, foreign researchers often distinguish three main models:

– English, in which the powers of the public authorities within the administrative justice system are part of the functions of courts of general jurisdiction, and at the same time there is a significant number of different quasi-judicial bodies dealing with such disputes;

– French, which provides for the existence and functioning of a multilevel system of independent administrative courts;

– German, which also has a multi-level system of special administrative courts, but the control over their activities is much more rigorous and more detailed than in France.

Almost all other European states, despite the cultural, political and legal differences, have implemented the above three models of administrative justice [14].

G. Marc referred to earlier, points out that, depending on the status of the highest judicial instance in administrative cases, three models can be distinguished. There are also systems of mixed nature. The general

[13] Discussion paper reform of civil and administrative justice. URL: http://www.justice.qld.gov. P. 7.; Fenton H. N. How administrative justice and security are related. URL: http://parlamericas. P. 1–4.

[14] Fix-Zamudio H. Concepto y contenido de la justicia administrativa. URL: http://biblio.juridicas.unam.mx/libros/4/1624/9.pdf. P. 5.

property of different models is that they guarantee the independence of the judiciary.

The first model is the United Supreme Court. Such a model is the most ancient since its emergence. It originates from the history of English law. Within such a system, in particular in the UK, there is a more pronounced differentiation between judicial administrative authorities. This model operates in most states, the judiciary of which is based on common law, as well as in many countries where there is an independent notion of administrative law (Spain, most Latin American countries).

The second model is the State Council. Such an administrative justice body is the successor to the Roman Princeps Council. In its modern form, the State Council appeared in France with the adoption of the Republican Constitution VIII of 1799. It represents a body that brings together the functions of an advisory council in the executive and higher administrative courts. The State Council operates, in particular, in the Netherlands, Belgium, Italy, Greece, Turkey, Colombia. The existence of such a system has been challenged several times by the European Court of Human Rights, but the court has confirmed its legitimacy.

The third model is the Supreme Administrative Court. It means an administrative court, not linked organisationally with civil courts or with the executive. Such a court was first established in Austria at the end of the XIX century. Today, such courts are included in the judicial system of some countries. Fourth – a mixed system In mixed systems, the first instance dealing with administrative disputes is ordinary courts of general jurisdiction, and the next instance is the specialized administrative court (the Netherlands, the Czech Republic). In some countries, on the contrary, there are administrative courts of first instance whose decisions can be appealed to a higher court of general jurisdiction (Australia, Switzerland)[15].

Speaking about European models of administrative justice, one can not turn to this institution in the European Union. The legislation of the European Union does not contain detailed norms (both material and procedural) concerning administrative justice. For the relevant authorities, only the general provisions applicable to the functioning of the judicial system as a whole are applicable. That is, the main issue of

[15] Соловьева А. К. Административная юстиция в России: проблемы теории и практики : автореф. дис. … канд. юрид. наук. СПб., 1999. С. 10.

the implementation of administrative justice is the responsibility of the states that are members of the European Union.

In many European countries, administrative justice (or administrative justice) is a prevailing institution (for example, France, Germany, Spain, Switzerland); active use of administrative justice opportunities in developing countries; In many states, discussions are underway, the subject of which is the formation of national institutes of administrative justice. In countries with a traditionally high level of legal regulation, attention to administrative justice is so significant that, even on formal grounds, it is a constitutional justice contender. So, in particular, in special research, constitutional justice is analyzed only after administrative justice.

Significant interest for lawyers is the organization of administrative justice of the French Republic. Firstly, the French model was recognized by classical lawyers, as well as that which had a significant impact on the development of the relevant legal institutions of a number of European states. Some scholars identify it as an independent model of organization of administrative justice (along with German and Anglo-Saxon). Secondly, the existence in France of the Code of Administrative Justice as a basic codified normative legal act with a sufficiently successful conceptual design and the existence of substantial law-making practice is essential.

An important role in the formation of the institute of administrative justice in France played the principle of the division of power, developed by Montesquieu. Proceeding from this theory, state officials came to the conclusion that general courts, acting as organs of a completely outsider administration, should not interfere in its activities. Today administrative justice of France is an independent branch of justice, separated from the system of courts of general jurisdiction and executive authorities. Its essence lies in the so-called French concept of separation of powers, which prohibits courts of general jurisdiction to interfere, except in cases provided for by law, in the activities of the executive. As a result, the double judicial system – the system of courts of general jurisdiction, headed by the French Court of Cassation and the system of administrative courts, headed by the State Council of France.

Administrative justice in France is different and specific, reflecting the duality of the judicial system in the country:

– in France there are two types of courts – general and administrative, with the delimitation of jurisdiction between them

sometimes causes difficulties, that is, there is a problem: in which court to sue the lawsuit. For its solution, in 1848, the Court on Disputes on Jurisdiction was established;

– by virtue of the principle of separation of powers, the activity of the administration is regulated mainly by the norms of administrative law. At the same time, only administrative courts had the right to consider cases, one of the parties in which the administration acted. On the other hand, administrative justice has so far been integrated into the administration itself and inextricably linked with it. This position is called by scientists as a kind of compromise between political power and administration.

3. Concepts of Administrative Justice

As far as the concepts of administrative justice are concerned, there is also no single approach in this area.

Some scholars, such as J. Marshau, distinguish the following concepts of administrative justice:

– a model of bureaucratic rationality, in which the main attention is paid to the efficiency, accuracy of the functioning of the administrative justice system, as well as the effectiveness of the corresponding costs;

– a professional model that provides the most qualified provision of services to users of the system of administrative justice and to meet the needs of individuals;

– a model of moral judgment, based on traditional representations on the content and the adoption of court decisions (characteristic of countries with the Anglo-Saxon system of law)[16]. From the point of view of this model, administrative justice, its main objective is to ensure the right to social welfare.

Another approach to the classification considered, proposed by M. Edler, includes the following theoretical models of administrative justice:

– management – a model within which public authorities are empowered to achieve certain standards of service for persons applying

[16] French R. Administrative justice in Australian administrative law. *Administrative justice – the core and the fringe* : Papers presented at the 1999 National administrative law forum. URL: http://150.203.86.5/aial/Publications/webdocuments. 2000. P. 12.

to the administrative justice system, as well as the freedom to identify ways to achieve such standards;

– consumerism – a model in which administrative justice is considered as a certain administrative process in which a citizen is involved as a consumer of public services;

– a market model in which administrative justice is identified with a system that obeys the laws of the market in which a citizen acting as a consumer has the opportunity to choose another service provider if he is not satisfied with the previous one[17].

S. Halliday considers such concepts of administrative justice as hierarchical, egalitarian, individualistic and fatalistic. At the same time, he considers administrative justice in the broad sense of decision-making by public authorities as a whole and classifies it depending on the degree of involvement of citizens in the process of making such decisions.

In the hierarchical concept of administrative justice, essential importance is attached to power and experience, and the state acts on behalf of the entire society due to the high trust in it; while officials exercise their powers in order to fulfill public interests.

The egalitarian concept of administrative justice implies decision-making by consensus between public authorities and the public in which citizens and officials are equal partners.

The individualistic concept of administrative justice implies, as well as the egalitarian concept, the achievement of consensus, but not between the state and society, but between the state and individual individuals. In the framework of the individualistic concept of administrative justice, the essential importance is given, first of all, to the satisfaction of consumers' demand for services within the framework of administrative justice.

The fatalistic concept of administrative justice involves consideration of the decision-making process by public authorities as a sort of "lottery", which is not connected with any laws with the relations of society and the state[18].

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[17] French R. Administrative justice – words in search of meaning. Australian institute of administrative law annual conference. P. 15–16.

[18] Convention for the protection of human rights and fundamental freedoms as amended by protocols № 11 and № 14, Rome, 4 November 1950. URL: http://ajtc.justice.gov.uk/docs/principles_web.pdf.

In addition, we note that the domestic legal science in no way left the study of the problem discussed in this section.

Thus, for example, A.B. Zelentsov distinguishes four main approaches to the understanding of administrative justice. The first approach, which is extremely broad, proceeds from the fact that administrative justice is a set of institutions of different legal nature, which ensure the activities of public administration in the framework established by law. And in this sense, administrative justice is understood as the use of different forms of control:

- parliamentary;
- administrative;
- jurisdictional.

The second approach is to understand administrative justice as part of the judicial system, as a purely judicial activity. In this aspect, general courts, chambers in general courts, as well as specialized administrative courts are considered as subjects of administrative jurisdiction.

The third approach is the administrative justice "stricto sensu" (in the "narrow" sense). According to him, administrative justice is the activity of specialized administrative tribunals, independent bodies, which decide exclusively the issue of public law, that is, it is the courts of public law.

The fourth approach is the Anglo-Saxon, which considers administrative justice only as a pre-judicial activity of quasi-judicial institutions, which resolve administrative disputes in extrajudicial order[19]. N. Y. Khamaneva, in turn, emphasizes that administrative justice is a special judicial procedure for challenging acts of public administration related to the protection of subjective public rights and the maintenance of the rule of law in the field of public administration. This type of justice should be regarded as a legal (judicial) form of resolution of conflicts that arise in connection with the legal assessment of the legality of acts and actions of a public authority[20].According to M.A. Lapin, administrative justice is, along with administrative

[19] Creyke R., McMillan J. Administrative Justice – the concept emerges. *Administrative justice – the core and the fringe* : Papers presented at the 1999 National Administrative Law Forum. Australian institute of administrative law inc., 2000. P. 91–92.

[20] Mashaw J. Bureaucratic justice: managing social security disability claims. Yale university press, 1983. Australian institute of administrative law annual conference. URL: http://www.hcourt.gov.au/assets/publications/speeches. P. 49.

procedures and administrative jurisdiction, one of the components of the administrative process. In this case, administrative justice is necessary for the consideration of legal disputes arising from administrative and administrative-procedural legal relations, courts (possibly quasi-judicial bodies) within the framework of conducting in each case judicial administrative and jurisdictional process[21].

V.V. Ershov claims that in the world several basic administrative justice systems and a lot of their modifications were formed. Studying the experience of functioning of the administrative justice bodies in foreign countries will help to identify the best approaches to the formation of their own model of administrative justice, the implementation of which the main role played by the judicial system[22].

CONCLUSIONS

Summing up the above, we came to the conclusion that:

– the phenomenon of "administrative justice" has no unambiguous interpretation both in domestic and in foreign legal literature, this term is interpreted differently, therefore, in different states there are its various modifications, oriented to a specific national legal system. But, as the research showed, the existing types of administrative justice in the world are united by the fact that this is a form of control over the observance of the rule of law in the field of public administration;

– in a modern democratic state, the system of administrative justice is, on the one hand, an essential component of proper public administration, and on the other hand, a key component of the justice system;

– the system of administrative justice exists, first of all, in order to facilitate the resolution of disputes between individuals and public authorities, as well as control over the various types of decisions taken by these authorities;

– from the organizational and formal (procedural) side, administrative justice is carried out in two main forms (in the form of administrative legal proceedings (judicial administrative process) and in the form of a quasi-judicial administrative process of jurisdiction;

[21] Principles for administrative justice. Administrative justice and tribunals council. URL: http://ajtc.justice.gov.uk/docs/principles_web.pdf. P. 35-38.

[22] Rhinow R., Roller H., Kiss C. Off entliches Prozessrecht und Justizverfassungsrecht des Bundes. URL: https://www.ncjrs.gov/pdffiles/tcps.pdf.

– administrative justice is the most common manifestation of the rule of law principle, as well as one of the effective ways of realizing basic human rights and freedoms;

– administrative justice in foreign countries – this is a judicial procedure, which is carried out by the judicial body, which makes decisions on complaints about acts taken by administrative bodies or on the actions of administrative bodies, with the fact that such decisions are made on the basis of material and procedural rules, in whole or in part different from the norms commonly used by courts in resolving disputes between individuals.

It is not excluded that separate disputes, which appear to involve the administrative authorities, are entirely in the field of general law. It is the most common manifestation of the rule of law, as well as one of the most effective ways of realizing basic human rights and freedoms;

– one of the key features of the system of administrative justice abroad is the fact that it simultaneously performs both functions of the judiciary and executive;

– the mechanisms of administrative justice apply to administrative decisions taken by various state bodies and other entities possessing public authority;

– in the foreign legal doctrine there is a unique position that the tasks of the system of administrative justice should include ensuring the adoption by the public authorities of appropriate (legitimate, reasonable and fair decisions, ensuring the functioning of the mechanisms of compensation in situations in which such bodies take the wrong solutions or incorrectly deal with private individuals, as well as reducing the likelihood of making such false decisions in the future.

SUMMARY

The article analyzes and generalizes the main doctrinal approaches of lawyers concerning the definition of the nature and concept of administrative justice in foreign legal law; the main tasks, features, mechanisms, models and concepts of administrative justice are determined.

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Information about authors:
Lehka O. V.
Doctor of the Law, Associate Professor,
Head of Department of Criminal-law Disciplines,
Dniprovskii University of the Humanities
Szewczak Marcin
doctor habilitowany nauk prawnych, adiunkt Kat. Prawa Administracyjnego i Gospodarczego Wydziału Prawa, Prawa Kanonicznego i Administracji, Katolicki Uniwersytet Lubelski Jana Pawła II (Rzeczpospolita Polska)

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SOME ISSUES OF THE STATE BORDER GUARD SERVICE OF UKRAINE AND THE STATE FISCAL SERVICE OF UKRAINE COOPERATION IN THE COUNTERACTION TO THE TRANSPORTATION OF GOODS ACROSS THE CUSTOMS BORDER OF UKRAINE CONCEALED FROM CUSTOMS CONTROL

Lipynskyi V. V., Yarmysh O. N.

INTRODUCTION

Violations of customs rules related to the transportation of goods across the customs border of Ukraine concealed from customs supervision are characterized by a high degree of organization, technical support, regional and international relations. Offenders are increasingly using methods that make export – import operations look legitimate, but also harm the state budget. Effective counteraction to customs offenses, in particular counteraction to the transportation of goods across the customs border of Ukraine concealed from customs supervision is one of the important functions of Ukrainian customs.

The systematic analysis of foreign economic operations and the determination of their expediency, control of the routes of goods and vehicles, and the strengthening of control over the implementation of foreign economic operations with some highly liquid goods on a permanent basis is carried out by the State Fiscal Service of Ukraine.

According to the results of the analysis of the detected attempts of illegal movement of goods and minimization of taxes during their import, a systemic problem has been identified related to the presence of goods in the territory of Ukraine, vehicles whose customs clearance was not carried out, therefore the state budget has not received proper customs payments in full. One of the reasons for such a situation on the domestic market of imported goods is using the gaps in the current legislation and the committing of illegal actions aimed at the non-declaring of goods and vehicles by unscrupulous subjects of foreign economic activity.

Customs cooperate with law enforcement agencies in carrying out their assigned tasks. During the customs offense detection, as well as the

identification of property without or with unknown owner, customs offices cooperate with state border guard departments.

Effective interaction of law enforcement and control bodies, in particular the State Border Service of Ukraine with the customs of the State Fiscal Service of Ukraine (hereinafter referred to as – SFS of Ukraine) in case of customs offense detection, is the key to effective protection of the economic interests of the country.

It should be noted that according to The Resolution of the Cabinet of Ministers of Ukraine of 18 December 2018 No1200 'On the Establishment of the State Tax Service of Ukraine and State Customs Service of Ukraine' the SFS of Ukraine is reorganized by dividing it into two services: the State Tax Service of Ukraine and the State Customs Service of Ukraine; newly created services are central executive authorities responsible for formulating and implementing the state tax and customs policy (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 assignees of the rights and responsibilities of the reorganized SFS of Ukraine[1]. The Cabinet of Ministers of Ukraine established The Resolution of 6 March 2019 № 227 'On Approval of Provisions of the State Tax Service of Ukraine and the State Customs Service of Ukraine'.

1. Legal Aspects of Counteraction to the Transportation of Goods Across the Customs Border of Ukraine Concealed From Customs Control

During 12 months of 2018, the customs of the SFS of Ukraine detected 48.9 thousand violations of customs rules with the value of offense objects amounting to UAH 3.4 billion.

Compared to the corresponding period of the previous year, the number of drawn up reports on violation of customs rules increased by 51%, and the value of the offense objects was doubled.

[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).

In 5.4 thousand cases of customs offenses, goods valued at UAH 914 million were temporarily seized. The amount of temporarily seized goods increased by 24 %.

The most common are cases of illegal industrial goods transportation across the customs border. During this period, goods valued at UAH 568.6 million were seized for such violations. Vehicles were withdrawn in the amount of UAH 149.9 million, foodstuffs – UAH 119.3 million, currencies – UAH 76 million.

There are some resonant examples of customs violations:

– three trucks with semi-trailers platform used for transportation of seismic signals control equipment from Spain to local companies in the amount of UAH 15.31 million arrived at Tysa checkpoint of Trans Carpathian Custom service of the SFS of Ukraine.

During the customs control double packages of transport documentation were detected. Based on the original documents with the marks of the Hungarian customs authorities, it was established that the goods were moved to Ukraine on the basis of documents containing false information about the shipper, consignee and customs value. These goods were temporarily seized.

The authorities of Trans Carpathian Custom service of the SFS of Ukraine has drawn up 3 reports on violation of customs rules in accordance with Article 483 of the Customs Code of Ukraine (hereinafter referred to as – CCU) (‘Transportation or actions aimed at the transportation of goods across the customs border of Ukraine concealed from customs control’).

– the director of the local company declared some fuel pellets intended to export to Great Britain at the Zaporizhzhia-Central checkpoint of Zaporizhzhia Custom service of the SFS of Ukraine.

During the customs inspection and unpacking of plastic bags together with the declared goods 1 217,6 kg of amber were revealed. These goods were temporarily seized. The authorities of Zaporizhzhia Custom service of the SFS of Ukraine drawn up the report on violation of customs rules in accordance with Article 483 of the CCU.

– the fact of the export from Bila Tserkva to the Slovakia of ‘waste products containing zinc, lead, iron, aluminum’ in the amount of UAH 65.59 million was established. The use of counterfeit shipping documents was detected during customs clearance of goods. 44 customs reports on violation of customs rules in accordance with Article 483 of

the CCU were drawn up by the Kyiv Custom service of the SFS of Ukraine.

– almost 15.5 million of Russian rubles were found under the plastic lining of the right threshold at the Goptivka checkpoint of the Kharkiv Custom service of the SFS of Ukraine during customs control in a HYUNDAIACCENT car, which was traveling from Ukraine to Russia under the control of a Ukrainian citizen. According to Article 511 of the CCU these banknotes were temporarily seized. The authorities of Kharkiv Custom service of the SFS of Ukraine drawn up the report on violation of customs rules.

39.2 thousand cases of violation of customs rules were considered by the Custom service of the SFS, that is 81% more than for the same period in 2017. 6.2 thousand cases of violation of customs rules in the amount of UAH 2.5 billion were submitted to the court. These customs offenses resulted in the fines and confiscation in the amount of UAH 483.8 million.

Cooperation and information exchange with the competent authorities of foreign countries within the framework of mutual administrative assistance, which ensures the prevention and detection of illegal export-import operations and the fact of non-payment of compulsory customs charges to the budget, is one of the most effective methods of counteracting the customs offenses.

As a result of such international cooperation, over 712 cases of violation of customs rules in the amount of UAH 686.5 million were initiated during the 12 months of 2018. Moreover, non-payment of over UAH 21.2 million customs charges was established[2].

During January-March 2019, the customs of the SFS of Ukraine detected 9.3 thousand customs offenses with the value of offense objects amounting to UAH 611 million. Compared to the corresponding period of the previous year, the value of the offense objects increased by 30.2%.

In 1.4 thousand cases of violation of customs rules, the offense objects in the amount of UAH 162.8 million were temporarily seized. The average value of the offense objects was UAH 117.5 thousand.

[2] 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).

The most common are cases of illegal food products transportation across the customs border. During this period, goods valued at UAH 102.2 million were seized for such violations. Industrial goods were seized in the amount of UAH 32.9 million, vehicles – UAH 11.3 million, currencies – UAH 16.7 million.

Almost 8,000 cases of violation of customs rules were handled directly by the customs of the State Fiscal Service. Administrative penalties in the amount of UAH 276.4 million were applied. The state budget collected UAH 31.8 million, which is 22.3% more than in January-March 2018.

Almost 1.6 thousand cases of violation of customs rules in the amount of UAH 965.5 million were submitted to court. As a result of the case consideration, the court decided to apply fines in the amount of UAH 127.3 million, which is 2.7 times more than the same period in the previous year, and confiscation in the amount of UAH 136.7 million that is 2.4 times higher than in January-March 2018.

Cooperation and information exchange with the competent authorities of foreign countries within the framework of mutual administrative assistance, which ensures the prevention and detection of illegal export-import operations and the fact of non-payment of compulsory customs charges to the budget, is one of the most effective methods of counteracting the customs offenses.

As a result of such international cooperation, over 305 cases of violation of customs rules in the amount of UAH 307.5 million were initiated during the 3 months of 2019. Moreover, non-payment of over UAH 16.1 million customs charges was established[3].

According to the paragraph 2, Article 544, of the CCU, prevention and counteraction to smuggling, combating violations of customs rules throughout the customs territory of Ukraine is on the most important functions of the customs service authorities[4]. Persons committing smuggling and violating customs rules encroach on the transportation of goods, vehicles across the customs border of Ukraine in the order

[3] Інформація щодо стану боротьби з митними правопорушеннями упродовж січня-березня 2019 року Державною фіскальною службою України. Київ, 2019. URL: http://sfs.gov.ua/media-tsentr/novini/375168.html (дата звернення: 15.04.2019).

[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).

established by the legislation, causing damage to the economy of the state, its cultural heritage, health of the population and public safety, contribute to the expansion of the economy shadow sector.

According to the paragraph 1, Article 483, of the CCU, movement or actions aimed at the movement of goods across the customs border of Ukraine concealed from customs control, i.e. using specific-purpose storage (hide) and other means or ways that hinder detection of such goods or by giving them the appearance of other goods, or providing the customs authorities as a ground for moving goods with forged documents or illegally obtained documents, or those containing false information regarding the name of the goods, their weight (including allowable losses with proper storage and transportation conditions) or quantity, country of origin, sender and/or recipient, quantity of cargo items, their marking and numbers, false particulars needed to identify the code of goods code under the UCG FEA and their customs value, shall entail a fine amounting to 100 per cent of the cost of goods, which are direct objects of customs offenses, with confiscation of such goods, as well as goods and means of transport with specific-purpose storage (hide) used for carriage of goods, which are direct objects of customs offenses, across the customs border of Ukraine[5].

The actions specified in paragraph 1 of this Article committed by a person held liable during a year for an offense set out in this Article or Article 482 of the CCU shall entail a fine amounting to 200 per cent of the cost of goods, which are direct objects of customs offenses, with confiscation of such goods, as well as goods and means of transport with specific-purpose storage (hide) used for carriage of goods, which are direct objects of customs offenses, across the customs border Ukraine.

The object of this offense is the procedure established by national legislation for the movement of goods and vehicles across the customs border of Ukraine.

Objective side means actions aimed at moving goods and vehicles across the customs border of Ukraine. Action is the active behavior (act) of a person which reflects externally his or her will and is aimed at causing certain negative consequences.

[5] Про судову практику у справах про контрабанду та порушення митних правил / Постанова Пленуму Верховоного Суду України від 03 червня 2005 р. № 8. URL: https://zakon.rada.gov.ua/go/v0008700-05 (дата звернення: 08.08.2019).

According to the paragraph 57, Article 4, of the CCU, ‘goods’ mean any moveable items, including those placed by the law under the immovable item arrangement (other than means of transport for commercial use), currency valuables, cultural valuables as well as electricity transmitted by power supply lines.

Means of transport refer to any means of aviation, water, rail, road, pipelines and transmission lines.

Movement of goods across the customs border of Ukraine concealed from customs control means moving them across the customs border:

- using specific-purpose storage or other means that make it difficult to detect them;
- by giving them the appearance of other goods;
- providing the customs authorities as a ground for moving goods with fake documents or illegally obtained documents, or those containing false information, or those that are a ground for moving other objects.

According to the paragraph 53, Article 4, of the CCU, specific-purpose storage (hide) means a storage designed for illegal movement of goods across the customs border of Ukraine as well as intentionally modified engineering structures or items that were dismantled, mounted, etc. to be fit for such purpose.

Other ways that hinder detection of goods are, in particular, hiding them in suitcases, clothing, shoes, hats, personal effects, on the body or in the human or animal body.

Giving some objects the appearance of others is a change in their appearance (shape and condition, packaging, labels, etc.).

It should be taken into account that without documents defined by legal acts, such as declaration of customs value, contract, consignment, license, quota, shipping documents, permissions of relevant public authorities, etc. is impossible to obtain customs clearance for the movement of any goods.

Forged documents should be considered as fake and authentic ones, with false information or some changes that distort its content, as well as documents with fake fingerprints, stamps, signatures, etc.

Illegally obtained means documents obtained by a person without any legal grounds or in violation of the established procedure, in other

words, documents issued on the basis of deliberately false information or forged documents.

Documents containing false information have untruthful information regarding the nature of the agreement, the name of goods, their weight or quantity, sender and/or recipient, country of origin or destination. Invalid documents are documents that have lost their validity (for example, a license which has expired).

A qualifying feature is the repeated violation of customs rules on the grounds of Article 482 and / or 483 of the CCU.

Such documents as environmental control services permits, certificates of origin, phytosanitary and veterinary certificates, certificates of conformity, bank documents, certificates of currency values declaration, incomes and property belonging to a resident of Ukraine and kept outside and some other, although necessary for customs clearance, are not, in fact, the basis for moving goods or other items across the customs border.

Also, while delineating offenses according to Article 472 and Article 483 of the CCU, it is necessary to highlight, that someone's actions can be recognized as failure to declare goods, means of transport for commercial use only when the offender did not intend to hide the goods from customs control.

The subject of the offense is a a sane person who has reached the age of responsibility and the enterprise official. Enterprise officials are managers and other employees of enterprises (residents and non-residents) who, due to their permanent or temporarily fulfilling duties, are responsible for compliance with the legal requirements established by the CCU, laws and other legislative acts of Ukraine, as well as international agreements.

The subjective side of the offense is characterized by an intent form of guilt. The motives and purpose of the offense as well as negative consequences are irrelevant for the classification of the actions as offence.

Carriers are responsible for the movement or actions aimed at the movement of goods across the customs border of Ukraine concealed from customs control providing the customs authorities as a ground for moving goods with documents containing false information only if this information relates to the amount of cargo places, their marking and numbers, and no steps have been taken by the carriers to verify the

accuracy of this information or, if such verification is not possible, no international entry has been made to the consignment note (CMR).

2. Some Issues of the State Border Guard Service of Ukraine and the State Fiscal Service of Ukraine Cooperation in the Detection of Customs Offenses

In accordance with the requirements of Article 558 of the CCU in achieving the objectives set for the customs authorities they shall interact with the law enforcement agencies in the manner prescribed by the law.

If customs supervision and other measures undertaken by the customs authority under the CCU and other legislative acts of Ukraine detect any indications of offense, for which investigation the customs authorities are not responsible, the revenue and duties authorities shall refer it to the competent law enforcement agency.

Law enforcement agencies shall notify the customs authorities of customs offenses or smuggling detected.

The customs authorities are obliged to transmit to the State Border Guard Service of Ukraine and to the National Police information about vehicles and persons, that have violated the terms of temporary importation of vehicles and / or terms of moving vehicles under the transit procedure, if these persons, who are brought to administrative liability for such offense, were not present during the protocol drawing up.

To regulate the interaction procedure of the state border guard authorities with customs and control bodies during the operational activities, the Ministry of Internal Affairs of Ukraine and the Ministry of Finance of Ukraine issued 'The Order of the State Border Guard Service of Ukraine and the State Fiscal Service of Ukraine cooperation in the detection of customs offenses, as well as the identification of property that has unknown or no owner' of 18 October 2018 № 849/828 . This order defines the mechanism of the state border protection authorities and customs authorities interaction in the detection of customs offenses, as well as with the main departments of the State Fiscal Service of Ukraine in the regions and in Kyiv[6].

[6] Ліпинський В.В. Щодо деяких питань взаємодії органів Державної фіскальної служби України та Державної прикордонної служби України під час виявлення ознак порушень митних правил. *Правова позиція*. 2019. № 2 (23). С. 73.

An official of the State Border Guard Service during the operational and off-duty activity outside the checkpoint have to take such measures towards customs rules offender:

– takes measures to stop the offense;

– immediately (at the earliest opportunity) informs the relevant management center of the service about the detention of persons and objects, indicating the date, time and circumstances of the offense;

– draws up an act of detection;

– ensures the preservation of offense objects, their packaging, the traces available and takes measures to prevent access to these objects and change of their location, avoids leaving fingerprints and other items related to this offense;

– transfers to the operational units the objects of the offense, the accompanying technical and registration document, the ignition keys of the vehicle, as well as the act of detection (with a transfer mark);

– in case of customs offense detection within the competence of the State Border Guard Service, draws up protocols and carries out registration of administrative offenses in accordance with the legislation of Ukraine;

– transmits documents and detained persons to the task force of State Border Guard Service officials[7].

The State Border Guard Service operational units after the immediate arrival at the place of the offense detection, but not later than three hours after the detection:

– receives from the State Border Guard Service officials, the objects of the offense, the accompanying technical and registration documents, the ignition keys of the vehicle, as well as the act of detection (with a mark of transmission and acceptance), as well as the detainees and administrative case files.

– checks the received documents for compliance with the current legislation requirements and carries out additional measures for the offenders and possible witnesses questioning (if necessary);

[7] Про затвердження Порядку взаємодії органів Державної прикордонної служби України та Державної фіскальної служби України під час виявлення ознак порушень митних правил, а також виявлення майна, яке не має власника або власник якого невідомий: наказ Міністерства внутрішніх справ України та Міністерства фінансів України від 18 жовтня 2018 р. №№ 849/828 / Міністерство внутрішніх справ України та Міністерство фінансів України. URL: http://zakon.rada.gov.ua/laws/show/z1290-18 (дата звернення: 04.04.2019).

– with the participation of State Border Guard Service officials, who found the offense, draws up a scheme of the place of the offense detection (showing the location of the detection; distance from the place of detection to the state border of Ukraine and the nearest settlements or roads; location of the border guard personnel; signs (shields), and in case of illegal crossing (attempt) of the state border of Ukraine – places of crossing);

– in the case of the offender detention in accordance with the procedure established by law for a term of up to three days, deliveres he/she to the temporary detention place;

– transfers the offense objects and the accompanying technical and registration documents , the ignition keys of the vehicle, which are seized by a customs officer.

If it is impossible for the operational unit to arrive at the offense detection place, the responsibility is held on the officials of the State Border Guard Service, who have found the offense.

Shift supervisor of the service management center of the State Border Guard Service:

– immediately reports to the Head of the State Border Guard Service and informs, but not later than 30 minutes from the moment of the time and circumstances of the offense detection, the customs office;u

– sends operational unit to the place of offense detection and registers the received information;

– specify the date and time of possible customs officer arrival at the place of offense detection;

– exchanges information on the progress of tasks fulfilling and changes in the situation with the senior of the task operational unit.

Head of the State Border Guard Service department shall organize and provide:

– operational unit arrival at the place of offense detection;

– detained persons delivery to the place of temporary detention;

– transfer (sending) not later than one day after the offense objects detection, all necessary copies of the materials related to the offense (reports, acts of detection, schemes etc.), to the customs office of the SFS of Ukraine;

– sending the act of identification and copies of the procedural document received from the customs officer of the SFS of Ukraine on the offense objects seizure to the information-analytical department of the State Border Guard Service.

The customs officer authorized to perform procedural actions and designated by the Head of the SFS of Ukraine, after receiving information on the detection of customs offense indicators:

– -arrives at the place of the offense detection no later than three hours after receiving the information about it, if it is detected outside the border crossing point of Ukraine, and within the border crossing point – immediately;

– seize the objects of the offense, the accompanying technical and registration documents, the ignition keys of the vehicle, constitutes the relevant procedural document and also carries out other necessary procedural actions;

– receives (if necessary) written explanations from State Border Guard officials who have detected signs of customs offense, other participants or witnesses of the offense.

The official of the the State Border Guard department in case of property without or with unknown owner detection during operational activity at a checkpoint across a state border, checkpoint of entry / exit, controlled border area:

– takes measures to preserve property;

– -immediately inform the appropriate service management center, indicating the time and circumstances of the property identifying;

– draws up an act of identification with a detailed description of the property, and ensures its further preservation until the arrival of the operational unit;

– transfers the property and the act of identification (with a transfer mark) to the operational unit.

The appropriate service management center immediately, but not later than 30 minutes after receiving the notification of the property identifying, reports to the Head of the State Border Guard department and inform SFS of Ukraine.

Head of the State Border Guard department organize and provide:

– operational unit arrival at the place of property identifying;

– transportation and storage of property;

– property delivery and transfer to the appropriate department of the SFS of Ukraine.

Operational unit after arrival at the place of property identifying:

– receives from the official of the of the the State Border Guard department the property and the act of identification (with the mark on the transfer and acceptance);

– delivers the property to the appropriate department of state border protection.

The head of the appropriate department of the SFS of Ukraine not later than the next day after the property transfert has to:

– make the decision on property transfer to storage taking into account its specificity;

– organize further work on property management in accordance with the current legislation.

The head of the appropriate department of the SFS of Ukraine receives the property on the day of its delivery, but not later than three hours from the moment of delivery.

The transfer of the property is formalized by the act of acceptance. A copy of the act of detection shall be attached to the act of acceptance.

On the basis of the above algorithms of the officials actions we agree with the opinion regarding the term 'interaction', that 'does not fully explain it (simultaneous work), because it does not show the connection of subsystems for a single purpose achievement.

We consider a more successful definition, which reflects and traces the purposefulness of this work or the unity of goals of all subsystems of the analyzed system, it is 'mutual'[8].

CONCLUSIONS

Based on the above, we can conclude that the situation with transportation of goods across the customs border of Ukraine concealed from customs control is difficult, since offenders are constantly improving ways of such movement, and also looking for new ones.

In order to improve the quality of counteracting the movement of goods across the customs border of Ukraine, with the exception of customs control, priority should be given to:

– strengthening the control over the authenticity of documents and information provided during the movement of goods, vehicles across the

[8] Карнаухов О.В. Особливості системи криміналістичного забезпечення. *Правова позиція*. 2017. № 1 (18). С. 131.

customs border of Ukraine and during their subsequent customs clearance;

– if there are reasonable doubts on the documents authenticity and information provided during the movement of goods across the customs border of Ukraine and at their subsequent customs clearance, sending requests to the customs and other authorities of foreign states;

– comparison of SFS of Ukraine statistics with the data of the customs service of the good's country of origin (consignee), quantity, value of goods exported from Ukraine and imported into it;

– effective and efficient interaction of the customs with law enforcement agencies.

In order to ensure the correct and unified legislation application in the mentioned area of SFS activity, it is necessary to initiate an appeal to the Supreme Court of Ukraine to summarize the judicial practice and to provide appropriate explanations for the practical use.

In addition, it should be noted, that the customs offices interact with the law enforcement agencies. During the customs offense detection, as well as the identification of property without or with unknown owner, customs offices cooperate with State Border Guard units.

If customs supervision and other measures undertaken by the customs authorities under the CCU and other legislative acts of Ukraine detect any indications of offense, for which investigation the customs authorities are not responsible, the customs authorities shall refer it to the competent law enforcement agency. Law enforcement agencies must notify the revenue and duties authorities of customs offenses or smuggling detected.

The issues of interaction between operative units of law enforcement agencies, authorized to smuggling counteraction, and customs offices, which are not authorized to carry out operative investigation activities, should recieve an appropriate legistalion framework[9].

In order to solve the problem of failure to declare goods, means of transport for commercial moved across the customs border of Ukraine, it is recommended to organize an exchange of information with the State

[9] Варава В.В. Запобігання та протидія втручанню в діяльність працівника правоохоронного органу з викриття кримінальних правопорушень у митній сфері. *Правова позиція*. 2018. № 2(21). С. 130.

Border Guard Service of Ukraine and customs administrations of foreign countries[10].

With the participation of the State Service of Ukraine for Transport Safety, the State Border Guard Service of Ukraine, SFS of Ukraine and the Ministry of Internal Affairs of Ukraine to create a single database for temporary registration of foreign cars in Ukraine[11].

SUMMARY

Persons committing smuggling and violating customs rules encroach on the transportation of goods, vehicles across the customs border of Ukraine in the order established by the legislation, causing damage to the economy of the state, its cultural heritage, health of the population and public safety, contribute to the expansion of the economy shadow sector.

Violations of customs rules related to the transportation of goods across the customs border of Ukraine concealed from customs supervision are characterized by a high degree of organization, technical support, regional and international relations. Offenders are increasingly using methods that make export – import operations look legitimate, but also harm the state budget. Effective counteraction to customs offenses, in particular counteraction to the transportation of goods across the customs border of Ukraine concealed from customs supervision is one of the important functions of Ukrainian customs service.

The exposed attempts of illegal movement of goods and minimization of the import taxes analysis revealed a systemic problem related to the presence in Ukraine of goods, vehicles, which customs clearance has not been carried out, as a result, the state budget did not receive the customs charge. One of the reasons of this problem in the domestic market of imported goods is the use of gaps in the current legislation and committing illegal actions aimed at not declaring goods and vehicles. The above indicates that effective interaction of law

[10] 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. 51.

[11] Легеза Є.О. Зарубіжний досвід митного оформлення, вартості та контролю транспортних засобів. *Сучасний стан та перспективи розвитку митних правовідносин в Україні : колективна монографія* / за заг. ред. Д.В. Приймаченка. Дніпро : Видавничий дім «Гельветика», 2018. С. 220.

enforcement and control bodies, in particular the State Border Service of Ukraine with the customs of the State Fiscal Service of Ukraine in case of customs offense detection, is the key to effective protection of the economic interests of the country.

Based on the above, the problematic issues of interaction between the State Fiscal Service of Ukraine and the State Border Guard Service of Ukraine during counteraction to the transportation of goods across the customs border of Ukraine concealed from customs supervision are considered and analyzed.

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Information about the authors:

Lipynskyi V. V.
Candidate of Law, Associate Professor,
Department of Administrative and Customs Law,
University of Customs and Finance

Yarmysh O. N.
Doctor of Law, Professor, Corresponding Member
of the National Academy of Legal Sciences of Ukraine,
President of the International Association of Historians of Law,
Senior Research Associate of the Legislation Institute
of the Verkhovna Rada of Ukraine

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IMPROVEMENT OF THE ADMINISTRATIVE AND LEGAL REGULATION OF ACTIVITIES OF THE STATE EXECUTIVE SERVICE IN UKRAINE

Makushev P. V., Dębiński Antoni

INTRODUCTION

Modern dynamic changes in domestic legislation testify to the global national processes of reforming the bodies of public administration. For the State Executive Service in Ukraine (hereinafter – SES) in Ukraine and government executives, the 2016 reform, which introduced a mixed system of enforcement, created a new legal framework for their functioning and set the need for adaptation to competition in the enforcement of decisions. The recent radical changes in the legal regulation of the functioning of the system of enforcement of decisions in Ukraine were conditioned by a multi-year demonstration of the ineffectiveness of SES's activities in Ukraine in this area. Domestic statistics over the past five years have witnessed the implementation of executive documents only in the range of 50 % to 65 %, and for the amounts to be recovered – from 18 % to 40 %. In 2016, this tendency has continued. Thus, out of 4 967 425 documents, which were executed by SES, for the total amount of 684 958 627 661 UAH. 848,714 were executed for the total amount of UAH 271,918,169,296, which was 18.1 % of the total number of executive documents and 39.69 % of the planned amounts. Such performance indicators are far behind the indicators of Western European countries. The situation with a low level of implementation of decisions has led to the formation of a negative image of state executives among the Ukrainian population. Thus, 43.6 % of the polled citizens noted that they do not have confidence in state executives. The current state of work conditions in the system of internal affairs agencies in Ukraine, the level of material security and social security of public executives also does not contribute to the popularity of this service. 57 % of the polled state executives were dissatisfied with their work, they indicated that they did not consider their profession prestigious.

Taking into account the aforementioned, in the context of the formation of an independent branch of executive power, the drafting of the Executive Code by the scientific community is an urgent need to formulate new, adapted to the conditions of a mixed system of implementation of decisions, the conceptual foundations of the SES in Ukraine, the basis of which should be the Concept of development of the SES.

1. Contemporary Concept of the Development of the State Executive Service in Ukraine

According to the Civil Service Reform Strategy and the service in local self-government bodies in Ukraine for the period up to 2017, the civil service in the SES has problems inherent in the civil service in general at this historic period, namely: prevention of corruption among civil servants; open competitive selection for all civil service positions; advancement in the service of civil servants taking into account professional competence and honest performance of their official duties; definition of requirements for civil service positions; a clear and transparent mechanism of responsibility of civil servants for violating the requirements of the legislation, non-fulfillment or improper performance of their duties; social protection of the state; improvement of the system of remuneration of civil servants; compliance of the system of State bodies with the functions that they perform; institutional capacity of the civil service and service in local self-government bodies; radical updating of the content of the personnel services of state bodies, strengthening their role in the management of the personnel of the relevant body; improvement of the system of training, retraining and advanced training of civil servants; establishing a close relationship of scientific research with the practical needs of state bodies and local self-government bodies; the prestige of the civil service.

In the opinion of the legislator, the activity of the SES in accordance with the Strategy for the reform of the judiciary, the judiciary and related legal institutes for the years 2015–2020 determines the existence of significant problems in the system of execution of court decisions, in particular: the extremely low proportion of actual enforcement of court decisions; absence of an effective system of motivation of state executors; systemic deficiencies in the interaction of state executives with other state and non-state institutions.

The surveyed SES employees in Ukraine identified the circumstances that most affected their dissatisfaction with the service (with no more than three answers): low wages and remuneration (67.9 %); ineffective legislation (47.4 %); a significant amount of documentation, bureaucracy (46.3 %); constant organizational changes (36.1 %); low level of public confidence (35.7 %); inadequate information provision of work (34.2 %); nervous overload (14,1 %); lack of career opportunities (9.1 %); poor system of retraining, training, training (8.4 %); bad relations with the management and colleagues (1.5 %), etc.

The state of social and legal protection of executive service officers nowadays in general does not ensure the attraction of worthy citizens to the service, not the desire of those already working to develop their own professional skills.

The results of the survey indicate a low level of social protection for state executives, lack of material incentives in their work. Under these conditions, it can be assumed that the units of the executive service are those who do not find themselves in civilian structures and are satisfied with the minimum of stability of the available official position, or those who have long linked their lives to the service and do not risk to change this attachment or tends to use a mercenary career. This is a crisis of social and legal protection of the personnel of the executive service. Today movement from it in the direction of increasing social protection of workers is necessary and relevant, it is directly related to the selection of citizens to work in the executive service. It is important that for the service of this component of the executive power of the state involved persons who are not important social and legal protection in themselves, but also the awareness of social fertility and the importance of this activity. Also the motivation of labor is an affirmative and relevant to the investigated civil service – the desire to realize itself in the career of a state executor.

The above-mentioned revolutionary changes have led to imbalances and unresolved issues in all areas of the SES. The reflection of such a situation in the field of regulation of SES affects its employees. So, the results of our survey reflect the pessimistic mood of the state executives regarding the results of the 2016 reform. So, if the reform of the implementation of a mixed system of decision-making in Ukraine was effective, the opinions shared almost equally: 43.1 % answered that it

would not be effective, 35.7 % shared the initiative of legislators and do not expect the effectiveness of such a reform, 21.2 % hesitated to answer. Similar tendencies are also observed during the study of the opinion of public executives on the effectiveness of implementing the institution of private executives: 46.1 % of respondents believe that the state of implementation of the decisions will not change, 17.9 % consider that they will deteriorate, 13 % consider that they will improve. The last question was answered by the citizens: 35.5 % of them believe that the implementation of the institution of a private executor will improve the state of execution of decisions, 33.1 % – that the situation will not change, 20.9 % consider that they will deteriorate, 10.5 % will hesitate answer. Compared to the answers of citizens and state executives to the question of the impact on the effectiveness of the implementation of decisions in Ukraine, the introduction of the institution of private performers is followed by a more positive mood, namely from citizens, which may be due to feelings of competition from state performers to private performers.

The introduction of a private enforcement institution that will exist along with Government enforcement and will significantly increase the prestige of the court enforcement without any state expense will be a positive step. However, it should be understood that the implementation of the private enforcement institution itself will not solve all the problems of enforcement proceedings. At the same time, the issues of material and organizational support of the activities of state executors should be addressed, while the increase of their responsibility, elimination of gaps in the current legislation, aimed at unconditional compliance with the provisions of the Constitution.

That is why, in our opinion, the reform of the modern executive system, including through the introduction of the institution of private litigants, is not only expedient but also vital. After all, the person who filed a lawsuit is aimed not only at obtaining a positive court decision, but also in real protection of his violated right or interest by implementing such a decision. That is, in fact, the purpose of the appeal to the court.

Nevertheless, it should be noted that the introduction of the private-sector institutions is rather complicated and requires careful decision-making and step-by-step in their implementation. At the initial stage of the activity of private organizations in executing court decisions is

considered by a legislator only in parallel with the existence of the current internal affairs bodies. However, given the tendency to give priority to the legal regulation of the activities of private performers in the content of the Law of Ukraine "On bodies and persons who enforce the enforcement of court decisions and decisions of other bodies" and the transfer of legal norms regulating the activity of internal affairs agencies into subordinate acts, we can speak about some discrimination of legal regulation of the activities of state executives compared with private performers. Therefore, we can predict that in the future everything will depend on a general analysis of the indicators of executed court decisions by private enforcement agencies and the SES. In the conditions of constant reduction of budget expenses for the maintenance of the state apparatus gradually, private executives may crowd out state executives from the enforcement system in Ukraine.

The state of chaotic placement of legal norms in subordinate acts regulating the activity of internal affairs agencies, the effect of regulations based on already obsolete laws, the absence of appropriate new analogues, the growth of legal incidents in the area of implementation of decisions is a temporary phenomenon that should be completed by the construction of a new balanced mixed system of execution of decisions with the definition of the place in it the SES. At the same time, such a state of imbalance in the system of legal regulation of the SES activities can last for a long time and not lead to an increase in the prestige of service in the SES and increase the performance of its work, if there is no clear plan for adjusting the system in this area. In order to streamline the legal norms governing the SES in Ukraine in the conditions of the destruction of the centralized model of the system and the establishment of a mixed decision-making system in Ukraine, we have developed the Concept for the development of the SES, which is designed for the period up to 2020.

We defined the following main problems of the conceptual content in the field of legal regulation of the Statute of the SES: 1) the absence of a normative definition of the concepts at the level of the law: the SES, SES body, Department of Internal Affairs of the Ministry of Justice of Ukraine, state executor, employee of the SES, the state serviceregime in the SES; 2) uncertainty in the legislation of the notion of the mechanism of execution of decisions, the system of execution of decisions, enforcement proceedings, the regime and mechanism of enforcement

proceedings, the executive process, the stage of enforcement proceedings and the stage of the executive process, subjects of the executive process, enforcement of decisions, executive affairs, executive action, etc.; 3) the lack of development of the principles of regulation of the interaction of the SES, public executives with private performers and their self-government bodies, public and private law subjects, as well as the principles of control over the activity of the SES.

In our opinion, the legal regulation of the activity of the SES has the following problems: 1) the lack of systematization of the relevant legal norms in one normative legal act; 2) the transfer of all legal norms regulating the administrative activity and administration of the system of the SES bodies in the by-laws; 3) the absence of the ethical code of the SES; 4) the absence of a disciplinary statute of the SES; 5) absence of the concept of information provision of the SES, the concept of informatization of the activity of the SES, a single normative legal act or a system of legal norms that would determine the basis of information provision for the activities of state enforcement agencies and the SES bodies; 6) the absence of provisions on the rules for the circulation of information with restricted access in the work of the SES bodies; 7) the absence of a provision on the procedure for the publication of public information about the activity of SES.

The purpose of the Concept for the development of theSES in Ukraine is to develop the SES as a system of public administration bodies with law enforcement functions, capable, in conjunction with other entities of public and private law, to ensure timely, complete and impartial enforcement of decisions enforced by law.

2. Areas of Increase of Efficiency of Organization of Activity of the State Executive Service

Areas of increasing the effectiveness of the organization of the SES are due to the disadvantages of organizational support for the activities of the SES bodies and areas identified by practical workers. So, to the question that the most troublesome in daily work for SES employees, they answered: the work “on statistics”– 39.2 %; a large number of indicators of activity – 29.8 %; lack of time for some tasks – 16.5 %; significant workload – 15.4 %; bad working conditions (conditions of premises, equipment) – 14.7 %; lack of operational stability (permanent organizational changes) – 11.9 %; the need to make a large number of

documents – 9.0 %; insufficient level of information exchange between employees of the SES departments – 8.6 %; incomprehensible service instructions – 6.9 %; the need to adhere to strict discipline – 4.3 %.

The employees of the SES in Ukraine, interviewed about the directions of their work, which require priority improvement, set priorities in the following way: increase of wages and remuneration of the state executor – 56 %; increase of interaction with other subjects – 46.5 %; provision of transport – 36.1 %; information and technical equipment and software of the workplace of state executors – 30.9 %; organization of access to databases – 28.7 %; introduction of social security measures for state executives – 28.3 %; unimpeded and uninterrupted use of the Internet – 24.4 %; provision of communication means – 20.9 %; introduction to the system of internal affairs the SES agencies in Ukraine of the power unit – 15.8 %; creation of a unit for psychological and legal security of SES employees in Ukraine – 11.6 %, etc.

One of the priority issues to be solved is to increase the material stimulation of SES employees. Another Decree of the President of Ukraine of July 22, 1998 "On Measures for the Implementation of the Concept of Administrative Reform in Ukraine" identified the importance of material incentives for public executives[1]. Thus, this document states that it is necessary to reform the system of remuneration of civil servants in order to ensure the competitiveness of the civil service in the labor market, to reduce the departmental and local influence, to prevent corruption, to radically increase the interest of the personnel in productive and qualitative, initiative and effective, conscientious and responsible work, civil service and further career advancement. This can be achieved by establishing higher average wages in the civil service than in the economic sectors, and no less than in the private sector. The structure of wages must be improved, its fairness and transparency ensured. It is necessary to significantly increase the share of official salary in the total wage, significantly increase the role of the rank of a civil servant in material incentives (for example, in the case of raising the rank wages should increase by at least 10 percent). It is imperative to

[1] Про заходи щодо впровадження Концепції адміністративної реформи в країні: Указ Президента України від 22.07.1998 р. № 810/98. *Офіційний вісник України.* 1999. № 21. Ст. 32.

increase the official differentiation of salaries, taking into account the level of responsibility, ensuring its rapid growth at the beginning of the career, as well as reducing interagency and local differences in wages[2].

In order to stimulate the abandonment of the most trained personnel in the SES, in our opinion, transparent criteria for promotion need to be introduced, in order to create plans for personal growth for the most professional SES employees. According to SES employees, such criteria should be: the number of enforcement proceedings closed in connection with the full and actual execution of enforcement proceedings (45 %); the amount of the imposed executive fee in the state budget revenues (29 %); the number of completed executive proceedings (23.1 %); the number of documents for which the expiry date has been set by law (22.9 %); the number of executive documents is executed in the accounts of enterprises, institutions, organizations (17.9 %); the number of outstanding executive documents at the end (13.0 %); actual load on the state executor per month (8.0 %); the number of suspended enforcement of executive documents (4.9 %), etc. In our view, this list of criteria should be standardized in the provision on remuneration of the SES employees and their promotion.

In addition to the above, it is also necessary to create decent working conditions for civil service personnel, including the provision of appropriate facilities, organizational, technical, informational and auxiliary staffing support.

Important issues of improving the work organization of the SES agencies are the information sphere. Analysis of the results of application of informatization systems in judicial and law enforcement agencies allows to determine the following positive trends in optimizing their work: 1) improving control over the execution of documents; 2) conducting a constant operational observation of the efficiency of the work of all performers with the subsequent detection of late checks; 3) the emergence of the ability to quickly generate a variety of reports and certificates, etc. Thus, the most important positive aspect of informatization is the reduction of the costs of ensuring the functioning and management of the State Executive Service of Ukraine at the

[2] Калінін Р. С. Про місце виконавчого провадження у системі права України. *Науковий вісник Міжнародного гуманітарного університету.* 2014. № 9–1. С. 73–76. С. 73.

expense of rationalization and unification of organizational, technological, financial and economic schemes and work processes of the SES of Ukraine, streamlining and unification of information flows.

Given this positive experience, we propose to develop and approve the Concept of the Automated Information and Analytical System of Support of Activities of the Bodies of the SES of Ukraine in order to ensure the further development of the state of information in the bodies of the SES of Ukraine.

It is clear that the strategy of introducing a single information space into the activities of the SES of Ukraine should have its own system of tasks, goals and principles that we will disclose. The purpose of this Concept is to: identify inefficient processes and procedures whose technology can be changed in order to reduce the time spent on work; establishment of reliable e-mail communication between all bodies of the SES in order to shorten the period of delivery of correspondence, exchange of information; improving control over compliance with procedural deadlines at all stages of enforcement proceedings; implementation of automation in the most labor-intensive and routine processes of the SES (document circulation, statistical reporting, planning, personnel issues, etc.).

Accordingly, the objectives of this Concept can be: creation of a single information space of the SES system and its integration into the information space of Ukraine; further computerization of work processes of the SES, use of modern communication and telecommunication facilities; increasing the efficiency, completeness, reliability and objectivity of accounting and control over the collection and distribution of finance; increasing the validity of managerial decisions through the use of settlement-analytical and optimization methods and models, the creation of an integrated and information-analytical system; increase the level of reference and information services of the agencies of the SES and the subjects of enforcement proceedings; reducing labor complexity, preparing, collecting and processing data from enforcement proceedings[3].

1. Construction of an Automated Information and Analytical System for Supporting the Activities of the Bodies of the SES of

[3] Макушев П. В., Негодченко О. В. Щодо питання інформатизації державної виконавчої служби України. *Право України.* 2015. № 3. С. 87–92. С. 90.

Ukraine should be carried out in accordance with the following principles: centralization, which provides for the establishment of a central data base including the State Register of Real Property Rights for Real Estate, the Unified Register of Exclusion Bans the Real Property, the State Register of Mortgages, the State Register of Encumbrances on Movable Property[4], the Register of Property Rights to Real Estate[5] [6], the Unified State Register of Enforcement Proceedings, the Unified Register of Debtors and the Register of Decisions, the Execution of Which is Guaranteed by the State; the Unified Register of Private Performe, recommended executive practice, statistical reporting, the ability to use the resources of the system by users, depending on the granted rights of access; standardization: the introduction of the reference system, ensuring the possibility of interaction with other information systems; decentralization: provision of sufficient functional capacity of local public servants' jobs for situations in which the connection to the central database is unreliable or lost, as well as the ability to work with the regional level of the central database; minimizing the number of transactions by introducing a one-time information system, using directories and classifiers, establishing interrelationships between documents; magnitude – taking into account the necessity of work in conditions of different numbers of users, the ability to withstand peak load in the reporting period[7].

At present, the current legislation governing enforcement proceedings provides for the following elements of the information support system for the SES activities: 1) the Automated Enforcement System, which includes: the United State Register of Execution

[4] Про затвердження Порядку використання даних Реєстру прав власності на нерухоме майно, Єдиного реєстру заборон відчуження об'єктів нерухомого майна, Державного реєстру іпотек та Державного реєстру обтяжень рухомого майна: наказ Міністерства юстиції України 14.12.2012 № 1844/5. URL: http://zakon3.rada.gov.ua/laws/show/z2102-12#n23.

[5] Про державну реєстрацію речових прав на нерухоме майно та їх обтяжень: Постанова Кабінету Міністрів України від 25 грудня 2015 р. № 1127. URL: http://zakon2.rada.gov.ua/laws/show/1127-2015-%D0%BF.

[6] Порядок доступу до Державного реєстру речових прав на нерухоме майно: Постанова Кабінету Міністрів України від 25 грудня 2015 р. № 1127. URL: http://zakon2.rada.gov.ua/laws/show/1127-2015-%D0%BF/paran326#n326.

[7] Макушев П. В., Богатирьов І. Г. Актуальні проблеми інформатизації діяльності Державної виконавчої служби України. *Публічне право.* 2012. № 3 (7). С. 178–183. С. 179.

Proceedings, the Uniform Register of Debtors and the Register of Decisions, the Execution of Which is Guaranteed by the State; 2) the Unified Register of Private Performers[8]. Also, part of the information support system for state executives is the Electronic Trading System.

Vertically, the functional structure of the Automated Information and Analytical System for Supporting the Activities of the Bodies of the State Executive Service of Ukraine should include three levels: district – district (city) departments of theSES; regional – departments of the SES of the Main Department of Justice of the Ministry of Justice of Ukraine in the Crimea Autonomous Republic, of the regional, Kyiv and Sevastopol city departments of justice; and the central one is the Department of the State Executive Service of Ukraine, the Ministry of Justice. At each of these levels, you need to create a local data processing system that includes security and functional subsystems.

Any citizen who has access to the Internet using the web browser can be a public user. Registration is not required in the system of public users, they can work with the system anonymously. Through the website of the SES of Ukraine, the public user can: to get the information about the SES of Ukraine in general and its individual structural units, in particular contact information, reception time, sample documents, etc.; access to examples of executive practice, etc.

Thus, we have defined the main provisions of the Concept of the Automated Information and Analytical System for Supporting the Activities of the Bodies of the State Executive Service of Ukraine, although this issue needs further elaboration. At the same time, I would like to note that, in order to solve the problems of informatization as an important component of the further development of the SES of Ukraine, in general, there is a need for a great organizational and educational work not only for the specialists of information services, but also for the heads of the SES of Ukraine of all levels. Without a complex solution of the listed tasks, the return on expended efforts and means for the introduction of new information technologies will be insignificant.

There is also an urgent need to revise the list of information that may be attributed to the SES's business information. The rules for

[8] Про затвердження Порядку формування і ведення Єдиного реєстру приватних виконавців України : наказ Міністерства юстиції України 05.08.2016. № 2431/5. *Офіційний вісник України*. 2016. № 64. С. 450. Ст. 2181, код акта 82814/2016.

handling official information and its carriers by SES employees by developing and adopting instructions on how to ensure access to public information in SESs, a list of information that compiles official information in the activity of the SES and instructions on how to work with official information that will take into account the specifics enforcement proceedings and SES activities requirement to regulate. Similar measures should be taken to create a mechanism for the protection of personal data in the work of the SES bodies.

3. Prospects for Improving the Regulatory and Legal Regulation of the State Executive Service

The reform of the system of compulsory execution of judicial and other decisions is a rather complex problem today, and its solution requires a considerable amount of time and the search for various variants of its reformation. And in this direction, the key point should be the legislative definition of the legal status of the SES not only at the national level, but also at the regional level[9]. The complexity of solving this issue at the local level is due to the special place of the state executive service in the system of state bodies, which acts as the leading state body in the implementation of state policy in the sphere of enforcement of judicial and other decisions with the corresponding administrative procedural powers. Therefore, it is worthwhile regulating at the legislative level the issues of the legal status of the territorial bodies of the SES on the basis of the general principles of reforming the central executive authorities and the formation of the State Executive Service as the central body of the executive service.

Requirement of introduction into the domestic legislation of international principles of enforcement proceedings, namely: compulsory execution should be determined and regulated by clear legal rules that establish the powers, rights and obligations of the parties and third parties (enforcement is to be exercised by the relevant law and judicial decisions, the procedure for enforced execution must be regulated in detail in the legislation in order to be authentic and

[9] Адміністративне право України : словник термінів / за заг. ред. Т.О. Коломоєць, В. К. Колпакова; Державний вищий навчальний заклад «Запорізький національний університет». Київ: Ін Юре, 2014. С. 187.

transparent, as well as to the extent possible predictable and effective; to cooperate in a coercive manner during compulsory execution, etc.)[10].

The enforcement procedure must: be clearly defined and easily enforceable by the employees responsible for enforcing it; have an exhaustive definition and listing of coercive acts and mechanisms for their entry into force; to clearly define the rights and obligations of defendants, plaintiffs and third parties, and for the last two categories of persons, their ranking and rights to recovered funds distributed among the plaintiffs; to provide the most effective and appropriate means of service of documents (for example, personal service by employees responsible for their compulsory enforcement, electronic funds, mail); to provide measures for preventing and preventing procedural misconduct; to foresee the right of the parties to petition for suspension of the enforcement procedure in order to ensure the protection of the rights and interests of the parties; to provide, in cases of necessity, the right to appeal judicial and non-judicial decisions taken during the conduct of the enforcement procedure[11].

Also, in the national legislation governing enforcement proceedings, the following principles should be introduced: 1) the payment of enforcement costs must be within reasonable limits, provided by law and a prior informed party; 2) attempts to execute the enforcement procedure must be appropriate to the claim, the amount of the claim and the interests of the defendant; 3) the obligation to pay for enforcement is usually relied upon by the defendant, although in the case of abuse by other parties during the execution of the enforcement procedure, the obligation to cover costs may be imposed on those parties; 4) searches and confiscation of the property of defendants should be carried out as effectively as possible, taking into account relevant human rights and provisions on the protection of information; 5) the collection of the necessary information about the defendant's property must be made quickly and efficiently with access to registers and other sources, in addition, the defendant may file a declaration of his property status; 6) the property should be sold quickly, but at the same time it is

[10] Береза Н. Виконавче провадження по-новому: новели, переваги та недоліки. URL: http://dspace.tneu.edu.ua/bitstream/316497/18117/1/%:D0%91%D0%B5%D1%80%D0%B5%D0%B7%D0%B0%20%D0%9D..pdf

[11] Клименко О. С., Макушев П. В. Адміністративно-правове регулювання державної виконавчої служби щодо примусового виконання рішень майнового характеру : монографія. Дніпропетровськ, 2012. 130 с.

necessary to try to sell it at the highest market price, avoiding expensive and excessive underestimation[12].

Improving the performance of state executives in accordance with the strategy for reforming the judiciary, judicial system and related legal institutes for the period 2015–2020 involves reorganization of the system of execution of court decisions and increase of efficiency of executive proceedings; creation of a single mechanism for the functioning of the system of enforcement authorities; the development of the institution of private performers, in particular, due to the gradual establishment of a system of self-government, the mechanism of admission to the profession; introduction of a system of control over the activity of private performers and deprivation of permission to carry out their professional activity, as well as introduction of insurance of professional civil liability of private performers; ensuring equal competition between state and private executors of court decisions; compliance with the balance of powers of private and public executives; review of the mechanism for determining the remuneration of performers in order to stimulate the growth of the level of real enforcement of court decisions; introduction of a quality system of continuous training and advanced training of performers in accordance with well-defined and properly systematized goals and objectives, review of requirements for performers; improvement of ethical and disciplinary rules on performers; reduction of formalization, optimization of stages of executive proceedings and terms of execution of executive actions; achievement of a fair balance of interests between the protection of the rights of collectors and debtors, including through providing executors with practical access to the debtors' assets, while providing guarantees against abuse, introducing effective incentives for the voluntary execution of court decisions, measures of influence on debtors; strengthening the management of information systems for better provision of electronic justice services by executives.

Implementation of the provisions of the Concept for the development of SES in Ukraine is proposed to be implemented through the introduction of amendments to the current legislation in three stages.

At the first stage, it is proposed to adopt the Concept of the development of SES in Ukraine, which defined the goals, tasks, methods

[12] Кушакова-Костицька Н. В. Електронне правосуддя: українські реалії та зарубіжний досвід. *Юридичний часопис Національної академії внутрішніх справ.* 2013. № 1. С. 103–109. URL: http://nbuv.gov.ua/UJRN/aymvs_2013_1_20.

of their achievement and the prospects of organizational, legal support for the activity of SES, as well as amendments to the Law of Ukraine "On bodies and persons performing enforcement of court decisions and decisions of other bodies" by supplementing it with a separate section "SES", the rules of which will determine the goals, tasks, functions, rights and responsibilities of SES in Ukraine; principles of interaction between the SES in Ukraine and other subjects; the peculiarities of legal status of all divisions of SES in Ukraine and all levels of positions of these divisions; the fundamentals of the information support system for the SES in Ukraine; the grounds and procedure for exercising control over the activities of the SES in Ukraine, disciplinary liability, social guarantees of the activities of state executives, etc.

At the second stage, it is proposed to amend the Law of Ukraine "On Enforcement Proceedings", namely, the replacement of its name with "On the Enforcement Proceedings", an addition to Art. 1 of this Law definitions of the concepts of "executive process", "executive proceedings", "executive action", "stage of the executive process", "subject of the executive process", "enforcement of decisions", "executive", "mode of execution of decisions", "Mechanism of execution of decisions", etc.

At the third stage, it is proposed to adopt the Executive Code of Ukraine. We propose the following structure of the Executive Code: Section I "General Provisions", containing the following chapters: 1 "Key Provisions", 2 "Executive Jurisdiction", 3 "Competence of Bodies of the State Executive' Service, Private Executors"; 4 "Executive groups, withdrawals"; Section II "General Provisions of Enforcement Proceedings" includes chapters 1: "Participants in the enforcement proceedings", 2 "Persons involved in the case", 3 "Other participants", 4 "Evidence", 5 "Executive documents", 6 "Parties in the executive Proceedings", 7 "Executive calls and messages"; Section III "General Provisions on Bodies and Persons Enforcing Enforcement of Judgments and Decisions of Other Bodies" contains the following chapters: 1 "State Executive Service", 2 "Private Bidders", 3 "Interaction of State and Private Bidders with Other Public Bodies" ; Section IV "General Conditions and Procedures for Enforcement Proceedings" – chapters: 1 "Measures to ensure implementation of decisions"; 2 "Measures of enforcement of decisions"; 3 "Voluntary execution of the decision", 4 "Information provision and information openness of the executive process"; Section V "Financing of enforcement proceedings":

1 “Expenditures of enforcement proceedings”, 2 “Accounting and reporting on amounts on accounts of the State Executive Service bodies and private executors”, 3 “Distribution of debts from the debtor of monetary amounts”; Section V of the “Stage of the executive process” contains the following chapters: 1 “Preparatory stage”, 2 “Statement of the application”, 3 “Opening proceedings”, 4 “Conducting proceedings”, 5 “Stop and close proceedings”, 6 “Removing the application without consideration”; Section V “Separate proceedings”: 1 “Procedure for the recovery of the debtor’s property”, 2 “Implementation of decisions of non-property character”, 3 “Recovery of wages, pensions, scholarship and other debtors’ income”, 4 “Conclusion of a settlement agreement”, 5 “Implementation of decisions regarding foreigners, stateless persons and foreign legal entities. Implementation of decisions of foreign courts”; Section VI “Control and supervision of enforcement proceedings: 1“Procedure for conducting checks on the legality of enforcement proceedings”, 2 “Appeal against decisions, actions or inactivity of executors and officials of the bodies of the State Executive Service”, 3 “Restoration of lost executive proceedings or materials of executive proceedings”; Section VII “Responsibility in the enforcement proceedings”; Section VIII “Final and Transitional Provisions”.

Thus, in Chapter III of the “General Provisions on the Bodies and Persons Enforcing the Enforcement of Judgments and Decisions of Other Bodies”, the Executive Code proposes to place a Chapter 1: “State Executive’ Service”, to which it is proposed to transfer the aforementioned norms defining the legal status of the SES in Ukraine.

The reform of the State Executive Service and enforcement proceedings in our state requires increased attention to the issues of morality in the activities of state executives and private performers. A state and private executor, regardless of their work experience, age and position, should understand that their attitude towards citizens, their colleagues, their appearance and language form their personal authority and authority throughout the executive service. The purpose, to which every state executor must strive, to become devotion to the case, compliance with service etiquette and discipline. Knowledge, skills and abilities of applying the Code of Professional conduct of state and private performers will ensure the effectiveness of the professional activities of the state and private executors, as well as promote the development of the SES, forming its positive image among the population as a body of executive power.

CONCLUSIONS

The implementation of the Concept for the development of SES should ensure that the conditions of the work of state executives are brought into line with international and European standards; to increase the efficiency of the SES in Ukraine and the prestige of the work of state executives; to improve the quality of executive proceedings; to increase the level of citizens' trust in the SES in Ukraine. The directions of improving the activity of the SES in Ukraine at the organizational level should be: the creation of a single mechanism for the functioning of the system of enforcement authorities; ensuring equal competition between state and private performers; compliance with the balance of powers of private and public executives; review of the mechanism for determining remuneration to performers in order to stimulate an increase in the level of real enforcement of court decisions; introduction of a quality system of continuous training and advanced training of performers in accordance with well-defined and properly systematized goals and objectives; review of requirements for performers; improvement of ethical and disciplinary rules on performers; reduction of formalization, optimization of stages of executive proceedings and terms of execution of executive actions; achievement of a fair balance of interests of payers and debtors, including through providing executors with practical access to debtors' assets and, at the same time, securing guarantees against abuses; introduction of effective incentives for voluntary enforcement of judgments, measures of influence over debtors; strengthening the management of information systems for better provision of electronic justice services by executives.

SUMMARY

The article is devoted to the comprehensive study of the State Executive Service in Ukraine. The historical and social determinants of the State Executive Service in Ukraine, the main stages of formation of legal principles of its activity were established and characterized. The features of the national model of the State Executive Service in Ukraine in the system of public authority were defined and characterized in the historical retrospective. The place, role and basic principles of enforcement of decisions in the activity of the State Executive Service in Ukraine were determined. The peculiarities of foreign experience of legal regulation of the activities of representatives of government bodies

in the enforcement proceedings were researched. The system and structure of the state executive service in the historical retrospective and in the modern period were outlined. The principles, functions and powers of the State Executive Service in Ukraine were determined. The functional features of the implementation of management activities of the bodies of the State Executive Service in Ukraine were defined. The content of the administrative and legal status of a state executor in the conditions of a mixed system of execution of decisions was revealed. The content and features of information support of the activity of the State Executive Service in Ukraine were studied. The legal principles of interaction between the State Executive Service in Ukraine and the subjects of public and private law were determined. The theoretical and legal approaches to the definition of the essence of control over the activities of bodies of the State Executive Service in Ukraine and its employees were allocated.

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7. Макушев П. В., Негодченко О. В. Щодо питання інформатизації державної виконавчої служби України. *Право України*. 2015. № 3. С. 87–92.

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Information about the authors:

Makushev P. V.
Doctor of Law, Professor,
Dean of the Law Faculty,
Dniprovskii University of the Humanities

Dębiński Antoni
doctor habilitowany nauk prawnych,
ksiądz profesor, rector,
Katolicki Uniwersytet Lubelski Jana Pawła II
(Rzeczpospolita Polska)

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ADMINISTRATIVE AND LEGAL SUPPORT OF INFORMATION SECURITY IN AGENCIES OF NATIONAL POLICE OF UKRAINE

Negodchenko V. O., Demchuk A. M.

INTRODUCTION

An important precondition for strengthening national competitiveness, stimulating economic growth and improving citizens' quality of life is to intensify the processes of developing information space and make conditions for the dynamic penetration of information and communication technologies in all areas of public life, which should contribute to the formation of a highly developed information society in Ukraine. The above leads to the necessity of developing an effective national information policy, as well as an effective administrative and legal mechanism for its implementation.

One of the condition for the formation of an effective state information policy is the availability of an appropriate system of entities that are authorized to perform tasks entrusted to them to ensure such a policy through the adoption of appropriate administrative and legal acts and the implementation of organizational and managerial measures. The bodies of the National Police of Ukraine take an important place in the system of subjects of formation and implementation of national information policy. A scientific study of the specifics of the police agencies' activities in providing state information policy is particularly relevant for further national law-making and enforcement, which is essential for the sustainable maintenance of law and order in the country, the effective functioning of the information space.

Thus, the necessity of developing an effective national information policy, improving the administrative and legal and institutional support for its implementation, the importance of establishing effective police agencies in this direction, the lack of development of the theoretical provisions on this issue, as well as the imperfection of legal regulation in this area, determine the relevance of a comprehensive study the peculiarities of the administrative and legal ensuring of the state information policy by the National police agencies of Ukraine.

1. Information Security as an Object of Administrative and Legal Support in Police Agencies of Ukraine

Within the framework of ensuring the national security of our country, priority is given to minimizing the vulnerability of state information resources, information resources of private law actors, as well as the network infrastructure of public agencies and local self-government in the event of various emergency situations, including those that arose during a break-up, intentional damage, cyberattack, etc. In view of this, the activation of efforts of all actors to ensure the state of information security in the direction of an adequate state policy of information security, which should also take into account all forms and manifestations of information threats and determine effective ways of counteracting them, becomes of great importance[1].

The National Police of Ukraine, as the central executive body that serves the society by ensuring the protection of human rights and freedoms, combating crime, maintaining public security and order, can not stand aside the problems related to the information area of our country. Indeed, the lack of adequate action against such threats is a factor that leads to the commitment of many crimes against the integrity of our country, property, established procedure of actions of state agencies, etc.

Thus, scholars under the information security understand, for the most part, the state of protection of interests of the man, the society and the state, determined in the legislative level, in the information area, which makes the proper conditions for the formation and development of the information space, provides citizens' rights and freedoms in the information area, etc.

According to the draft Doctrine of the Information Security of Ukraine, developed in pursuance of the decision of the National Security and Defense Council of Ukraine dated April 28, 2014 "On Measures to Improve the Formation and Implementation of the State Policy in the Field of Information Security of Ukraine", enacted by the Decree of the President of Ukraine of May 1 2014 No. 449, information security is an important independent area of ensuring national security, which

[1] Негодченко В. О. Перспективні напрями удосконалення адміністративно-правового забезпечення інформації з обмеженим доступом в органах Національної поліції України. *Прикарпатський юридичний вісник.* 2016. № 3. С. 85–92. С. 86.

characterizes the state of protection of national interests in the information area from external and internal threats and represents a set of information-psychological and information-technological security of the country[2].

Summarizing the views of the scientific community and law enforcement agencies, information security can be defined as the direction of state information policy that characterizes the state of security of interests of the man, the society and the state determined by the legislative level, which makes the proper conditions for the formation and development of the information space of Ukraine, ensures citizens' information rights and freedoms, timely detection, prevention and neutralization of real and potential threats to national interests in information area.

The notion of "information security" in its content is a broader concept than "cybersecurity". This point of view is due to the fact that, in the framework of ensuring cyber security, the main focus is on the implementation of various measures (organizational, legal) in the field of computer systems and / or telecommunication networks, that is, the first of all is the "digital environment" or it emphasizes the prevention of violations of the rights and freedoms of citizens, society and the state in the information area with the help of such systems (networks). At the same time, speaking about information security, we also mean the real space around the person and concerns not only computer networks, but also other channels of information distribution. Cybersecurity, for the most part, embodies the "technological aspect" of information security (security of digital space), caused by the rapid development of information and communication technologies.

It is also worth considering the correlation between the notions of "information security" and "security of information". An analysis of their etymology suggests that the term "information security" is broader than "security of information". Information security of Ukraine, as already noted, can be considered from the point of view of protecting national, personal and social interests. The threats to this security are not only the "state of security of information" as such, but also the

[2] Про Доктрину інформаційної безпеки України : Проект указу Президента України. URL : http://comin.kmu.gov.ua/control/uk/publish/article?art_id=113319&cat_id=61025.

manifestations of restrictions on freedom of speech and access to public information, the dissemination by the media of a cult of violence, cruelty, pornography, attempts to manipulate social consciousness, in particular by disseminating inaccurate, incomplete or biased information[3], etc. Instead, the security of information is a certain state in which its integrity, inviolability is preserved, used or disseminated. The security of information can be secured by restricting the access (accidental or unauthorized) of entities that do not have this right. In this case ensuring the security of information is an integral part of general information security. That is, providing, for example, the security of information about a specific person, about agencies' activities, we provide a policy of information security of the country on behalf of relevant actors.

Thus, the Ukrainian police powers in providing information security of the country (as one of the areas of national information policy) are determined by several factors: 1) the place of the National Police in the system of law-enforcement bodies in general and in the system of internal affairs bodies in particular; 2) the nature of the tasks performed; 3) the structure of the National Police and the system of bodies and units of the National Police that is substantially updated compared to the police structure and more adapted to counter current threats to the information security of people, societies and the state as a whole; 4) the specificity of forms of information security: legal (or legislative) and technical; 5) the necessity of observing rights and freedoms of the man and the citizen simultaneously with the use of measures to ensure information security.

According to the current legislation, the National Police of Ukraine is a central executive body that serves the society by ensuring protection of human rights and freedoms, combating crime, maintaining public security and order[4]. The Law of Ukraine "On National Police" stipulates rules regulating the police activity in the information area, police powers regarding the use of information resources and combatting offense in the field of information. Executing its tasks, the police ensure the observance of human rights and freedoms guaranteed by the

[3] Про основи національної безпеки України : Закон України від 19.06.2003 № 964-IV. URL : http://zakon.rada.gov.ua/laws/show/964-15.

[4] Про Національну поліцію : Закон України від 02.07.2015 № 580-VIII. URL : http://zakon.rada.gov.ua/laws/show/580-19.

Constitution and laws of Ukraine (including in the field of information). It also ensures continuous information to the public agencies and local self-government bodies as well as to the public on its activities in the field of protection and safeguard of human rights and freedoms, crime prevention, public security and order. Police provide access to public information that it owns according to the procedure and requirements specified by law.

The law enforcement powers of the police to ensure information security of the state include:

1) implementation of preventive activities aimed at preventing offenses in the field of information;

2) identification causes and conditions that facilitate the commitment criminal and administrative violations in the field of information, use within their competence measures for their elimination;

3) taking measures for detecting criminal, administrative offenses in the field of information security;

4) taking measures aimed at eliminating threats to the life and health of individuals and public safety that arose as a result of the commitment criminal, administrative offense in the field of information security;

5) pre-trial investigation of criminal offenses in the field of information and information security within the limits of a definite investigation;

6) search for persons who are absconded from the bodies of pre-trial investigation, investigating judge, court, who committed the aforementioned offenses;

7) in cases determined by law, the execution of proceeding in cases of administrative violations in the field of information, makes decisions on the use of administrative penalties and ensures their enforcement.

The police powers in the field of information and analytical support can include: 1) making databases that are part of a unified information system of the Ministry of Internal Affairs of Ukraine; 2) use of databases (banks) of the Ministry of Internal Affairs of Ukraine and other bodies of state power; 3) carrying out information search and information-analytical work.

Police activities related to the protection and processing of personal data are carried out on the grounds defined by the Constitution of Ukraine, the Law of Ukraine "On Personal Data

Protection". Police have direct operational access to the information resources of other state power bodies under the mandatory observance of the Law of Ukraine "On Personal Data Protection". Information on access to the database (bank) should be recorded and stored in an automated data processing system, including information about the policeman who has received access, and the amount of data accessed to it. Every policeman's action to receive information from information resources is recorded in a special electronic archive, which is entrusted to the information technology service of the Ministry of Internal Affairs of Ukraine.

Police should take all measures to prevent any violations of human rights and freedoms related to the processing of information. Police bear personal disciplinary, administrative and criminal responsibility for their actions, which resulted in violations of human rights and freedoms related to the information processing. Within the framework of its competence, the Ministry of Internal Affairs of Ukraine exercises control over observance of the requirements of laws and other acts during the formation and use of police information databases (banks).

By providing information security to the person the police prevent crimes and offenses related to the implementation of the individual's rights in the field of information, exercise an individual preventive work aimed at identifying and eliminating causes and circumstances of these offenses. Concerning the society information security it should be noted that the police take a number of legal and organizational measures aimed at ensuring the security of information, identifying and eliminating factors in the information area, which can cause damage or impair the realization of the information rights, needs and interests of the country and its citizens. In the framework of national information security, the police, in the framework of powers granted to it, implement the national information policy, develop strategies for combatting crimes in the field of information, organize interaction with other actors to ensure national information security, etc.

2. The Mechanism of Administrative and Legal Support of Information with Limited Access in the Police Agencies of Ukraine

The concept of "legal support" is defined, in the majority, as implemented by the government through legal rules, regulations and a

set of means of streamlining social relations connected with their legal consolidation, implementation, protection, safeguarding and restoration[5].

The administrative and legal mechanism of ensuring citizens' rights and freedoms in the field of prevention and combatting corruption can be defined as a special procedure of activity of state bodies and local governments in making proper conditions for realization, protection and safeguarding citizens' rights and freedoms from unlawful corruption actions, which is carried out by the use of special measures of administrative-legal nature[6].

Many researchers to the elements of the mechanism of administrative-legal support refer rules of administrative law, acts of the implementation of administrative law, legal relations or consider it as a system of measures in three areas: regulation, safeguard and protection. We believe that such an approach can be expanded. First, it should be emphasized that social relations are not an element of this mechanism, they are the object of influence, it is these relations that should be arranged by the corresponding mechanism. Such relations are connected with the implementation of public administration of economic, socio-cultural and administrative-political areas of life, as well as ensuring the implementation and protection of individuals' and legal entities' rights, freedoms and legitimate interests. Secondly, the method of administrative law is based on the relations of subordination between participants in social relations, and this is a sign of the so-called imperative method of regulation (or method of power regulations or power-subordination)[7]. Consequently, not all methods are included in the mechanism of administrative and legal support, namely, imperative.

Taking into account the given mechanism of administrative and legal support of information with restricted access in the police agencies is the activity of the Ukrainian police and other agencies regulated by the

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[5] Лазур Я. В. Поняття, сутність та елементи адміністративно-правового механізму забезпечення прав і свобод громадян у державному управлінні. URL : http://nbuv.gov.ua/UJRN/FP_index.htm_2009_3_57.

[6] Плиска В. В. Поняття та елементи адміністративно-правового механізму забезпечення прав і свобод громадян у сфері запобігання та протидії корупції. *Науковий вісник Ужгородського національного університету. Серія: Право.* 2015. Вип. 35. Т. 2. Ч. 1. С. 143–147. С. 145.

[7] Адміністративне право : підручник / Ю. П. Битяк (кер. авт. кол.), В. М. Гаращук, В. В. Богуцький та ін. ; за заг. ред. Ю. П. Битяка, В. М. Гаращука, В. В. Зуй ; Нац. юрид. акад. України. Харків : Право, 2010. 624 с. С. 31.

norms of law in relation to the circulation of information that is in the legal possession or disposal of the police in respect of which access is subject to a legal restriction in the interests of public safety and order, crime fighting, human rights and freedoms protection, interests of society and the state, the disclosure of which can cause and substantial damage to these interests and publicity dominates the public interest to obtain them. The elements of the mechanism of administrative and legal support of information with restricted access in the police can be attributed to: administrative law, enshrined in agencies' relevant acts. These norms regulate social relations that arise in obtaining, storing, distributing and providing access to restricted information by police agencies and departments, as well as other state agencies, which are in proper relationship with the police agencies in relation to the circulation of information from restricted access; bodies that enter into relations with citizens and among themselves on circulation of restricted information (National Police and its territorial units, the Security Service of Ukraine, other agencies); forms and methods of police and other agencies' activities in relation to the circulation of information with limited access in its system, as well as on ensuring citizens' rights in the field of information according to established restrictions.

In the structure of the National Police, the direction of work related to the circulation of official information is monitored by the Ukrainian National Police Department of Documentary Support and relevant subdivisions of documentary support in the departments of the National Police of Ukraine[8]. The statute of this department has been approved by the order of the National Police of Ukraine on November 18, 2015.

According to the requirements of this Act the Department of Documentary Support of the National Police is the structural unit of the National Police Central Directory. The Department exercise its powers directly, as well as through the established order of administration, departments, divisions (sectors) of the documentary departments (chancellery) of the police departments of the structural subdivisions of the National Police in the Autonomous Republic of Crimea and the city

[8] Про затвердження Положення про Департамент документального забезпечення Національної поліції України : Наказ Нац. поліції України від 18.11.2015. Служб. док.

of Sevastopol, oblasts, Kyiv, territorial subdivisions, interregional territorial police bodies.

The main task of this Department in the field of the circulation of information with restricted access is to ensure, within the limits of authority, the protection of official information, control over its preservation in the bodies and units of the police.

Concerning the work with secret information in the police, the situation is slightly different. The relevant administrative rules are contained in the following acts: the Law of Ukraine "On State Secrets"[9], the Resolution of the Cabinet of Ministers of Ukraine from 12.10.2010 No. 939 "On Approval of the Order for the Organization and Support of a Secrecy Regime in National Agencies, Local Self-Government Bodies, at enterprises, institutions and organizations" (for official use), the Order of the Security Service of Ukraine from August 12, 2005 No. 440 "On Approval of the Volume of information presenting State secret"[10] and other documents with restricted access.

The Security Service of Ukraine is entrusted with the competence to ensure the protection of state secrets according to the legislation. The Security Service of Ukraine has the right to control the state of the state secret protection in all state bodies, local self-government bodies, enterprises, institutions and organizations, as well as in connection with the exercise of these powers to receive free information from them on issues of securing state secrets. The Security Service of Ukraine conclusions, set in official inspections acts on the results of monitoring the state of state secrets protection, are mandatory for officials of enterprises, institutions and organizations, regardless of their ownership forms[11].

The Central Directorate of the Security Service of Ukraine makes proposals to the President of Ukraine on the issuance of acts concerning state secrets, which are mandatory for implementation by public agencies, enterprises, institutions, organizations and citizens.

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[9] Про державну таємницю : Закон України від 21.01.1994 № 3855-XII. URL : http://zakon.rada.gov.ua/laws/show/3855-12.

[10] 10. Про затвердження Зводу відомостей, що становлять державну таємницю : Наказ Служби безпеки України від 12.08.2005 № 440. URL : http://zakon.rada.gov.ua/laws/show/z0902-05.

[11] Про Службу безпеки України : Закон України від 25.03.1992 № 2229-XII. URL : http://zakon.rada.gov.ua/laws/show/2229-12.

In addition, the Security Service of Ukraine has the right to participate in the development and implementation of measures to ensure the protection of state secrets and to monitor compliance with the procedure for recording, storing and using documents and other material carriers containing official information gathered in the course of operational search, counterintelligence activities in the field of defense of the country, to facilitate according to the procedure provided for by law, enterprises, institutions, organizations and entrepreneurs in preserving commercial secrets, disclosure of which can harm the vital interests of Ukraine.

The third and most important element of the mechanism of administrative and legal support of information with restricted access at the National Police is the forms and methods of administrative activity of authorized entities regarding the circulation of this information.

Classification of forms of management in the administrative-legal literature is mainly carried out after the emergence of certain consequences. Therefore, they are more often divided into legal and non-legal. Legal forms are the publication of legal acts, the use of coercive measures, etc., act as legal facts and can generate (change, terminate) administrative-legal relations. Non-legal forms include no direct legal significance, that is, they do not entail the emergence of a specific legal result. These are actions such as the organization and holding of meetings, discussions, inspections, drafting plans, forecasts, programs, methodological recommendations, implementing measures to improve the quality and efficiency of managerial work, etc.[12]

Consequently, administrative-legal support is carried out, in particular, in the form of publication of acts regulating the circulation of information with restricted access.

Consequently, it can be concluded that the method of the activity of authorized persons with regard to information with restricted access in the police bodies is the means and methods of realization of powers granted to him/her in relation to the circulation of information with restricted access in the police agencies in order to ensure public order and safety, crime prevention, protection citizens' rights and freedoms.

[12] Адміністративне право України. Академічний курс : підручник : у 2 т. Т. 1 : Загальна частина / редкол.: В. Б. Авер'янов (голова). Київ : Юрид. думка, 2004. 584 с.

According to generally accepted points of view, administrative-legal methods are divided into two large groups: persuasion and coercion. The method of persuasion is manifested in carrying out information and advocacy work on running information with restricted access in the police. Such work is carried out both among the personnel and among citizens. Among other measures carried out by the method of persuasion, we can note the training of persons working with restricted information, exchange of experience in ensuring the legal regime of this information in general in the system of law enforcement.

Yet and the prevailing method in the mechanism of administrative and legal support of restricted access to the police system is the coercive method, or, as it is called, the imperative method. This is due to the fact that in these relations preference is given to the assignment of responsibilities, the initiative of the actors of these relations is limited; among the legal facts that cause the establishment of parental relations related to information with restricted access, are dominated by acts of unilateral expression of will. The coercive method is manifested in the use of precautionary measures, coercive measures and measures of liability.

For preventive measures we can carry out inspections of documents with the stamp "For official use", restriction of access of mass media representatives to documents marked "For official use" and the transfer of such materials to them, conducting an expert evaluation of material media that are planned to be transmitted to foreigners. Also in the system of the National Police it is prohibited: to deliver non-working documents bearing the stamp "For official use" in an organization where there are no permanent regular employees; use information from documents bearing the stamp "For official use" for open appearances or publishing in the media, to exhibit such documents at open exhibitions, display them on stands, showcases or other public places; to keep documents with the stamp "For official use" in public libraries; removal from business or transfer of documents stamped "For official use" from one business to another without permission; to issue documents with the stamp "For official use" outside the premises[13].

[13] Про затвердження Інструкції про порядок обліку, зберігання і використання документів, справ, видань та інших матеріальних носіїв інформації, які містять службову інформацію : Постанова Кабінету Міністрів України від 27.11.1998 р № 1893 URL : http://zakon.rada.gov.ua/laws/show/1893-98-п.

In the event of such cases being detected, the documentary support or regime units and the technical protection of information should take measures to stop the violation, restore the state of the existing situation before committing unlawful actions and bring the perpetrators to justice.

The analysis of administrative and legal acts regulating the circulation of information with restricted access to the National Police and the powers of the relevant actors in this area, leads to the conclusion that they mainly use such methods of legal regulation as prescriptions and prohibitions. By means of regulations for a participant in public relations, the subject of authority is to perform certain actions, for example, to register a document containing information with restricted access, according to a certain procedure.

Summarizing the foregoing it may be noted that the peculiarity of the mechanism of administrative and legal support of information with restricted access in police agencies is that it is implemented in the administrative and political area of government, where the state interests above the individual rights, freedoms and legitimate interests of individual citizens. This mechanism is related to the activity of the executive agencies of the state in ensuring the accumulation, storage and use of information with restricted access in the bodies of the National Police of Ukraine.

3. Improvement of Administrative and Legal Support of Information with Restricted Access in the Police Agencies of Ukraine

The legal regime of restricted information has gradually received proper legal and organizational support in recent years. Instead, scholars and practitioners point out that many problems remain unresolved. The mentioned problems concern not only the bodies of public administration, but also directly affect the activities of the police of Ukraine. We believe that before discussing the improvement of the legal regime of information with limited access in the police, it is necessary to outline the general directions of optimization of the legal regime of this information on a national level. After all, the further work of the police and police departments on the proper administrative and legal support of information with restricted access in its own area of activity will depend on such steps.

The Law of Ukraine "On Information" states that the procedure for referring information to a secret or official service, as well as access to it, is governed by laws[14]. Such laws became, to some extent, "On State Secrets" and "On Public Information Access". However, if the situation is rather stable in the area of classified information, there are certain problems with respect to official information.

The fuzziness of legal rules in the field of legal regime of official information was the result of the publication of additional clarifications from authorized officials of the state on the use of the norms of the Law of Ukraine "On Public Information Access". For example, the Commissioner for Human Rights notes that the first step in the course of resolving whether it is possible, according to the Law of Ukraine "On Public Information Access" to provide the information "for official use" status, is to determine if this information is such that:

1) is contained in the documents of the authority actors, which constitute internal correspondence, in particular, memoranda, recommendations, if they relate to the development of the direction of the institution or the exercise of control, oversight functions of state agencies, the decision-making process and precede public discussion and / or decision making;

2) collected in the course of operational-search, counter-intelligence activities, in the field of defense of the country, which is not classified as state secrets.

When referring information to official service, it is mandatory to carry out checks on its compliance with the following set of requirements: 1) the restriction of access meets one or more of the following interests: in the interests of national security, territorial integrity or public safety in order to prevent disturbances or crimes, to protect population’s health, the reputation or rights of others, in preventing the disclosure of confidential information or to maintain the authority and impartiality of justice; 2) the disclosure of information can cause substantial damage to the above-mentioned interests; 3) the public interest in obtaining such information prevails from the disclosure of such information. Therefore, we must follow the specified sequence of steps before transferring certain information to the official one.

[14] Про інформацію : Закон України від 02.10.1992 № 2657-XII URL : http://zakon.rada.gov.ua/laws/show/2657-12.

Taking into account the foregoing and for the purpose of proper administrative and legal support of the regime of information with restricted access, there is a need for the adoption of a separate Law of Ukraine "On Official Information", as required by the Law of Ukraine "On Information". Thus, the regulatory framework regulating information relations in Ukraine will be streamlined: the Law of Ukraine "On Information" – Framework, Laws of Ukraine "On Public Information Access", "On State Secrets", "On Official Information" are basic ones.

The contents of the proposed Law "On Official Information" should include the following sections: the notion of official information; the procedure for referring information to official one; a list of information that can not be attributed to official one; the order of registration of documents containing information which constitute official information; the order of copying, replication, transfer of documents containing the information constituting service information, as well as the disclosure of information constituting official information; the procedure for access to official information of citizens, authorized persons of state bodies and public organizations; the list and powers of state agencies in the field of official information; the order of control over the circulation of official information; responsibility for violating the law on official information, etc.

Among the issues that require additional regulation, is the procedure for ensuring the regime of official information when receiving foreign delegations, groups and individual aliens in the police bodies and units. This is also relevant concerning the organization of studying foreigners in higher education institutions with specific training conditions of the Ministry of Internal Affairs of Ukraine. In some ways, these issues are outlined in the Instruction on the procedure for recording, storing and using documents, cases, publications and other material media containing official information; at the same time, this act is mostly framed, therefore, in the system of the National Police of Ukraine an additional Regulations require: the structure of the program of work with foreign delegations in the bodies of the National Police of Ukraine; the order of staying and placement of foreign students in the territories of higher educational establishments with specific educational conditions; clear deadlines for informing the security services of Ukraine about the composition of the foreign delegation or training group; requirements for

the premises of the National Police of Ukraine, in which the foreigners are systematically accepted or in which foreign citizens reside.

The next urgent issue is the regulation of the procedure for the work of the expert commission of the National Police of Ukraine on the circulation of official information. The Resolution of the Cabinet of Ministers of Ukraine of November 27, 1998, No. 1893, states that lists of information containing official information are approved by ministries, other central executive bodies, the Council of Ministers of the Autonomous Republic of Crimea, regional, Kyiv and Sevastopol city state administrations. In order to comply with this provision, central commissions are formed by central executive agencies. They include representatives of the regime-secret and other structural subdivisions of the most skilled specialists.

If necessary, other experts of interested institutions may be involved in the work of the expert commission. The decision of the commission is made by a protocol, which is approved by the ministry, another central executive body. Based on the decision of the expert commission, the information is included in the list of information containing the official information.

Nevertheless, in the system of the National Police of Ukraine, the regulatory act on the activities of such a commission, the order of its meetings, the decision making, etc., was not adopted, therefore the elimination of this shortfall will promote the optimal mode of the circulation of the official information. We also believe that this act should also include provisions on the requirements for members of such expert commissions (age, education, other professional competencies).

In our opinion, unsolved, there is also the question of the appointment of a state expert on state secrets in the bodies of the National Police of Ukraine. According to the Law of Ukraine "On State Secret", the functions of a state expert on secrets in other government bodies, the National Academy of Sciences of Ukraine, enterprises, institutions and organizations are relied on specific officials by the President of Ukraine upon the submission of the Security Service of Ukraine on the basis of proposals from the heads of relevant state bodies, the National Academy of Sciences of Ukraine, enterprises, institutions and organizations. Intervention in the activities of a state expert on secrets of a person who is subordinate to his position is not allowed.

By the Decree of the President of Ukraine dated December 12, 2009 No. 987, in the system of the Ministry of Internal Affairs of Ukraine, the functions of a state expert on state secrets are assigned to: the Minister of Internal Affairs of Ukraine; First Deputy Minister of Internal Affairs of Ukraine; Deputy Minister of Internal Affairs of Ukraine – Head of the apparatus; Deputy Minister of Internal Affairs of Ukraine. In addition, by this decree, state experts are also defined in the system of the National Guard of Ukraine: the commander of the National Guard of Ukraine, the first deputy commander of the National Guard of Ukraine. We believe that this situation needs to be corrected. In particular, the National Police of Ukraine carries out operative search activities, therefore it is understandable that it operates with the information that belongs to the state secret, namely: on the affiliation of persons to secret police staff (employees) of the operational unit of the National Police; about the connection of the features of a person involved in criminal proceedings and taken under protection according to the current legislation of Ukraine in connection with the threat of its life or health and in respect of which measures are being taken or taken to change personal data or appearance or place residence, with its previous individual characteristics; on the functional duties of secret staff members (employees); about the actual appointment or affiliation of a unit created for the purpose of carrying out tasks of operational and investigative activities, the disclosure of which may hinder the performance of these tasks; the fact (regardless of time) or plans to use the office (vehicle or other property) of institutions, organizations, enterprises that enable them to be identified on a confidential basis for performing operatopnal-search, counterintelligence or intelligence activities.

Therefore, it is necessary to amend the Decree of the President of Ukraine "On the List of Officials in Responsibility for the Functions of the State Expert on SECRETS" of 12.12.2009 by adding the following officials to the list of state experts on state secrets: the Head of the National Police; First Deputy Head of the National Police of Ukraine – Chief of Criminal Police; Deputy Head of the National Police of Ukraine – Head of the staff; Deputy Head of the National Police of Ukraine.

CONCLUSIONS

Information security is the direction of the state information policy that characterizes the state of ensuring personal, social and the state interests, determined on the legislative level, which creates the proper conditions for the formation and development of the information space of Ukraine, ensure information citizens' rights and freedoms, identifies, prevents and neutralises. threats to national interests in the information area. At the same time, the police are not the leading actors of information security, but it is precisely on the effectiveness of its activities in this area that directly depends on the observance of procedural mechanisms for the collection of evidence in electronic form, the optimization of forms and methods of identification and fixing offenses committed in cyberspace, making expert researches.

The areas of police activity, which contain official information, include: 1) the scope of operational-search activities and pre-trial investigation, the scope of operational and technical measures; 2) the area of counteraction to terrorism and extremist manifestations; 3) the scope of duty of parts; 4) the area of public security and order maintenance; 5) the scope of protection of court employees, law enforcement agencies, participants in the criminal procedure and other persons; 6) the scope of the fight against certain types of crimes; 7) area of work with personnel; 8) the scope of mobilization work, territorial defense and civil protection; 9) area of communication, information-telecommunication and computer networks; 10) area of state secrets protection; 11) the scope of cryptographic protection of information. The content of the official information in each sphere is disclosed.

Elements of the mechanism of administrative and legal support for the circulation of information with restricted access in the bodies of the National Police of Ukraine are: 1) administrative and legal rules regulating social relations arising from the receiving, storage, distribution and access to restricted information by police bodies and units; 2) bodies that enter into relations with citizens and among themselves in relation to the circulation of information with restricted access; 3) forms and methods of the activities of the police and other agencies regarding the circulation of information with restricted access in its system, ensuring citizens' rights in the field of information observing established restrictions.

SUMMARY

The article deals with study of the essence and peculiarities of the administrative and legal ensuring of state information policy by the bodies of the National Police of Ukraine. The general characteristic of the subjects of providing state information policy has been given. The peculiarities of the administrative and legal status of the police agencies as subjects of state information policy ensuring have been studied. The purpose and tasks of the police agencies' activity in implementing the state information policy of Ukraine have been determined. The functions of the police agencies regarding the state information policy of Ukraine have been specified; the specifics of their implementation have been outlined. The tasks and functions of the units of organizational and analytical support and operative reaction of the police bodies of Ukraine have been exposed. The article described features of the information circulation providing by the units of information and analytical support and operational response of the police agencies of Ukraine. The peculiarities of organization of documentary support of police bodies of Ukraine have been revealed. The directions of improvement of the organizational and legal principles of ensuring state information policy in the police bodies of Ukraine have been proposed. The mechanism of administrative and legal support of information with restricted access in police agencies of Ukraine has been analyzed, on the basis of which proposals for optimization of administrative and legal ensuring of information security in police agencies have been developed.

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Information about the authors:

Negodchenko V. O.

Doctor of Law, Associate Professor,
Professor at the Criminal Legal Disciplines Department,
Dniprovskii University of the Humanities

Demchuk A. M.

PhD in Law, Dean of the Faculty of Law,
Lesya Ukrainka Volyn National University

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METHODOLOGY OF STUDY OF ADMINISTRATIVE AND LEGAL FORMS OF MANAGEMENT IN ENSURING OF ENVIRONMENTAL SAFETY OF THE COUNTRY

Yemets L. O., Yatsyshyn M. M.

INTRODUCTION

The signing in 2014 of the Association Agreement between Ukraine and the European Union has actualized the issue of establishing cooperation on environmental issues, strengthening the environmental activities of each of the parties (in particular in the field of environmental management), integration of environmental policy in other areas of state policy. In Ukraine, the state of environmental safety is being negatively influenced by a number of factors today, in particular: the imperfection of the existing system of public administration in the field of environmental protection from the beginning of the 90s of the last century and the ensuring of environmental safety, duplication of environmental and economic functions by various subjects of management in this area; adoption of separate management decisions without taking into account their environmental consequences; insufficient activity of civil society institutions in the processes of formation of environmental legislation and control over its observance as subjects of management in the field of ensuring environmental safety, as well as subjects of industrial and transport infrastructure, etc. In view of this, the importance of raising the level of environmental safety by strengthening the role of environmental management in the system of public administration with the use of an arsenal of administrative and legal means. Due to the management carried out by the relevant actors, the country's environmental safety system is not only maintained in good condition, but also made much more stable and more resistant to any dangers of natural or man-made nature.

1. The Essence of Management in the Field of Ensuring the Ecological Safety of the Country and its Significance

For the development of a meaningful and systematic scientific view of the administrative and legal principles of management regarding the ensuring of environmental safety of the country, attention should be paid to the question of the essence and content of management in this area. That is the phenomenon that underlies all the rules regulated by the administrative law of the subjects of relations regarding the ensuring of environmental security of the country.

1. The importance of this phenomenon is quite significant, because, as it is noted, either one or another system not only maintains its integrity, but also optimizes its functioning. For example, specialists draw attention to the fact that state environmental policy is the regulatory sphere of society, within which the state, through the system of institutions, carries out activities aimed at the formation of an environment whose quality would ensure the possibility of sustainable development[1]. That is, due to the management of the relevant subjects, the system of ecological safety of the country is not only maintained in the proper condition, but also made much more stable and more resistant to any dangers of natural or man-made nature. In particular, the importance of governance indicates that it is a complex and universal social phenomenon, since the development of society, its individual spheres is impossible without the establishment and implementation of a certain set of laws, rules, norms, the algorithm of behavior of society as a whole and its components in particular.

But first of all, we will make a distinction between concepts used by scholars about the activity, in particular, the state, in describing the phenomena associated with the regulation of certain social relations – "regulation" and "management". We agree that management in the field of environmental protection is an integral part of social management, and if one understands management in a broad sense, then it can be defined as the activity of state bodies, local self-government bodies and public organizations for the implementation of environmental protection measures, and, accordingly, distinguish: state, self-government, public

[1] Лазор О. Я. Адміністративно-правові засади державного управління у сфері реалізації екологічної політики в Україні : автореф. дис... д-ра наук. Київ, 2004. 36 с. С. 18.

administration[2]. The above, in particular, should also be attributed to the specifics of the phenomenon under study. As we consider, taking into account the fact that environmental safety is important both for the individual, community, society, and for the country as a whole, then it will be in a certain part to determine the subjects of its management. And this should be attributed to the peculiarities of the organization and implementation of this kind of management.

Specialists in the context of the above shows that this organizational and regulatory influence of the state can be divided into two components: political (political management – definition of strategic goals, general policy and main tasks of implementation of the state policy in the relevant sphere) and administrative (in fact, the mechanism of implementation of the political course, formed by higher authorities, where management is analyzed and distributed to organizational and managerial components – planning, organization, management, control, etc.)[3]. That is why we can speak of both state policy in the field of ensuring the country's environmental safety and its own management of its ensuring. But, as we believe, and as stated above, in essence these phenomena act as components of a holistic organizational and regulatory means of influencing the state on social processes in the field under investigation.

As a confirmation of the appropriateness of allocating certain levels of management in the area under study, we will outline the provisions of such a program document as the Basic Principles (Strategies) of the State Environmental Policy of Ukraine for the period up to 2020. This act indicates that on the basis of these Fundamental Principles, national action plans will be developed that are to be integrated into regional socio-economic development programs and detailed at the level of regional environmental protection plans as part of the process of implementing state environmental policy[4]. In this example, we see that

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[2] Кобецька Н. Р. Екологічне право України : навч. посіб. 2-ге вид., перероб. і допов. Київ : Юрінком Інтер, 2008. 352 с. С. 77–78.

[3] Куц Ю. О. Природа та сутність державного управління. *Теорія та практика державного управління і місцевого самоврядування*. 2013. № 1. URL : http://nbuv.gov.ua/UJRN/Ttpdu_2013_1_24.

[4] Про Основні засади (стратегію) державної екологічної політики України на період до 2020 року: Закон України від 21 грудня 2010 року № 2818-VI). *Відомості Верховної Ради України (ВВР)*. 2011. № 26. Ст. 218. URL : http://zakon.rada.gov.ua/laws/show/2818-17.

the process of formation and implementation of the state environmental policy has certain levels: conceptual – at the state level, programmatic – at the level of national action plans, regional – at the level of local environmental action plans.

The indicated division in general relates to the content of Art. 6 of the Law of Ukraine "On Environmental Protection", which provides for the development and adoption of state target, intergovernmental, local environmental programs. That is, considering these programs as a means of management, management in this case can be divided into the following levels: interstate, state, regional, local. In particular, it is indicated that the classification of management in the sphere of implementation of environmental state policy on the international, national, local and public is the most extensive.

The analysis of the scientific point of view on this subject shows that most scientists allocate three levels of governance in the implementation of state environmental policy, including in terms of environmental safety regulation: national, regional, local, or global, national and local. Individual scientists allocate more levels. For example, regarding the possibility of allocating the local level, it is stated that the environmental quality management system is an integral part of the general system of administrative management of enterprises and organizations[5]. In particular, those of whom, whose activities have a significant impact on the state of environmental safety at the local level. We believe that in general such detail deserves attention, because depending on the nature of the problems and threats to ecological safety, precautionary measures at each of these levels can be taken precisely.

But, in our opinion, the most optimally on the basis of the subjective-territorial criterion, as generally pointed out by O. Ya. Lazor and other scholars would be to allocate the following levels of management of ensuring the ecological security of the state: planetary, interstate, state, regional, local. This should be attributed to the specific features of the investigated varieties of public administration. The above allocation of levels helps to identify the subjects and objects of such management, its means and forms, the nature of relations that are subject to regulation, methods of communication between the subject and object

[5] Зеркалов Д. В. Екологічна безпека та охорона довкілля : монографія. Київ: Основа, 2012. 514 с. С. 5.

of management, its regulatory and legal framework, as well as the specifics Interrelationships between levels.

Thus, we may note beforehand that the management in the field of ensuring the ecological safety of the state is characterized by the following general features: 1) acts as a kind of social management, and therefore, depending on the social subject, has its own forms (interstate, state, self-government, public administration); 2) since it is carried out within the state and for the fulfillment of its ecological function, it is mainly implemented in the form of state management of ensuring the ecological safety of the state; 3) exists in the form of a purposeful organizational regulatory means of influencing the actions of the person, the behavior of society, the state and development of social processes in this area; 4) is embodied both in the ideological (political) direction of management and in the administrative (organizational and administrative) direction, which differ in content, significance and subjects of implementation, but in its totality is an integral means of regulating the object of management; 5) is carried out through the activities of the system of the relevant actors (individuals, communities, societies, states and their bodies, international organizations); 6) has its own goal, since it is aimed at eliminating the danger to human health, the formation of a safe environment, the possibility of preserving its integrity and sustainable development, as well as the implementation of the ecological function of the state; 7) is realized through a system of elements that are interconnected.

More specifically, the purpose of management in the field of environmental protection, including environmental safety as part of it, determines Part 5 of Art. 16 of the Law of Ukraine "On Environment Protection ". In particular, according to this article, its purpose is: implementation of legislation, control over observance of environmental safety requirements, ensuring effective and comprehensive measures on environmental protection, rational use of natural resources, achieving coherence of actions of state and public bodies in the field of environmental protection environment[6]. That is, as can be noted from the analysis of the article, the aim of management in the field of law is

[6] Про охорону навколишнього природного середовища : Закон України від 25 червня 1991 року № 1264-XII. *Відомості Верховної Ради України (ВВР).* 1991. № 41. Ст. 546.

described by the legislator quite widely. It encompasses various aspects, which, when analyzed more deeply, are nothing but separate areas of activity in this area. And such a broad interpretation of the purpose of management in the field of environmental protection provides grounds for scientists to criticize this formulation.

Thus, since management in the field of ensuring environmental safety of the state also has an administrative-legal nature, then its significance for this sphere will have similar content. In particular, we believe it will be related to the following: 1) defines the structure of the mechanism of administrative-legal regulation of such an important component of the implementation of the ecological function of the state, which, of course, is the state's ecological safety; 2) has a regulatory influence on the emergence, development and termination of legal relations that arise in the state regarding the ensuring its environmental safety; 3) ensures the proper functioning and effective implementation by participants of environmental relations of rights and responsibilities in the field of ensuring the country's environmental safety; 4) creates conditions for the formation and proper implementation of the norms, enshrined in normative legal acts, in a specific sphere of social regulation; 5) creates conditions for the protection and protection of environmental rights and freedoms of citizens, vital interests of society and the state in this area.

2. Principles of Management in the Field of Environmental Security of the Country

The specifics of the object of management affect the content of the very means of influence on the development of the relationship. And the features that characterize the systematic and complex nature of this phenomenon, in the process of their ordering, require their mutual harmonization, bringing to certain criteria and fulfilling numerous requirements. Previously, the specifics of management in the field of ensuring environmental safety of the state presupposes the need to develop a unified approach to its organization and implementation, necessitating the identification of basic guidelines for the implement-tation of appropriate management activities in this area. And such benchmarks should be considered those phenomena that have signs of criteria and requirements, phenomena that have the properties of the

common standards of organization and management in the identified field, and are able to influence the whole of this area as a whole.

Proceeding from the above, we will establish the most significant characteristics of the concept of "management principles", and, accordingly, the characteristics of the concept of "principles of management of environmental security of the state." So, we believe, the following should be attributed to them: 1) the principles of management act as its main, initial provisions, which determine the management of the system of activities, as well as determine the basis for the establishment and functioning of the public administration in the field of study in general ; 2) they are primary in relation to other management positions and determine their content; 3) the principles of management reflect the essential features of management, which are the basis for its creation and implementation; 4) the principles of governance have the nature of the rules, which should be guided by its subjects in the conduct of management, and therefore their violation leads to improper performance of its functions and, consequently, failure to achieve the goal of governance in general; 5) principles are different in nature of phenomena, because they determine different aspects and manifestations of management, and therefore should speak about their particular set, which in aggregate should form a system of principles of governance, because only if they are united into a single system these principles can ensure the formation of a single content and holistic purpose of a means to streamline relations in the field of environmental security of the state.

In turn, the second kind of system of principles of public administration is a group of structural principles, among which scientists allocate: structural-target (consistency of goals of state administration among themselves, consistency in achieving the whole set of goals of public administration, etc.); structural-functional (compatibility of functions within the competence of one body, concentration, which determines the provision to one body of a set of management functions and appropriate resources to provide powerful management action directed to managed objects, etc.); structural-organizational (unity of the system of state power, territorial-sectoral approach, which determines the dependence of organizational structures from the territory, production and service industries, etc.); structural-procedural principles (conformity of elements (methods, forms and stages) of the management of public administration bodies to their functions and organization,

specification of management activity and personal responsibility for its results, etc.). The analysis of this group of principles of public administration makes it possible to point out that they are aimed at the effective organization and implementation of management in the field of ensuring environmental safety of the state as a whole, ensuring the effectiveness and efficiency of its subjects. Their non-compliance leads to the ineffectiveness of such activities, and consequently, the impossibility of actually ensuring the state of the state of environmental safety[7]. That is why the role of management principles is also in the formation of effective models of behavior of the subjects of management, including the subjects of management in the field of ensuring the ecological safety of the state.

As we have noted, the system of branch management principles in the field of ensuring environmental safety of the state form the principles of environmental management. The importance of taking these ambush into account is due to the inextricable link of environmental safety with the state of the environment, and the fact that it is the task of harm to the environment, as a rule, causes significant changes in the state of environmental safety of the state. The experts note that the solution of environmental problems is impossible without the perception of man as a part of nature, which together forms a single whole, the development of such generalized models and principles of behavior that realize the spiritual and physical needs of man and, at the same time, encourage ecologically safe activities, coordinated with the functioning of the biosphere[8]. That is why the principles of ecological management (management in the field of ecology), which certainly take into account the specifics of the sector, have a significant impact on the efficiency and effectiveness of the authorities and their officials in the field of environmental security of the state.

Let's emphasize at the same time that beyond the legal mediation and consolidation of environmental principles in the rules of law, the principles of the investigated type of management will not have the same properties of control influence, which should characterize the essence of governance as such. In this context, we will agree that the content of the

[7] Державне управління : навч. посіб. / А. Ф. Мельник, О. Ю. Оболенський, А .Ю. Васіна, Л. Ю. Гордієнко; За ред. А. Ф. Мельник. Київ : Знання-Прес, 2003. 343 с.

[8] Мірошниченко Р. В. Механізми правового забезпечення екологічної політики України. *Державне будівництво.* 2014. № 2. URL : http://kbuapa.kharkov.ua.

legal regulation of the management is to create the necessary legal framework that would create the necessary conditions for the functioning of the whole system of state bodies, fully regulate the peculiarities of the division of functions between individual bodies and units, and also ensure the specifics of their implementation of the obligations imposed on their responsibilities[9]. That is precisely due to the legal protection, including in the part of normative-legal consolidation of the principles of management in the field of ensuring environmental safety of the state, it, as a system of activities of the relevant actors, receives conditions for the proper performance by these subjects of its tasks and functions in this sphere. It is the legal security of management in this area acts as a means of regulating the order, conditions and grounds, forms and methods of management in the field. And the consolidation of the relevant principles of this administration is a guarantee of its legality, a condition for achieving the goal, as well as a basis for assessing the results of activities in accordance with the criteria set forth in the norms of law. Regarding normative legal acts in which, we believe, the relevant basic rules regarding the organization and implementation of management in the field of environmental security of the state are given, the following examples can be cited. In particular, in paragraph 36 of the "Regional Environmental Policy", the main directions of the state policy of Ukraine in the field of environmental protection, use of natural resources and ensuring environmental safety, approved by the Verkhovna Rada of Ukraine from 05.03.1998, No. 188/98-VR, that the regional environmental policy should be based on the following principles: compliance with national priorities in the field of environmental protection and use of natural resources; ensuring separation of powers between executive authorities; consideration of environmental interests of other regions, including outside Ukraine, in accordance with the intergovernmental agreements; the formation of a mechanism for financial support of environmental activities of the regions[10].

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[9] Безпалова О. І. Правове забезпечення управління органами поліції України. *Адміністративне право і процес*. 2017. № 9 (259). С. 111–115. С. 114.

[10] Про Основні напрями державної політики України у галузі охорони довкілля, використання природних ресурсів та забезпечення екологічної безпеки : Постанова Верховної Ради України від 05.03.1998 № 188/98-ВР. *Відомості Верховної Ради України (ВВР)*. 1998. № 38–39. Ст. 248.

In turn, Art. 3 of the Law of Ukraine "On Environmental Protection" contains the following basic principles of environmental protection such as: a) mandatory compliance with environmental standards, norms and limits for the use of natural resources in the implementation of economic, managerial and other activities; c) the precautionary nature of measures for the protection of the environment; d) ecologization of material production; e) preservation of spatial and species diversity and integrity of natural objects and complexes; e) scientifically grounded harmonization of ecological, economic and social interests of society; e) compulsory environmental impact assessment; g) transparency and democracy in decision-making, the implementation of which affects the state of the environment, the formation of the ecological world outlook among the population; h) scientifically substantiated normalization of the influence of economic and other activities on the environment; i) free of charge for the general use and payment of special use of natural resources for economic activity; i) compensation for damage caused by violations of the legislation on the protection of the environment; i) the decision of the issues of environmental protection and use of natural resources taking into account the degree of anthropogenic change of territories, the combined effect of factors that negatively affect the environmental situation; i) a combination of incentive measures and responsibility for environmental protection; k) solving the problems of environmental protection on the basis of wide-ranging interstate cooperation; l) establishment of environmental tax, rent for special use of natural resources; m) taking into account the results of the strategic environmental assessment.

From the analysis of the norms given and enshrined in the Main directions of the state policy of Ukraine in the field of environmental protection, use of natural resources and ensuring environmental safety, the Basic principles (strategy) of the state environmental policy of Ukraine for the period until 2020 and in Art. 3 of the Law of Ukraine "On Environmental Protection", it can be noted that at the same time, among the principles of governance in this area are both the general principles of public administration and special sectoral provisions that have the nature of the basic principles for management in the field of environmental protection. That is, we find a confirmation of the position regarding the systemic and complex nature of the management

principles in the field of ensuring the country's environmental safety. We believe that this property is characteristic of all varieties of management in different spheres of the state's implementation of its functions.

With regard to the specific principles of environmental safety management, which reflect the main features of management in this area, they are reflected in both legal acts and professional literature. So, in relation to the principles of ecological safety, for example, in the Main directions of state policy of Ukraine in the field of environmental protection, use of natural resources and ensuring environmental safety, approved by the Verkhovna Rada of Ukraine from 05.03.1998, No. 188/98-VR, to the main Among them: selection of locations of nuclear industry enterprises taking into account geological, hydrological, landscape and meteorological characteristics of sites, biogeocoenoses, density of population distribution; scientifically substantiated choice of nuclear technologies, equipment and equipment; reduction of the influence of natural sources of ionizing radiation on the health of the population; reduction of the influence on the health of the population and the environment of other harmful factors in the work of nuclear industry enterprises in the project mode; taking into account the presence of joint influence of nuclear and other economic activities on the health of the population and the environment when choosing their location. As the analysis of these provisions shows, they are mainly aimed at determining the basic principles of the activities aimed at creating conditions for ensuring environmental safety and preventing violations.

In turn, from the analysis of the provisions of Art. 3 of the Law of Ukraine "On Environmental Protection" one can distinguish the following principles of environmental protection, which can be fully considered as the principles of governance in the field of environmental security of the state. In particular, we will include such provisions as: a) priority of the requirements of environmental safety; b) guaranteeing an environmentally safe environment for people's life and health; c) transparency and democracy in making decisions, the implementation of which affects the state of the environment, the formation of the ecological world outlook among the population; d) scientifically grounded valuation of the influence of economic and other activities on the natural environment.

3. Functions of Management in the Field of Environmental Safety of the Country

The state, setting itself the task or assuming one or other responsibilities, turns them into certain varieties, directions of its work. Due to this static norms are transformed into dynamic forms of its activity within the limits of its state administration. In this regard, it is noted that the content of such management is a set of functions, which are called functions of public administration. The peculiarity of the existence of these management functions is that they, on the one hand, reflect its internal content, and on the other hand, they are simultaneously embodied in the external forms of activity of the subjects of management. For example, it is indicated that the functions of the subject of public administration – the main activities of this entity, forming the content of its activities[11]. That is why the effective implementation of these activities and ensures the achievement of the objective of the sectoral type of government we are investigating, that is, the existence of such a state of the environment, which prevents deterioration of the environmental situation and the emergence of a danger to human health (Art. 50 of the Law of Ukraine "On Protection the environment").

As a generalization of the study of the concept of the functions of management, let's give our vision of the concept of "management functions in the field of ensuring the state of ecological safety", under which we propose to understand the specific, homogeneous objects, contents and means of realization of integral stable implemented on behalf of the state by the subjects of management in accordance with the legislation of the main directions of influence (their activity) on the state of development of social relations on the ensuring of environmental safety of the state in order to fulfill the tasks of state administration in and field.

We believe that the above definition systematically characterizes the concept under investigation, distinguishes both its internal features and external forms of manifestation (the integral, stable subjects carried out on behalf of the state by the subjects of management in accordance with the legislation, the main directions of their influence, activity), as well as their role in the general mechanism management of ensuring the environmental safety of the state (the state of development of public

[11] Мельник Р. С., Бевзенко В. М. Загальне адміністративне право: навчальний посібник / За заг. ред. Р. С. Мельника. Київ : Ваіте, 2014. 376 с. С. 181.

relations and the fulfillment of the tasks of public administration in this area). On this occasion, it is rightly pointed out that the functions are actually an instrument that enters the organizational and structural component of the legal status of the subject of public administration, and, therefore, the exercise of the functions of the subject of public administration by its structures guarantees the solving of tasks and achievement of the main goal of this sub the object.

2. Regarding the subjects of the implementation of management functions in the field of ensuring the country's ecological safety, taking into account that this issue will be devoted to a separate part of the research, we will only briefly characterize it. Yes, it is indicated that the Ministry of Ecology and Natural Resources of Ukraine, the State Ecological Inspection of Ukraine, the State Service for Geology and Subsoil, the State Agency for Water Resources, the State Agency for Environmental Investments, the Ministry of Agrarian Policy and Food of Ukraine are engaged in the implementation of functions and tasks of the state management in the field of nature use, State Agency of Land Resources and their territorial units, local state administrations and local self-government bodies. That is, this point of view not only emphasizes the predominantly state nature of management in this area, although experts correctly distinguish state, self-governing, public administration[12]. The above position focuses on the fact that such management is carried out by a large number of different state bodies and other entities. And in this context, attention should be paid to the correct and mutually agreed distribution of functions between management entities in this area.

On the basis of the above and taking into account the analysis of the views of scientists, we arrive at the conclusion that it is possible to characterize the management functions in the field of ensuring the ecological safety of the state as a certain interconnected system. This provides the basis for their classification, which contributes to their comprehensive vision in their relationship with such elements of the administrative and legal principles of the characteristics of management in the field of environmental security of the state as: objects of management in this area (relations related to the use of the surrounding the natural

[12] Кобецька Н. Р. Дозвільне і договірне регулювання використання природних ресурсів в Україні: питання теорії та практики : монографія. Івано-Франківськ : Прикарпат. нац. ун-т ім. Василя Стефаника, 2016. 271 с.

environment, and relations related to the actions of authorized bodies and other persons regarding the ensuring of environmental safety of the state); the structure of the levels of governance in the field of ensuring the state's ecological safety (planetary, interstate, state, regional, local); the structure of the principles of management of ensuring the environmental safety of the state (general, sectoral, special).

Scholars who considered the implementation of the functions of public administration in the field of environmental protection, including the management of environmental safety, leads to their subsequent grouping. The generalization of the positions of scientists regarding the classification of functions of public administration leads us to the conclusion that the most optimal is the three-level classification of functions on the basis of the content of management (in general, management in this area, environmental management as the basis of environmental safety, management of activities to prevent the violation of the state of environmental safety) On this basis, we propose the following grouping of these functions: 1) general management functions in the field of environmental safety; 2) sectoral environmental management functions in the field of environmental safety; 3) special security management functions in the field of environmental safety.

We believe that such a classification of functions to a greater extent reflects the relationship between such phenomena as public administration, management in the field of ecology and management of environmental safety, and also gives the opportunity to more fully identify the range of management entities whose activities in one aspect or another is connected with providing of ecological safety of the state. In addition, the given classification in a certain part correlates with the system of foundations in this area. We believe that the ensuring of ecological safety of the state as part of the implementation of its ecological function should also be based on the principles of environmental protection (Article 3 of the Law of Ukraine "On Environmental Protection"), and therefore it should include sectoral principles and functions (Art. 16 of the Law of Ukraine "On Environmental Protection"). Accordingly, the existing directions of influence (activities) of the subjects of management of ensuring the ecological safety of the state – the functions of management in this area, should be divided into three groups and get their proper legal consolidation.

Along with the main functions of management, scientists allocate and auxiliary functions. Among them, in particular, include the following directions of activity of the subjects of management: logistical, economic and financial (financial), legal, personnel, social security, social protection of system workers and the function of motivation[13]. The main purpose of the auxiliary functions, as stated above, is to create conditions and ensure the effective functioning of the management entity, the implementation of its management functions, maintenance of internal system communications and links with the object of management.

With regard to the sectoral environmental management functions in the field of environmental safety, their content is determined by the peculiarities of the object of management, or, as specified in the literature, special functions characterize the features of a particular subject or object of management[14]. First of all pay attention to the provisions of Art. 16 of the Law of Ukraine "On the Protection of the Environment". This provision stipulates that environmental protection management is to implement observation, research, strategic environmental assessment, environmental impact assessment, control, forecasting, programming, informing and other executive-management activities in this area. The analysis of these functions shows that their content is a special direction of the activities of authorized bodies and their officials, which are aimed at the implementation of the tasks of the legislation on environmental protection (Art. 1 of the Law of Ukraine "On Environmental Protection"). And part of these tasks, along with the regulation of relations in the field of protection, use and reproduction of natural resources, is to ensure environmental safety.

The last group of functions that we are studying is the special security functions of management in the field of ensuring the ecological security of the state. To their number, we believe, should include the directions of activities of management entities, which directly affect the social relations that are related or conditioned by the ensuring of environmental security of the state.

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[13] Алфьоров С. М., Ващенко С. В., Долгополова М. М., Купін А. П. Адміністративне право. Загальна частина : навч. посіб. Київ: Центр учбової літератури, 2011. 216 с. С. 38, 60.

[14] Павлов Д. М. Адміністративне право: Загальна частина: конспект лекцій. Київ : МАУП, 2007. 136 с. С. 60.

CONCLUSIONS

Considering the importance of environmental safety for people's health, ensuring their interests, rights and freedoms, the interests of society and the country, and also taking into account the impact of the state of environmental safety on the vital aspects of the functioning of the state, the state of its national security, phenomena, relations and Conditions related to environmental safety are subject to mandatory legal regulation. In the field of ensuring the ecological safety of the state the object of administrative and legal regulation is, in particular, social relations in the form of behavior and actions of people who take place in connection with the ensuring by subjects of public authority, primarily public administration, environmental rights and freedoms of the man and the citizen, the interests of society and the state. Management in the field of ensuring the ecological safety of the state should be attributed to varieties of social management, since its object is mainly the behavior of people in relations that arise, develop and cease to exist when the state implements its environmental policy in terms of ensuring the country's ecological safety.

The internal structure of management in the field of ensuring the ecological safety of the state is its object, subject and means of management. Thus, the object of management by the authorized bodies as its subjects in the field of environmental safety of the state are: the environment, its state and behavior (actions) of participants in environmental legal relations.

The importance of management in the field of ensuring the country's environmental safety is manifested in the following aspects: organizational (defines the content of the mechanism of administrative-legal regulation), normative (creates the needs and conditions for the formation and implementation of administrative-legal norms), regulatory (regulates the emergence, development and termination of legal relations) , security (creates conditions for the protection and protection of environmental rights and freedoms, the interests of society and the state).

SUMMARY

The article deals with analysis of administrative and legal principles of management in the field of ensuring the ecological safety of the country. The essence of ecological safety as an object of administrative-

legal regulation has been determined. It has been established that in the field of ensuring environmental safety of the country the object of administrative-legal regulation is social relations in the form of behavior and actions of people who take place in connection with ensuring by the subjects of public authority, primarily public administration, environmental rights and freedoms of the man and the citizen, the interests of society and the country in this area. The author has reasoned that the importance of management in the field of ensuring the ecological safety of the country manifests itself in the following aspects: organizational (defines the content of the mechanism of administrative-legal regulation), normative (creates requirements and conditions for the formation and implementation of administrative-legal rules), regulatory (regulates the emergence, development and termination of legal relations), secure (creates conditions for protection and safeguard of environmental rights and freedoms, interests of society and the country). The classification of principles of management of the ensuring of environmental safety of the country to the general (principles of public administration), sectoral (principles of management in the field of environmental protection in general and in the field of ecology in particular) and special (principles of direct management in the investigated sphere reflecting its specific features) has been proposed.

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Information about the authors:

Yemets L. O.
Doctor of Law, Associate Professor,
Associate Professor at the General Legal Disciplines
Department, Dniprovskii University of the Humanities

Yatsyshyn M. M.
Doctor of Law, Professor, Head of the Department
of Theory and History of State and Law,
Lesya Ukrainka Volyn National University

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