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CONTENTS

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INTERNATIONAL AND FOREIGN EXPERIENCE OF LEGAL REGULATION OF THE PROCESS OF INFORMATION SUPPORT OF PUBLIC ADMINISTRATION BODIES IN THE CONDITIONS OF DIGITIZATION OF PUBLIC ADMINISTRATION

Blinova A. A., Holovko K. V.

INTRODUCTION

Problem formulation. The Digital Economy and Ukrainian Society Development Concept for 2018–2020 stipulates that the digitalization of Ukraine will provide every citizen with access to information services. “Digital” technologies in the public sector of Ukraine, emphasizes I.V. Lopushinsky is the basis for reforming it and a potential example for the whole country of how to take advantage of the digital world. Synergetic potential of social, mobile, “cloud” technologies, as well as technologies of data analysis and “Internet of things”, believes IV. Lopushinsky, collectively capable of leading to transformational changes in public administration and in general, that is, to make the public sector of Ukraine efficient, reactive and valuable.[1] At the same time, the introduction of the digitalization of public administration in Ukraine is, in our view, a complex, long-lasting process that will require coordinated considerable work of the authorities, society and business. However, this area of public administration development is in demand and is being implemented in all successful countries of the world. One of the features of the public administration system in the EU member states, observes B.A. Kokhan, is the presence of an electronic system of communication with citizens and providing them with services. The phenomenon of e-government in the EU is now well-established[2]. The concept of e-governance in the world is closely linked to the digitalization of public administration and the digital economy, as evidenced by a number of adopted international documents.

[1] Лопушинський І.В. «Цифровізація» як основа державного управління на шляху трансформації та реформування українського суспільства. Теорія та практика державного управління і місцевого самоврядування. 2018. № 2. С. URL: http://el-zbirn-du.at.ua/2018_2/20.pdf.

[2] Кохан Б.А. Адміністративні послуги в електронній формі: досвід країн ЄС та перспективи розвитку в Україні. Право і суспільство. № 2 частина 2. 2019. С. 111–115. URL: jrnl.nau.edu.ua/index.php/UV/article/download/.../14439.

The EU's digital agenda adopted in 2010 is foreseen by 2020. Most EU countries view this document as a framework and adopt appropriate National Digital Society Development Programs for the next few years, setting out medium-term and short-term priorities and indicators for achieving the targets. For example, Germany has adopted the second such program for 2017–2022[3]. The reforms taking place in the leading countries are aimed at rationalizing the various areas of public administration, notes T.L. Sivolapenko. The introduction of state-of-the-art information technologies into the practical work of government officials is a major means of reducing the cost of material and other resources aimed at ensuring interaction between citizens, business and government bodies[4].

The modern global information society has gradually developed in different countries of the world. Changing forms of production, the rapid development of information and telecommunications and hardware, computer technology, global electronic electronic networks have given rise to modern trends such as the emergence of the digital economy, e-democracy and governance. Human life is now closely linked to the activities of public administration, the basis of which is the mutual exchange of information.

The EU-Ukraine Association Agenda back in 2009 identified that the parties are working together to prepare for the implementation of EU acquis through the exchange of information and experience on implementing the EU i2010 initiative to develop and implement e-strategies in Ukraine, including the implementation of the National Development Concept telecommunications and the state e-Ukraine program[5]. Annex XVII-3 to Title IV of the Association Agreement has already obliged Ukraine to implement a number of EU acts establishing common rules in the market for electronic communications services. The Agreement also stipulates that a roadmap for change should be adopted in this

[3] Цифрова адженда України – 2020 («Цифровий порядок денний» – 2020): Концептуальні засади (версія 1.0). Першочергові сфери, ініціативи, проекти «цифровізації» України до 2020 року: Проект URL: https://ucci.org.ua/uploads/files/58e78ee3c3922.pdf.

[4] Сиволапенко Т.Л. Досягнення та перспективи цифровізації публічного управління в Естонії. Theory and Practice of Public Administration. № 2(61). 2018. URL: http://kbuapa.kharkov.ua/e-book/tpdu/2018-2/doc/5/5_7.pdf.

[5] Порядок денний асоціації Україна – ЄС для підготовки та сприяння імплементації Угоди про асоціацію. «Україна – Європейський Союз: зібрання міжнародних договорів та інших документів (1991–2009)». https://zakon.rada.gov.ua/laws/show/994_990/print.

comprehensive area[6]. The framework agreement of the European Union in the field of the European Union in this area is the EU Framework Directive / 2002/21 on common legal frameworks in the field of electronic communications networks and services, as well as a number of directives and regulations[7].

Ordinance of the Cabinet of Ministers of Ukraine # 649-r of September 20, 2017 "On Approval of the Concept of Development of E-Governance in Ukraine", dated November 8, 2017 No. 797-p "On Approval of the Concept of Development of E-Democracy in Ukraine and Action Plan for its Implementation" and dated January 17, 2018, No. 67-p approval of the Concept of development of the digital economy and society of Ukraine for 2018-2020 and approval of the plan of measures for its implementation "create prerequisites for the emergence of new goals, interests and needs in the information sphere of public administration bodies, namely the introduction: information and telecommunications iynyh systems for decision-making and automation of administrative processes; digital democracy, namely e-parliament information support, e-voting, e-justice, e-mediation, e-referendums, e-consultations, e-petitions, e-political campaigns, e-polls; the implementation of the concept of smart city – "Smart City"; digital government platforms; blockchain concepts; ensuring electronic interaction of state information resources and development of interoperability infrastructure; the introduction of digitalisation of public institutions, multi-channel information and citizen engagement, the concept of open data using electronic platforms, such as Civil Society and Government, or the Unified System of Local Petitions; etc.[8;9;10]. The above examples are the results of the beginning of the process of digitalization of public administration in Ukraine.

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[6] Нині в Європі успішно реалізується стратегія Єдиного цифрового ринку – Digital Single Market Strategy https://www.ukrinform.ua/rubric-economy/2364078-misia-ocifruvati-ekonomiku-strategia-edinogo-cifrovogo-rinku.html.

[7] Там само.

[8] Про схвалення Концепції розвитку електронного урядування в Україні: Розпорядження Кабінета Міністрів України від 20.09.2017 № 649-р : Урядовий кур'єр від 27.09.2017 – № 181.

[9] 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 від 17.11.2017 – № 217.

[10] 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 від 11.05.2018 – № 88.

Regarding the above, we consider it necessary to support I.V. Lopushinsky, who believes that “digitization” should be seen as a tool, not an end in itself. Under the systematic state approach, “digital” technologies will significantly stimulate the development of an open information society as one of the essential factors for the development of democracy in Ukraine, increase productivity, economic growth, job creation, and improve the quality of life of Ukrainian citizens[11,12]. Regarding the above, in our opinion, particular attention should be paid to the foreign and international experience of legal regulation of the circulation of public information in the form of open data and public information with limited access in the information support system of public administration bodies.

1. The current state of legal regulation of the process of digitalization of public administration in Ukraine

The decisive tendencies of the present in the activity of the bodies of state administration and local self-government, emphasizes A.S. Tverdokhlib is to ensure maximum transparency of their activities, a service-oriented approach to the provision of management and other state and municipal services, approaching the everyday problems of ordinary citizens and building on this basis trust relations, accountability and control of the authorities of different hierarchical levels, implementation of digital technologies in all spheres of public life and construction of the newest digital infrastructure in response to the requirements and in summons of the modern globalized world. Today, the implementation of the principles of openness and transparency of the activity of power structures, insists A.S. Hard bread is one of the important tasks for many countries of the world. Each of these principles is a step-by-step process towards achieving the ultimate goal, taking into account national specificities and priorities, namely: combating corruption and improving accountability, enhancing engagement and partnership between public

[11] Лопушинський І.В. «Цифровізація» як основа державного управління на шляху трансформації та реформування українського суспільства. Теорія та практика державного управління і місцевого самоврядування. 2018. № 2. С. URL: http://el-zbirn-du.at.ua/2018_2/20.pdf.

[12] Цифрова адженда України – 2020 («Цифровий порядок денний» – 2020): Концептуальні засади (версія 1.0). Першочергові сфери, ініціативи, проекти «цифровізації» України до 2020 року: Проект URL: – Режим доступу: https://ucci.org.ua/uploads/files/58e78ee3c3922.pdf.

authorities and civil society organizations, and making them more accessible and accessible to civil society to improve management services and more[13].

The coherence of science and practice, the needs of society and political will led to the implementation in Ukraine of the latest global trends in the introduction of the concept of open data, through the adoption of the Law of Ukraine "On Amendments to Some Laws of Ukraine on Access to Public Information in the form of open data"[14]. Experts say the possibilities of open data are endless. They are used to increase transparency and efficiency of the state, as well as to develop the economy.

In 2017, international open source experts commented on Ukraine's achievements as a breakthrough year. According to the ranking of the Global Open Data Index, compiled by the international non-governmental organization Open Knowledge International, Ukraine ranked 31st and improved its result by 23 positions compared to 2016. In the Open Data Barometer ranking of the international non-governmental organization World Wide Web Foundation, Ukraine ranked 44th and improved its score by 18 positions. In these ratings, Ukraine overtook its neighbors and some EU countries, including Italy, Greece, Portugal, Croatia, Bulgaria and Poland. Ukraine received the most commendable estimates for the openness of the state budget and expenditures, purchases, the unified state register of legal entities, individual entrepreneurs, public entities and national legislation[15].

The Law of Ukraine "On Amendments to Certain Laws of Ukraine on Access to Public Information in the Form of Open Data" states that public information in the form of open data is public information in a format that allows its automated processing by electronic means, free and free access to it, as well as its further use. Anyone may freely copy, publish, distribute, use, including commercially, in conjunction with other information, or by incorporating public information in the form of open data, with a mandatory link to the source of such information. Information managers are obliged to provide public information in the form of open

[13] Твердохліб О.С. Методологія та практика реалізації концепту відкритих даних в органах публічного управління України. http://www.dridu.dp.ua/zbirnik/2017-02(18)/7.pdf.

[14] Про внесення змін до деяких законів України щодо доступу до публічної інформації у формі відкритих даних: Закон України від 9 квітня 2015 року № 319-VIII. Відомості Верховної Ради України від 19.06.2015. 2015 р. № 25. Стор. 1357. Стаття 192.

[15] Відкриті дані: шість перемог 2017 року. URL: https://www.epravda.com.ua/rus/columns/2018/01/11/632868/.

data upon request, to publish and regularly update it on a single government open data portal and on their websites[16].

In early 2017, the State Agency for Electronic Governance consulted with businesses and NGOs on expanding the number of mandatory opening kits. At the end of December, the government approved an updated resolution # 835. It doubles the number of datasets from 302 to 600 and improves the standards for their disclosure in the form of open data. As a result, the Government of Ukraine adopted a decree "On approval of the Regulation on data sets to be disclosed in the form of open data", which specified specific provisions of the said law, in particular, defined the requirements for the format and structure of data sets to be disclosed in the form of open data, and the procedure for their publication, as well as a list of such datasets[17], and a year later, Ukraine joined the International Open Data Charter[18], committing itself to ensure the implementation of its core data principles: openness by default; timeliness and completeness; accessibility and convenience; comparability and interoperability; improved governance and citizen engagement; inclusive development and innovation[19]. On November 30, 2016, the Cabinet of Ministers of Ukraine approved the Procedure for Maintaining a Single State Open Source Web Portal[20] in order to provide access to public information in the form of open data and interact with users about it. One of the priorities of public policy in this area is to improve the principles of open data development, the requirements for the format and structure of data sets to be disclosed in the form of open data, the frequency of updating, as well as the list of such data sets, increasing responsibility for non-disclosure and non-disclosure

[16] Про внесення змін до деяких законів України щодо доступу до публічної інформації у формі відкритих даних: Закон України від 9 квітня 2015 року № 319-VIII. Відомості Верховної Ради України від 19.06.2015. 2015 р. № 25. Стор. 1357. Стаття 192.

[17] Про затвердження Положення про набори даних, які підлягають оприлюдненню у формі відкритих даних : Постанова Кабінету Міністрів України від 21 жовт. 2015 р. № 835 // Законодавство України. – Режим доступу : http://zakon.rada.gov.ua/laws/show/835-2015-п.

[18] Деякі питання приєднання до Міжнародної хартії відкритих даних : розпорядження Кабінету Міністрів України від 22 верес. 2016 р. № 686-р // Уряд. кур'єр. – 2016. – 20 жовт. – № 196.

[19] The International Open Data Charter. – Access mode : https://opendatacharter.net.

[20] Деякі питання оприлюднення публічної інформації у формі відкритих даних. Постанова Кабінету Міністрів України від 30 листопада 2016 р. № 867. Урядовий кур'єр від 19.12.2016. № 239.

of information open data form[21]. Existence and dissemination of this kind of data, considers A.S. Tverdokhlib, enables the public, including in the face of civil society institutions, to control and monitor the activities of public bodies of different organizational and hierarchical levels – from local to national, and the state – to involve their citizens in the direct management of public affairs, developing of public-public interaction, taking it to the next level by applying the latest achievements of modern information and telecommunication technologies, contributing to the very appearance of a synergistic effect, when it becomes possible to solve new, non-obvious problems using interrelated open data and the latest software solutions, because the data needed for analysis and generalization is accessible to anyone at any time and can be used with any purpose not prohibited by law[22].

These processes are also implemented at the local level. Open data has begun to develop intensively at the local level, which is particularly relevant for decentralization reform. The Lviv City Council has published over 300 datasets, the Dnieper City Council has published over 100 sets, and Lviv, Chernivtsi, Dnipro, Vinnitsa and Drohobych have joined the International Open Data Charter. For 2017, a record number of tools and analytics have been created in a variety of areas to support managerial decision-making[23].

The tool "Takeoff allowed" provides an estimate of the number of free frequencies on international aviation routes, "Winter is near" allows you to monitor whether a power plant is implementing a coal storage plan, and "Women and Men in Leadership" addresses gender equality. Throughout the year, Opendatabot has published analytics that help to better understand Ukrainian business – from the number of new companies to the amount of tax debt. These projects show the color and variety of data usage, and enable citizens to benefit from large amounts of data[24]. Increasing of society information needs and, accordingly, of public

[21] 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 від 17.11.2017. – № 21.

[22] Твердохліб О.С. Методологія та практика реалізації концепту відкритих даних в органах публічного управління України. http://www.dridu.dp.ua/zbirnik/2017-02(18)/7.pdf.

[23] Відкриті дані: шість перемог 2017 року. URL: https://www.epravda.com.ua/rus/columns/2018/01/11/632868/.

[24] Там само.

administration bodies, produce the development of a significant number of relevant technical tools in the field of public administration.

Efficiency of public administration in Ukraine in the conditions of decrease in the number and quality of civil servants, parallel increase of the number of tasks, initiatives, projects and at the same time optimization of expenses on management, technologies, emphasizes IV. Lopushinsky means that the public sector, when looking for new forms of life and ensuring continuity of its functioning, must rely on world experience, which shows that significant economic effect, as well as increasing the transparency and efficiency of public institutions can be achieved through the unification and standardization of business processes, and outsourcing non-core business functions. Governments in many countries around the world are now making significant efforts to maximize the unification of public administration processes, centralization of national "digital" infrastructure, and the refusal (and sometimes outright ban) of multiple, uncoordinated expenditures on the automation of standard functions. There are a number of functions that IV has discovered. Lopushinsky, inherent in virtually any state institute or enterprise, for example: human resources management (so-called "personnel departments"), payroll, finance, budgeting, procurement, real estate and lease management, maintenance and repair of equipment and infrastructure, project management, document management, information security and ICT infrastructure management and more. This list of typical processes is quite large, and the idea of unifying them seems to be on the surface. However, currently in Ukraine, each of the 75,000 spending units, IV notes. Lopushinsky, independently obtains or develops a system for automation of such processes, spends money on their support and development, creation of a separate ICT infrastructure, solving issues of information security and catastrophe resistance[25]. We fully agree with this scientist that such a situation leads to unjustified spending of a huge amount of budget funds and a complete impossibility of integration of such decisions. This is contrary to the international principles of the circulation of public information in the field of public administration and should be orderly to the relevant foreign experience.

[25] Лопушинський І.В. «Цифровізація» як основа державного управління на шляху трансформації та реформування українського суспільства. http://el-zbirn-du.at.ua/2018_2/20.pdf.

2. International and foreign experience in the legal regulation of the use of public information by public administration bodies in the form of open data and information with restricted access

In our view, the progress of legal regulation of the digitalization of public administration in Ukraine was facilitated by the use of positive foreign and international experience of legal regulation of public relations in the sphere of public information circulation, principles of its elaboration by public administration bodies, determination of the boundaries of access to such information, and the beginning of the process of creation of such information. digital economy, e-government, justice, administration to build digital nations and global information society.

As stated in Recommendation No. R (81) 19 of the Committee of Ministers of the Council of Europe 1981 "On Access to Information held by Public Authorities", it is generally recognized that a democratic system can function most effectively only when the public is fully informed. Moreover, because of social and technological development, modern life has become so complex that public authorities often have a wealth of documents and information of public interest and importance. In order to ensure adequate participation of all in public life, it is necessary to ensure, with inevitable exceptions and restrictions, public access to information held by public authorities at all levels[26]. This document also defined the regularity of bilateral functioning of information exchange between public authorities and a person, which positively affects both the work of public authorities and human life. This is driven by the need for the public and the public to access information held by public authorities to exercise most of their rights and protect their interests. Also, the definition of rules for access to public information and the maximum information openness of public authorities have a positive impact on public administration activities, as it allows for closer communication with people and the public, as well as responding promptly to changes in society and the economy.

The work of international governmental and non-governmental organizations in the field of protection of the right to access to public information has resulted in a number of international legal acts, which

[26] Про доступ до інформації, що знаходиться у розпорядженні державних органів: Рекомендація № R (81) 19 Комітету Міністрів Ради Європи 1981 р. [Електронний ресурс]. URL: http://cedem.org.ua/library/re81-19-pro-dostup-do-informatsiyi-shho-znahodytsya-u-rozporyadzhenni-derzhavnyh-organiv/

both relate to the exercise of the right of citizens to access information and determine the limits of such free access by establishing rules for the use of restricted information. The first group of international legal acts include the following: the Universal Declaration of Human Rights 1948[27]; The European Convention for the Protection of Human Rights and Fundamental Freedoms[28]; International Covenant on Civil and Political Rights[29]; The Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (the Aarhus Convention)[30]; Okinawa Charter of the Global Information Society[31]; The Strasbourg Convention on the Protection of Individuals with regard to Automatic Processing of Personal Data[32]; The Convention on Cybercrime[33]; Council of Europe Recommendation of 1981 No. R (81) 19 "On Access to Information held by Public Authorities"[34].

The list of international documents defining the rules for the circulation of restricted information should include the Model Law on Informatization, Information and Information Protection, adopted at the Twenty-sixth Plenary Session of the CIS Inter-Parliamentary Assembly

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

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

[29] Модельний закон про свободу інформації міжнародної неурядової організації «Артикль 19». Міжнародні стандарти забезпечення свободи вираження поглядів: зб. публікацій Артиклю 19 / за ред. Т. Шевченка, Т. Олексіюк. Київ: Фенікс, 2008. 224 с.

[30] 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.

[31] Окінавська хартія глобального інформаційного суспільства від 22 липня 2000 р. URL: http://zakon.rada.gov.ua/cgi-bin/laws/main.cgi?nreg=998_163.

[32] 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

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

[34] 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 медіаправа. URL: http://www.medialaw.kiev.ua/laws/laws_international/116.

in 2005[35] and ratified in 2010 by the Convention in connection with the automated processing of personal data[36]. The principles contained in the Convention are specified and extended by Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data[37] and Directive 97/66/EC of the European Parliament and of the Council of 15 December 1997 on the processing of personal data and the protection of the right to privacy in the telecommunications sector[38], which have not yet been ratified by Ukraine, but which may be used to improve national legislation.

An important role in international documents is to harmonize national legislation with EU legislation on procedures for the exchange of classified information and to ensure the confidentiality of personal data[39]. The basis for the development and adoption of national legislation on the protection of personal data were international documents such as the Model Law on Informatization, Information and Information Protection, adopted at the Twenty-sixth plenary session of the CIS Inter-Parliamentary Assembly in 2005[40] and ratified in 2010. individuals in connection with the automated

[35] 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

[36] 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.

[37] 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.

[38] 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.

[39] План дій «Україна – Європейський Союз». Європейська політика сусідства: схвалено Кабінетом Міністрів України 12.02.2005 р. URL: http://zakon1.rada.gov.ua/laws/show/994_693/print 139090841663515.

[40] 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 [Электронный ресурс]. URL: http://zakon2.rada.gov.ua/laws/show/997_d09/print1329875570254855.

processing of personal data[41]. The principles contained in the Convention are specified and extended by Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data[42] and Directive 97/66/EC Of the European Parliament and of the Council of 15 December 1997 on the processing of personal data and the protection of the right to privacy in the telecommunications sector[43], which have not yet been ratified by Ukraine, but which may be used to improve national legislation. In accordance with these documents, most EU and CIS countries have issued their own national laws: on activities with personal data in the medical, statistical, government, journalistic, police and other fields.

The main principles of foreign policy that influence the formation of national legislation on access to public information is to ensure the integration of Ukraine into the European political, economic and legal space in order to become a member of the European Union. In this regard, there is a constant need for the exchange of public information between Ukraine and the EU, intergovernmental organizations, and the implementation of appropriate security measures provided for in the relevant agreement between Ukraine and the European Union. At the same time, Ukraine also sets foreign policy goals for rapprochement with NATO, not excluding the possibility of Ukraine becoming a member of the organization. This vector of the development of Ukraine's foreign policy influences the national legislation on access to public information and the practice of its application. Important documents that define the content, nature and the legal basis of Ukraine's relations with NATO are the NATO Partnership for Peace (PfP) Framework Document (launched January 10, 1994, Ukraine joined on February 8, 1994), the Special Partnership Charter between NATO and Ukraine of July 9, 1997, the Declaration on its

[41] Конвенція про захист осіб у зв'язку з автоматизованою обробкою персональних даних: Страсбург, 28 січня 1981 року URL: http://zakon4.rada.gov.ua/laws/show/994_326.

[42] 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.

[43] 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.

Supplement of August 21, 2009, and the Law of Ukraine on the Principles of Internal and Foreign Policy of July 1, 2010. In accordance with the Declaration on the addition of the Charter, Annual National Programs of Ukraine-NATO Cooperation (RNP) are also being developed under the auspices of the KUN.

The main principles of foreign policy that influence the formation of national legislation on access to public information is to ensure the integration of Ukraine into the European political, economic and legal space in order to become a member of the European Union[44]. In this regard, there is a constant need for the exchange of public information between Ukraine and the EU, intergovernmental organizations, and the implementation of appropriate security measures provided for in the relevant agreement between Ukraine and the European Union[45]. At the same time, Ukraine also sets foreign policy goals for rapprochement with NATO, not excluding the possibility of Ukraine becoming a member of the organization[46]. This vector of the development of Ukraine's foreign policy influences the national legislation on access to public information and the practice of its application[47]. Important documents that define the content, nature and the legal basis of Ukraine's relations with NATO are the NATO Partnership for Peace (PfP) Framework Document (launched January 10, 1994, Ukraine joined on February 8, 1994)[48], the Special Partnership Charter between NATO and Ukraine of July 9, 1997[49], the Declaration on its Supplement of August 21, 2009, and the Law of Ukraine on the Principles of Internal and Foreign Policy of July 1, 2010[50].

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[44] Про засади внутрішньої і зовнішньої політики : Закон України від 1 липня 2010 р. № 2411-VI. Відомості Верховної Ради України. 2010. № 40. Ст. 527.

[45] Угода між Україною та Європейським Союзом про процедури безпеки, які стосуються обміну інформацією з обмеженим доступом: ратифіковано Законом № 499-V від 20 грудня 2006 р. Офіційний вісник України. 2007. № 15. С. 163. Ст. 582.

[46] Про Рекомендації парламентських слухань про взаємовідносини та співробітництво України з НАТО: Постанова Верховної Ради України від 21 листопада 2002 р. № 233-IV. Відомості Верховної Ради України. 2002. № 51. Ст. 374.

[47] Про основи національної безпеки України: Закон України від 19 червня 2003 р. № 964-IV. Офіційний вісник України. 2003. № 29. Ст. 1433

[48] Петров С. В. Адміністративно-правове забезпечення реалізації права громадян на доступ до публічної інформації : дис. … канд. юрид. наук : 12.00.07. Запоріжжя, 2013. 196 с.

[49] Хартія про особливе партнерство між Україною та Організацією Північно-Атлантичного договору: дата підписання 09.07.1997; дата набуття чинності 09.07.1997. Офіційний вісник України. 2006. № 34. С. 203. Ст. 2453.

[50] Про засади внутрішньої і зовнішньої політики : Закон України від 1 липня 2010 р. № 2411-VI. Відомості Верховної Ради України. 2010. № 40. Ст. 527.

In accordance with the Declaration on the addition of the Charter, Annual National Programs of Ukraine-NATO Cooperation (ANP) are also being developed under the auspices of the UNC.

The principles set out in international instruments play an important role in regulating information relations in the area of access to public information. For example, Recommendation No. R (81) 19 of the Committee of Ministers of the Council of Europe 1981 "On access to information held by public authorities" sets out the following principles for accessing information held by public authorities:

(1) Everyone within the jurisdiction of a Member State should have the right to receive, upon request, information held by public authorities, with the exception of the legislature and the judiciary;

2) effective and appropriate means must be provided for access to information;

3) cannot be denied access to information on the ground that the person making the request has no particular interest in the matter;

4) access to information is based on equality;

5) these principles are only subject to such restrictions and prohibitions as are necessary in a democratic society to protect the legitimate interests of society (eg national security, public security, public order, economic well-being of the country, prevent crime or prevent the disclosure of confidential information), as well as for the protection of privacy and other legitimate private interests, which, however, must be safeguarded to the specific needs of the individual in the information available from public authorities, which concerns him personally;

6) any request for information must be considered within a reasonable timeframe;

7) a public authority refusing access to information must state the reasons for such refusal with reference to legislation or practice;

8) Any refusal to provide information shall be subject to appeal[51].

The Model Law on Freedom of Information of International Non-Governmental Organization "Article 19" developed the following principles for the circulation of public information:

1) the principle of maximum disclosure, which means that all information held by public authorities is subject to disclosure, and that

[51] Про доступ до інформації, що знаходиться у розпорядженні державних органів: Рекомендація № R (81) 19 Комітету Міністрів Ради Європи 1981 р. [Електронний ресурс]. URL: http://cedem.org.ua/library/re81-19-pro-dostup-do-informatsiyi-shho-znahodytsya-u-rozporyadzhenni-derzhavnyh-organiv.

this presumption can only be overcome in a very limited number of cases, since public authorities have a duty to disclose information, and every member of society has the right to receive correspondence;

2) the principle that the following categories of information are made public by the public authorities: the following categories of information: prompt information on how a public body functions, including its costs, objectives, audited accounts, standards, achievements, etc., especially if the body provides direct services to the public; information on any requests, complaints or other direct actions that members of the public may take against this public authority; instructions on the procedures by which members of the public can participate in formulating and implementing policies or making legislative proposals; the types of information held by the institution and the form in which it is stored; the content of any administrative or political decisions affecting society, together with the reasons for making such decisions and the materials justifying their need;

3) promoting an open government, as informing citizens about their rights and promoting a culture of open government is important in implementing freedom of information legislation, as the experience of different countries shows that a civil service that ignores legislation can undermine even the most progressive legislation;

4) procedures for facilitating access, which must be implemented at three different levels: at the level of a public body; appeal to an independent administrative body; appeals in court, as well as all public authorities, should be required to establish open and accessible internal systems to ensure the right of the public to receive information, that is, in general, the authorities should designate a person responsible for processing information requests in accordance with the law;

5) excessive cost should not prevent persons from submitting information requests and other principles;

6) limited scope of exceptions, ie all individual requests for information from public authorities should be accepted if public authorities are unable to prove that this information is subject to the restricted exemption regime[52]. Such exceptions are determined by another group of international documents.

[52] Модельний закон про свободу інформації міжнародної неурядової організації «Артикль 19». Міжнародні стандарти забезпечення свободи вираження поглядів: зб. публікацій Артиклю 19 / за ред. Т. Шевченка, Т. Олексіюк. Київ: Фенікс, 2008. 224 с.

The principles of regulatory for the protection of restricted information, or – in NATO terminology, the Security of Information Policy (hereinafter SOI) are governed by document SM (2002) 49. Historically, SOI was for the first time fully documented in a document known as C-M (55) 15 (Final). In the late 1990s, NATO revised the C-M (55) 15 (Final) document, resulting in a document now known as C-M (2002) 49 in 2002.

Document C-M (2002) 49 outlines five basic principles of NATO security policy: Breadth, Depth, Centralization, Controlled Distribution, Personnel Controls[53].

The Breadth Principle states that NATO member states are obliged to regulate access to all types of sensitive information in the same way, whether or not they belong to NATO. Such a requirement is based on the fact that NATO must be assured that each NATO member country has set high standards of information security. Depth is based on a system of division of information with limited access on a level and definition of bars of secrecy[54].

The principle of centralization has national and intergovernmental aspects. At national level, the principle is based on the requirement for each NATO member state to have a national authority or national security organization (hereinafter NSO) responsible for information security and staffing, for collecting and registering espionage and subversion activities. The Bureau should also be empowered to control the security status of information with restricted access in other state and non-state regime-secret bodies, to organize methodical and research work, certification of information security means. At the intergovernmental level, there is a central coordinating body. A Security Bureau was set up in NATO in 1955, now transformed into the NATO Office of Security (hereinafter NOS), which is responsible for full coordination of NATO information security matters. NOS informs national governments of the application of principles and standards and monitors national systems to ensure effective protection of restricted information[55].

The Controlled Distribution principle is based on two rules. The first of these, the need-to-know, is that persons should have access to classified information only when there is a need for such information to perform their direct official duties, and access should not be given only to them.

[53] Roberts Al. S. Nato's security of information policy and the entrenchment of State Secrecy. Reports Basic Newsletter on Internal International Security October 2003 Nb.

[54] Там само.

[55] Там само.

that a person in a certain position is a leader. This principle is considered fundamental in NATO. The second rule is the most important in an agreement signed by the members of the alliance back in January 1950. It is that the information cannot be kept secret or declassified without the consent of the party from which it was obtained[56].

The Principle of Personal Control (Personnel Controls) provides rules for the selection of candidates to be granted access to classified information. Controls are based on credibility checks, assessments of the candidates' lifestyle[57].

Due to the active pro-European development of domestic information legislation, we believe that the legislation of Ukraine on access to public information should reflect the above principles.

It was preceded by the adoption of the international documents discussed above in the field of the circulation of public information, both open access and closed, changes in national laws of the leading countries of the world governing information relations.

As V. Yo. Shishko points out, information openness has become a constitutional principle in most countries of the world, and secrecy is the exception. This scholar notes that the concept of "right to information" was not in the legislation of most European countries at the end of the 1990s. However, the experience of leading European countries, such as Sweden, France, the Netherlands, Denmark, Finland, has prompted most states to amend the existing legislation and adopt new laws that clearly regulate the legal relationship regarding access to public information[58]. In all countries, this process has been progressing gradually with varying levels of regulation. Thus, in our view, foreign countries can be divided into two groups according to the level of law in which the right of access to public information and freedom of information are enshrined: the first group includes countries where such right is enshrined at the level of the constitution (Germany, Czech Republic, France, Hungary, Poland and others), and the second – countries where such a right is enshrined at the level of constitutional laws (Sweden, USA, Denmark and others). By this criterion, in our view, Ukraine belongs to the first group.

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[56] Roberts Al. S. Nato's security of information policy and the entrenchment of State Secrecy. Reports Basic Newsletter on Internal International Security October 2003 Nb.

[57] Там само.

[58] Шишко В. Й. Міжнародний досвід реалізації права доступу громадян до публічної інформації. Науковий вісник Львівського державного університету внутрішніх справ. Серія юридична. 2016. Вип. 2. С. 235–244.

Historically, the right to information emerged in the eighteenth century, which was associated with democratic processes in the United States. VF Ivanov notes that the right to information is associated with the United States of America since the American Freedom of Information Act of 1966 provided new interpretations and new legal forms of information protection. At the same time, the US and Scandinavian countries kept up. Thus, V.F. Ivanov points out, one of the first to adopt regulations governing information relations in countries such as Sweden, where the Constitutional Law on Freedom of the Press was passed by the Riksdag in 1766; two centuries later – Finland (Law of 1951); in 1970 similar laws were adopted in Denmark, Norway, in 1973 – in Austria, in 1978 – France and the Netherlands, in 1982 – in Australia, New Zealand and Canada, in 1990 – in Italy, in 1992 – Hungary, 1993 – Portugal, 1994 – Belgium, 1997 – Ireland and Thailand, 1998 – Korea and Israel, 1999 – Czech Republic and Japan[59].

Let's examine examples of regulation of information relations in the sphere of circulation of public information with open and restricted access mode on the examples of national laws of different countries.

Sweden, according to Yu. S. Shemshuchenko, is a country worth considering in the context of the experience of legal regulation of relations regarding access to public information, since freedom of information in this country was legally enshrined in 1766[60]. The Modern Law on Freedom of the Press, according to L.O. Okunkov, was adopted in 1949 and edited in 1994. This legal act together with the Law "On Freedom of Speech", "On the Form of Government" and some other laws form the Constitution Sweden. Paragraph 1 of Chapter 2 of the Law "On the Form of Government", informed by LA Okunkov, guarantees all citizens "in their relations with society" freedom of speech and freedom of information[61].

As noted in the scientific literature, France was one of the first countries to legislate on the right to information. In Art. 11 of the Declaration of Human Rights and the Citizen of 1789, included in the

[59] Іванов В. Ф. Інформаційне законодавство: український та зарубіжний досвід. Київ, 2009. 208 с. С. 102–103.

[60] Шемшученко Ю. С. Інформаційне законодавство: зб. законодавчих актів: у 6-ти тт. / Ю. С. Шемшученко, І. С. Чиж, В. Ф. Погорілко та ін.; Ін-т держави і права ім. В. М. Корецького НАН України; Державний комітет телебачення і радіомовлення України; Ю. С. Шемшученко (заг. ред.), І. С. Чиж (заг. ред.). Київ: Юридична думка, 2005. Т. 4: Інформаційне законодавство країн Європи і Азії. 384 с. С. 219.

[61] Конституции государств Европейского Союза / под общ. ред. Л. А. Окунькова. Москва: Инфра-М, 1997. 803 с. С. 702.

preamble to the 1958 Constitution of France, states that "the free exchange of views is one of the most valuable human rights. That way, all people are free to speak, write and publish, provided that they are responsible for any abuse of this freedom in the cases provided for by law"[62]. One of the fundamental principles guaranteed by the laws of France is the freedom of expression and communication[63]. The right to information in France is also protected by the 1992 Communication Code, the Access to Information Act 1978, the Civil Code (Article 9) and the Criminal Procedural Code (Articles 40, 283, 306)[64].

In the Basic Law of Germany the right of access to public information from 1949 in paragraphs 1, 2 of article 5[65]. According to the German Constitution, everyone has the right to freely express and disseminate his or her opinion verbally, in writing or by way of an image, as well as to receive information freely from public sources; freedom of the press and freedom of information are guaranteed through broadcasting and film production; there is no censorship; the limits of these rights are laid down in the provisions of general laws; free are art and science, research and teaching, emphasizes L.A. Okunkov[66]. At the same time, the Federal Republic of Germany is improving the protection of information with restricted access in the following areas: improvement of legislation in the field of protection of state secrets and secrets of companies; strengthening of counterintelligence bodies and giving them greater powers, including in the field of protection of state secrets; creation of self-help organizations in industry and deployment of their activities. Another direction of protection of information with limited access in Germany, says S. Knyazev, is the creation of associations of industrialists of the so-called self-help organizations and the deployment of their activities[67]. Also, in the Federal Republic of Germany, great importance is

[62] Constitution de 1958, Ve République – 4 octobre 1958 [Online]. URL: http://www.conseil-constitutionnel.fr/conseil-constitutionnel/francais/la-constitution/la-constitution-du-4-octobre-1958/texte-integral-de-la-consti-tution-de-1958.5074.html

[63] Закони та практики ЗМІ у одинадцяти демократіях світу. Харків: Фоліо, 2000. 199 с. С. 123.

[64] Cours de droit constitutionnel: présentation de l'histoire constitutionnelle de la France [Online]. URL: http://www.droitconstitutionnel.net/cours-histoire. htm.

[65] Конституции государств Европейского Союза / под общ. ред. Л. А. Окунькова. Москва: Инфра-М, 1997. 803 с. С. 182.

[66] Там само.

[67] Князев С. Деякі аспекти забезпечення охорони інформації з обмеженим доступом в провідних країнах світу. Правове, нормативне та метрологічне забезпечення системи захисту інформації в Україні. 2006. Вип. 2 (13). С. 99–102. С. 97.

attached to law enforcement and qualified legal assistance to the population, which is impossible without a lawyer and a lawyer's secret, which is one of the manifestations of the lawyer's independence and a necessary condition for him to exercise the most important professional functions of judicial representation and protection. German law, as well as Ukrainian law, has strict requirements for the protection of the confidentiality of negotiations of so-called holders of professional secrecy – persons with spiritual authority or lawyers, especially lawyers in criminal law[68].

M.I. Malyshko notes that the Hungarian Constitution of 1945 enshrines the right of everyone to express their opinions freely, to receive and impart information that is of public interest. According to this document, freedom of the press is recognized and protected (paragraph 2 of Article 61), and freedom of the press is protected in a special way[69].

The Italian law, says S. Knyazev protects the order of circulation of such types of restricted information as professional secrets; trade secrets entrusted to public officials in connection with their official position; service secrets. Thus, the Criminal Code of Italy provides for the responsibility for the disclosure of an official secret by an official or a person performing public service (Article 326). Disclosure of official secrecy is carried out by the guilty person in violation of duties related to his functions or service, in the abuse of his position, as well as if the activity of the guilty person will in any way contribute to the disclosure of this information. These actions are considered criminal if they are intentionally committed. The same article provides for liability in cases where the promotion of official secrecy was only negligent (Part 2 of Article 326)[70].

According to Art. 145 of the Criminal Code of Norway, any person who unlawfully reads the contents of a private letter or gains access to the premises of another person is subject to a fine or imprisonment for a term

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[68] Короткова П. Е. Становление, развитие и функционирование института адвокатской тайны: на примере России и ряда зарубежных стран : автореф. дис. … канд. юрид. наук: 12.00.11 «Судебная власть; прокурорский надзор; организация правоохранительной деятельности; адвокатура. Москва, 2009. 27 с. [Электронный ресурс]. Федеральный правовой портал «Юридическая Россия». URL: http://law.edu.ru/book/book.asp?bookID=1374578. С. 18.

[69] Малишко М. І. Конституції зарубіжних країн та України (основи конституціоналізму): навч.-метод. довідник. 2-ге вид., доп. Київ: МАУП, 2000. 111 с. С. 41.

[70] Князев С. Деякі аспекти забезпечення охорони інформації з обмеженим доступом в провідних країнах світу. Правове, нормативне та метрологічне забезпечення системи захисту інформації в Україні. 2006. Вип. 2 (13). С. 99–102. С. 97.

not exceeding six years. Such punishment shall be extended to any person who, by breach of protection, gains unauthorized access to data accumulated or disseminated by electronic and other technical means. Chapter "Disclosure of the secret" of the Criminal Code of Holland provides for the responsibility for the deliberate disclosure of a secret by a person who is obliged to keep it by virtue of his position or profession (Article 272). Part two of this article states that a person who has disclosed a secret shall be prosecuted only after the victim's complaint. In Art. 272 provides for liability for the disclosure of a trade secret (Part 1) and for the use of this information, which caused damage to its owner[71].

The Criminal Code of the People's Republic of China provides for liability for causing damage to the sovereignty of the People's Republic of China, its territorial integrity and security, committed by collusion with a foreign state (Article 102), as well as for providing material assistance to organizations and individuals, to commit the actions provided for in Art. 102 (art. 107). Of interest is Art. 109, which provides for the liability of employees of public authorities who hold state secrets who have left the country or who have stayed abroad. Responsibility for espionage arises in the following actions: 1) membership in the espionage organization or receipt of tasks from the espionage organization or its representative; 2) Indication of the bombing targets. In Art. 111 provides for the responsibility for the illegal transfer of material that is a state secret or other state information to foreign bodies or organizations, individuals. Other state information is understood to be official secrecy, as well as any other information, the disclosure of which may damage the sovereignty of the PRC, its territorial integrity and security. Ways of committing this crime are stealing information, obtaining it through bribery, espionage. The list of ways to obtain this information is exhaustive. Thus, there is no article in the Chinese Criminal Code that provides for liability for the loss of documents containing state secrets. All crimes provided for in the chapter on "Crimes against State Security" of the Criminal Code of China are only committed intentionally (Art. 102-113)[72].

D.P. Vasilenko and V.I. Maslak noted that other EU member states also have laws regulating the circulation of public information with restricted access. Such regulatory acts for the Czech Republic are the

[71] Уголовный кодекс Голландии / под ред. Б. В. Волженкина; пер. с англ. И. В. Мироновой. Санкт-Петербург: Юрид. центр Пресс, 2001. 510 с. С. 178–179.

[72] Уголовный кодекс КНР / под ред. А. И. Коробеева. Санкт-Петербург: Юрид. центр Пресс, 2001. 303 с. С. 35–39.

"Order of Access to Information" and the "Classification of Information Act"; for Estonia, the Public Information Act and the State Secrets Act; for Lithuania, the Law on Conditions for Transmission of Information to the Public and the Law on State Secrets; for Latvia, the "Freedom of Information Act" and the "Law on State Secrets"; for Poland, the Access to Information Act and the Classified Information Protection Act[73]. According to V. Artemov, the countries of Central and Eastern Europe – NATO members – went the way of incorporating basic principles of information security policy into national law. This became evident, notes V.Yu. Artemov, that the differences in the ways of implementing international legal norms for the protection of information in the domestic law of these countries depend not only on the system of their state system, but also has genetic roots due to the dynamics of world processes[74].

In general, national laws in many countries, as T. Mendel notes, contain the only normative legal acts (mostly laws) that regulate citizens' right to information – "freedom of information laws". T. Mendel states that a typical Freedom of Information Act "contains the right of the public to access information held by a government-elected authority and imposes a duty on the elected government to publish key types of information"[75].

V. Yo. Shyshko notes that laws on access to public information exist in most democratic states, and they are a real legal mechanism for exercising one of the fundamental human rights – the right of access to public information, which is, in turn, a requirement of European law and necessary condition for integration into the European Community[76]. This scholar emphasizes that the countries where there are laws on access to public information are: USA (Freedom of Information Act), UK (Freedom of Information Act), Latvia (Freedom of Information Act), Estonia (Freedom of Information Act)), Slovakia (Law on Free Access to Information), Bulgaria (Law on Access to Public Information), Slovenia (Law on Access to Public Information), Hungary (Law on Protection

[73] Василенко Д. П., Маслак В. І. Законодавство провідних країн світу у сфері захисту інформації. Вісник КДУ імені Михайла Остроградського. 2010. № 2 (61). Ч. 1. С. 128–132. С. 130.

[74] Артемов В. Ю. Захист інформації з обмеженим доступом в країнах НАТО (на прикладі Чехії і Словаччини). Правове, нормативне та метрологічне забезпечення системи захисту інформації в Україні. 2005. Вип. 11. С. 60–63. С. 60-61.

[75] Мендел Т. Типовий закон про суспільне мовлення. Артикль 19. Київ, 2010. 15 с. С. 3.

[76] Шишко В. Й. Міжнародний досвід реалізації права доступу громадян до публічної інформації. Науковий вісник Львівського державного університету внутрішніх справ. Серія юридична. 2016. Вип. 2. С. 235–244. С. 238.

of Information), etc. In general, V. Yo. Shishko notes, over the last decade, various states have created freedom of information laws around the world, including the United Kingdom, Nigeria, Mexico, Trinidad and Tobago, South Africa, South Korea, Thailand, Fiji, Japan and most of the countries in the East Europe. Sweden, the United States, the Netherlands, Finland, Australia, and Canada have previously implemented such laws[77,78]. However, like the domestic legislation of Ukraine[79], the legislation of many countries regulates the order of circulation, in addition to open public information, and the circulation of public information with restricted access.

CONCLUSIONS

Thus, we have considered principles of legal regulation of the circulation of public information, guarantees of free access to it and the reasons for its limitation in international regulations and legislation of individual countries, and found that most documents contain principles of free access to public information and, at the same time , determine its limits, which are implemented to a greater or lesser extent in their information, administrative, tort and procedural legislation. The international principles of the circulation of public information in the form of open data and information with restricted access are defined, and proposals for their implementation in domestic law are made.

It has been found out that in Ukraine on the way of digitalization of public administration there are many problems related to systematization, interoperability of "digital" systems, transparency of processes of information support of public administration bodies at different levels. In order to eliminate them, we believe it is necessary to unify the business processes of these organizations. This will allow at the legislative level to consolidate the same principles of functioning of information systems of public administration bodies, to fix the principle of using standardized

[77] Шемшученко Ю. С. Інформаційне законодавство: зб. законодавчих актів: у 6-ти тт. / Ю. С. Шемшученко, І. С. Чиж, В. Ф. Погорілко та ін.; Ін-т держави і права ім. В. М. Корецького НАН України; Державний комітет телебачення і радіомовлення України; Ю. С. Шемшученко (заг. ред.), І. С. Чиж (заг. ред.). Київ: Юридична думка, 2005. Т. 4: Інформаційне законодавство країн Європи і Азії. 384 с.

[78] Шишко В. Й. Міжнародний досвід реалізації права доступу громадян до публічної інформації. Науковий вісник Львівського державного університету внутрішніх справ. Серія юридична. 2016. Вип. 2. С. 235–244. С. 238–239.

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

solutions for each typical business process by all spending units and to ban the development of duplicate systems. We propose to lay down such principles in the Law of Ukraine “On Information Support of Public Administration Bodies”.

SUMMARY

Scientific theories and national normative legal acts that define the meaning of the concept of “digitalization”, its basic principles and principles are investigated. The main programmatic domestic, foreign and international documents that set the standards of digitalization of public administration and determine the directions of its development are identified. The types of public information that are in circulation in the information support of public administration bodies are considered: in the form of open data and information with restricted access. The main achievements in the field of legal regulation and practical implementation of the concept of open data in public administration are identified and illustrated, as well as the level of international evaluation of such results. An attempt has been made to systematize international and foreign regulatory acts that determine the principles of using public information in open data format and as restricted information.

It has been found out that in Ukraine on the way of digitalization of public administration there are problems related to systematization, interoperability of “digital” systems, transparency of processes of information support of public administration bodies at different levels. It is proposed to unify the business processes of public administration bodies and to enshrine at the legislative level in the Law of Ukraine “On Information Support of Public Administration Bodies” the same principles of functioning of their information support systems, as well as to introduce a ban on the development of duplicate systems.

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2. Василенко Д. П., Маслак В. І. Законодавство провідних країн світу у сфері захисту інформації. Вісник КДУ імені Михайла Остроградського. 2010. № 2 (61). Ч. 1. С. 128–132.

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PECULIARITIES OF ADMINISTRATIVE LIABILITY FOR VIOLATION OF INTELLECTUAL PROPERTY LEGISLATION

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INTRODUCTION

An integral part of public administration in the field of intellectual property is the establishment of administrative liability for the commission of relevant administrative offenses and ensuring the implementation of its activities. The reason for the allocation of administrative liability for violations of legislation in the field of intellectual property are those processes that take place in the material and spiritual life of society. Objectively, the need to overcome the current stage of development of the domestic community of violations of intellectual property rights is due primarily to the need to ensure the legitimate rights and interests of the owners of these rights, as well as the creation of conditions for the development of the Ukrainian economy, compliance with the law on fair competition in entrepreneurship and the promotion of intellectual creative work. Indeed, in order for intellectual property to really play a significant role in the life of society and ensure its development, a reliable system of its legal protection, including administrative and legal protection, and effective protection is necessary. We are confident that the problem of administrative liability for violating intellectual property rights in modern conditions requires a deeper, more comprehensive, complex and comparative analysis in order to identify its features. That is why in Ukraine there is an urgent need for urgent use of both legislative and enforcement measures for the creation of a holistic effective system of protection and protection of intellectual property, an important place in which administrative coercion is called for and one of its types – administrative liability for violating the legislation in the field of intellectual property.

We are convinced that the urgency of issues related to the development of conceptual foundations of administrative liability for violating the legislation in the field of intellectual property is not in doubt. Moreover, the role of administrative liability in Ukraine in recent years has increased significantly. This, as rightly noted in the legal literature, was

the consequence, first of all, of the nature of the criminal policy of our state, associated with the decriminalization of certain criminal acts and their transfer into administrative offenses. Moreover, creating a market economy and building a legal democratic state radically change socio-economic relations in Ukraine, the role and significance of many social and legal institutions.

1. Administrative offense in the field of intellectual property as the basis for administrative liability

The basis for the use of administrative liability for violation of intellectual property rights is a homogeneous group of administrative offenses – administrative offenses in the field of intellectual property. They have similar features that stem from the features of the sphere of human life in which they are committed, allowing them to be distinguished from other offenses. We believe that without a clear understanding of the concept of an administrative offense in the field of intellectual property, effective solution of the tasks of public administration in the field of intellectual property will be impossible.

Art. 9 of the Code of Ukraine on Administrative Offenses (hereinafter – CUAO) defines an administrative offense as an unlawful, guilty (intentional or negligent) act or omission that infringes on public order, property, rights and freedoms of citizens, on the established procedure of management and for which the law provides for administrative liability[1]. Objective signs of an administrative offense are its social harm, wrongfulness and punishment, and subjective – guilty and subjectivity.

The first significant feature of administrative offenses in the field of intellectual property is their social harm, which consists in violating the right of intellectual property and causing damage (material and non-material) or creating the threat of causing it to subjects of those social relations that have developed over the use of the results of intellectual creative activity and are protected by the law on administrative liability. The public harm of an administrative offense means that it is harmed by certain social relations, which are protected by legal norms: state and public order, property, rights and freedoms of citizens, established procedure of administration. This damage can be either material or

[1] Кодекс України про адміністративні правопорушення : Закон України від 7 грудня 1984 р. № 8073-X. URL.: http://www.zakon.rada.gov.ua/go/80731-10.

otherwise (moral, organizational, etc.). The action or inaction of the subject causes or threatens to cause damage to the objects of administrative and legal protection, in this case it is an infringement of the right of intellectual property, for example, to the right of authorship or the right to a trade mark (a sign for goods and services). Public harm in these cases is an objective feature of such offenses and a real violation of the relations of intellectual property rights, representing "the destruction of social in the object of the misdemeanor – the relationship of rights to objects of intellectual property" [2].

Wrongfulness, as a sign of an administrative offense in the field of intellectual property, implies a direct reference to this in the law. Administrative wrongfulness is closely linked to social harm and is an objective manifestation of the actual harmfulness of an act for public relations in the field of intellectual property and its legal assessment[3]. Exemption of administrative wrongfulness as a mandatory feature of an administrative offense is a concrete expression of the principle of legality in administrative law, since only the person who committed a socially harmful act is subject to administrative liability.

Another mandatory feature of administrative offenses in the field of intellectual property, which appears at the time of the commission of the offense and reflects its internal psychological content, is the presence of guilt. Thus, an administrative offense is not only socially harmful, illegal, but also a guilty act, that is, that which is the result of the manifestation of the will and mind of the offender. Guilty involves the presence of a person's own mental attitude to the relevant act and its consequences[4]. An important legal significance are the forms of guilt. Acting intentionally, the perpetrator realizes the unlawful nature of his/her act, foresaw and wishes (direct intent) or knowingly admits (implicit intent) the onset of harmful consequences. An administrative offense may be committed by negligence.

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[2] Селіваненко В. В. Форми порушення та захист прав суспільства на об'єкти інтелектуальної власності у сфері охорони здоров'я. *Часопис Київського університету права.* 2013. № 3. С. 223–228. С. 223.

[3] Письменський Є. О. Реалізація кримінально-правової політики шляхом криміналізації та декриміналізації: аналіз поточних законодавчих ініціатив. *Часопис Київського університету права.* 2015. № 1. С. 230–234. С. 231.

[4] Венгер Ю. В. Вина як суб'єктивна підстава адміністративної відповідальності юридичної особи за вчинене правопорушення у сфері стандартизації. *Науковий вісник Міжнародного гуманітарного університету. Серія : Юриспруденція.* 2015. Вип. 13(1). С. 85-87. С. 85.

An important feature of an administrative offense in the field of intellectual property is its administrative punishment, which is understood as the threat of the use of punishment for this offense, as appropriate, contained in administrative and legal sanctions. A specific act may be recognized as an administrative offense only if the law provides for administrative liability for its commission[5]. Administrative misconduct is characterized by an internal sign – wrongfulness.

Thus, the state of administrative punishment is a measure of administrative prevention, since it does not entail negative consequences for the offender, but only serves as a preventive function.

Without an administrative sanction it is impossible to fight against any offenses[6]. However, this does not mean that the non-punitive sanction must necessarily be imposed to a person who committed an act formulated in the disposition of a particular article. A person recognized as an offender may be exempted from administrative liability. In some cases, the presence of all signs of an administrative offense in an act of a person does not mean that this act automatically entails the administrative liability provided by the CUAO. Penalty as a sign of administrative offense is stipulated by the sanction of Art. 51-2 of CUAO in the form of a specific type of penalty: fine and confiscation of illegally manufactured products and equipment and materials intended for its manufacture. In some cases, especially in cases of extreme necessity, the presence of all signs of an administrative offense may not entail the emergence of administrative liability. With regard to intellectual property, the extreme need may be manifested in the following cases: in the case of the use of a patented formula of the invention without the consent of the patent holder for the creation of a medicinal product necessary for the preservation of human life and health (groups of people). At the same time, urgency does not allow using procedures for obtaining a permit from a patent holder or a compulsory license.

And the last sign of this type of administrative offenses is their subjectivity. Administrative offenses in the field of intellectual property are acts committed by the actor of the offense, since not every person who has committed a socially harmful administrative offensive act is subject to

[5] Чишко К. О. Адміністративно-правова кваліфікація та кваліфікація адміністративного правопорушення (проступку): поняття, ознаки, передумови. *Вісник Харківського національного університету внутрішніх справ.* 2015. Вип. 3. С. 150–158. С. 153.

[6] Колпаков В. К. Фактичні ознаки та юридичний склад адміністративного проступку: поняття та розмежування. *Вісник Запорізького національного університету. Юридичні науки.* 2016. № 3. С. 160–70. С. 165.

administrative liability[7]. He/she must be aware of her actions and manage them, reach a certain age, and so on. The notion of subjectivity of administrative offenses in the field of intellectual property is important in the context of the development of the theory of administrative misconduct, the improvement of administrative and jurisdictional activity to prevent them, as well as ensuring the coherence of administrative coercion with the nature of the relevant offenses.

The legal characteristic of the subjectivity of administrative offenses in the field of intellectual property allows to determine the socio-legal essence of their subjects, to identify the causes and conditions that promote the development of administrative delicacy in the field of intellectual property[8], after all, the correct definition of the legal status of the actor of this administrative offense, the establishment of a level and directions of his/her professional training, social, property status, as well as personal interests and preferences contributes to a complete and objective assessment of administrative offenses committed by members of relations in the field studied.

The peculiarity of administrative legislation on intellectual property is that its rules provide for administrative liability for the commission of illegal actions on intellectual property objects, as well as the protection of property interests of subjects of intellectual property right whose rights are violated by such actions. Due to the fact that legal relations regarding certain objects of intellectual property are regulated by special laws, in the conduct of an administrative case, it is necessary to follow the provisions of that special law, which provides protection of personal non-property and property rights of authors and their successors, as well as rights of performers, producers of phonograms and videograms and broadcasting organizations and inventors' rights.

Thus, in order to qualify for an administrative offense in the field of intellectual property, it is necessary to have clearly expressed its features. From a practical point of view, there is a more detailed regulation of the range of objects in respect of which the offenses are committed and for which the offense subject is administratively liable. In connection with

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[7] Фролов О. С., Васильєв І. В. Зміст та обсяг концепту «суб'єкт адміністративного правопорушення». *Держава і право. Юридичні і політичні науки.* 2014. Вип. 66. С. 105–117. С. 107–108.

[8] Світличний О. П., Слюсаренко С. В., Тандир О. В. Захист прав суб'єктів права інтелектуальної власності адміністративним законодавством : монографія. Київ : НУБіП України, 2015. 181 с. С. 91.

offenses that violate intellectual property objects, one can identify a range of issues in relation to which human rights activities are carried out. First of all we are talking about disputes related to the refusal to issue security document on third party's objections regarding its issuance, security document invalidation etc. Typically, these issues are resolved administratively or in court. They are considered in specially created entities of public administration, which are responsible for the protection and enforcement of intellectual property rights. Such entity is the Department of Intellectual Property of the Ministry of Economic Development and Trade of Ukraine, and in particular its body, which resolves disputes related to issuance of security documents and their invalidation – Appeals Chamber.

2. Legal structure of administrative offenses in the field of intellectual property

All warehouses of administrative violations in the field of intellectual property (Articles 51-2, 107-1, 156-3 (in part concerning intellectual property objects), 164-3, 164-6, 164-7, 164-6, 164-7, 164-6, 164-7, 8, 164-9, 164-13) are characterized by such elements as objective evidence (they are the totality of the generic object and the objective side of the composition of these administrative offenses), as well as subjective features (a set of relevant entities and the subjective side).

Characteristics of the objective signs of the composition of administrative offenses in the field of intellectual property should begin with the disclosure of their generic object – what the offender perpetrators and why it causes or may cause harm. The legislator placed the stocks of these socially harmful acts into three different chapters (6, 9 and 12) of the law on administrative liability. But it is obvious that the generic objects of the administrative offenses listed in Art. Art. 51-2, 107-1, 156-3 (in the part relating to the objects of intellectual property), 164-3, 164-6, 164-7, 164-8, 164-9, 164-13 CUAO go beyond the boundaries of the generic objects of the administrative offenses encroachment on property (Article 51-2), administrative offenses in agriculture and violations of veterinary and sanitary rules (Article 107-1) and administrative offenses in the field of trade, public catering, sphere services, branches of finance and entrepreneurial activities (Articles 156-3 (in so far as they relate to intellectual property objects), 164-3, 164-6, 164- 7, 164-8, 164-9 and 164-13).

In our opinion, these administrative offenses have their own unique generic object – public relations of intellectual property taken under the protection of the law on administrative liability.

The objective side of the warehouses of administrative offenses in the field of intellectual property is a set of features that characterize the violation of intellectual property rights as an outwardly expressed behavior. In particular, the unlawful act in Art. 51-2 CUAO is defined as "illegal use of the object of intellectual property rights (literary or artistic work, their performance, phonograms, transmission of broadcasting organization, computer program, etc.), assignment of authorship to such object or other intentional violation of rights on the object of intellectual property rights".

In the CUAO, illegal acts in the field of intellectual property are defined as "violation of rights" (Article 51-2), "violations of requirements established by law" (Article 156-3), "unfair competition" (Article 164-3), "violation conditions" (Article 164-7), "illegal distribution" (Article 164-9), "violation of the law" (Article 164-13). An analysis of the dispositions of the aforementioned articles convinces that administrative offenses can be committed by action, but since the wording "another intentional violation" (Article 51-2) contains an inexhaustible list of acts, the question arises about the possibility of committing these offenses and by way of inaction[9].

In the disposition of the articles under investigation, the domestic legislator, using the notion of "illegal use", as well as illegal "demonstration", "distribution", etc., reveals their content without mentioning a complete or even partial list of those unlawful actions that should be considered illegal. In order to find out the same meaning mentioned in the above-mentioned Articles of the Code of Conduct, the concepts of characterizing unlawful acts should necessarily refer to the corresponding special laws. At the same time, it must be taken into account that for each group of objects of intellectual property the legislator establishes the appropriate types of violations. Thus, ways to violate the rights to the results of literary and artistic activities are specified in the laws "On Copyright and Related Rights" and "On the Distribution of Copies of Audiovisual, Phonograms, Videograms, Software, Databases". Regarding

[9] Самбор М. А., Самбор А. М. Інші та подібні дії як елемент складу адміністративного правопорушення та його вплив на кваліфікацію діяння як адміністративного проступку. *Науковий вісник Дніпропетровського державного університету внутрішніх справ.* 2014. № 3. С. 143–160. С. 151.

the results of scientific and technical creativity, the possible violations of their rights are fixed in the laws “On the Protection of Rights to Inventions and Utility Models”, “On Protection of Rights to Industrial Designs”, “On Protection of Rights to Integrated Circuits’ Topographies”, “On Protection of Rights on plant varieties”,“On tribal affairs in animal husbandry”. Ways of unlawful use of the results of individualization of goods (services) and their producers are regulated by the laws of Ukraine “On the protection of rights to marks for goods and services” and “On the protection of rights to indicate the origin of goods.”

The analysis of the relevant articles of the special laws on the protection of intellectual property rights leads to the conclusion that the objective side of the composition of administrative offenses in the field of intellectual property is not limited to the acts specified in the law, but should be taken in the broader sense, which causes certain difficulties in their practical use. The legislator left an open list of possible violations of intellectual property rights, which allows for the use of these articles in various factual circumstances of the commission of administrative offenses. It is also evident that in practice the violation of the intellectual property rights of different objects has different economic, social and legal consequences, and therefore the degree of their social harm is different. On this basis, there is a need for differentiation of administrative liability depending on the object of intellectual property.

Subjective features of the composition of administrative offenses in the field of intellectual property (Articles 51-2, 107-1, 156-3 (in so far as they relate to intellectual property objects), 164-3, 164-6, 164- 7, 164-8, 164-9 and 164-13 of the CUAO) represent the unity of the actor and the subjective side, and their specificity is determined by the peculiarities of the actor of these offenses, elements of which are various objects of intellectual property actively used in economic activity by enterprises and organizations.

The current administrative law does not provide a general definition of the actor of an administrative offense and does not use such a term. The analysis of the relevant articles of the CUAO, including illegal acts in the field of intellectual property, allows us to conclude that it is a convicted person who has reached a certain age and fulfilled the part of the administrative offense described in the law.

It should be noted that the current CUAO recognizes the actor of the misdemeanor solely an individual. This, in particular, is evidenced by normatively fixed features. Yes, Art. 12 of the CUAO sets the age after

which the administrative liability comes (16 years); Art. 20 of the CUAO provides for the obligatory sign of the actor of his/her sanity; Art. 33 of the CUAO requires, when imposing a penalty, to take into account the offender's personality; Art. 256 of the CUAO requires that the protocol on administrative offenses compulsorily contain information on the identity of the offender, and also indicates the obligation of the offender to sign the protocol; Art. 268 of the CUAO establishes for those who have committed misconduct, the right to speak in their own language, etc.

It is hard to imagine that the listed rates are for legal entities. Moreover, Art. 27 of the CUAO determines that a fine is a monetary fine imposed on citizens and officials for administrative offenses. Analyzing the peculiarities of the administrative liability of individuals, one can distinguish the following types of actors of the administrative offense: general, special and special.

The second subjective feature of the composition of administrative offenses in the field of intellectual property is their subjective aspect, which, by the science of administrative law, is defined as the internal part of administrative offenses, which encompasses the mental attitude of the person to the socially harmful act that it is committed and its consequences[10]. The subjective part, in turn, has mandatory and optional features. A compulsory sign of the subjective part of administrative offenses is the fault. The practical significance of its finding in administrative offenses in the field of intellectual property is the need to prove the deliberate infliction of damage to the right of intellectual property, and the analysis of the disposition of these articles allows us to conclude that there is an unconditional deliberate violation of intellectual property rights. Intention can be direct (when the person was aware of the socially harmful nature of his/her act, envisaged its socially harmful consequences and wished for their onset), or indirect (if the person was aware of the socially harmful nature of his/her act, envisaged its socially harmful consequences, and although he/she did not want it, he deliberately assumed their offensive). Consequently, the guilty person during the violation of intellectual property rights realized that he/she illegally used objects of intellectual property rights, assigns authorship to them or otherwise

[10] Мельничук Н. Ю., Сьома М. Еволюція категорій правопорушення та адміністративна відповідальність. *Наукові записки Львівського університету бізнесу та права.* 2014. № 12. С. 60–64. С. 60.

violates the right of intellectual property, envisaged the possibility of pecuniary damage and wished or tolerated such consequences.

Optional features of the subjective part of the administrative offenses in the field of intellectual property are the motive and purpose of the guilty person. It should be noted that the motive and purpose of violation of intellectual property rights in the dispositions of Art. Art. 51-2, 107-1, 156-3 (insofar as it relates to intellectual property objects), 164-3, 164-6, 164-7, 164-8, 164-9 and 164-13 of the CUAO by the legislator provided, and therefore they are not obligatory signs of these administrative offenses and do not affect their qualification. We support the opinion of some researchers that a violation of intellectual property rights may come from various but necessarily mercenary motives: profit, appointment, for glory, etc. For example, plagiarism may be carried out in order to enter into a creative union, defend a dissertation, etc.

That is, the guilty person in violation of intellectual property rights realized that he illegally uses objects of intellectual property rights, assigns authorship to such objects or otherwise deliberately violates the rights to intellectual property objects, envisaged the possibility of causing pecuniary damage and wished or allowed these consequences[11]. Forecast of socially harmful consequences means the presentation of the guilty person, at least in general terms, about the harm that will be caused by his/her actions. For example, in the manufacture of counterfeit printed products, the guilty person may not know exactly who and in what size the damage does. If the necessity of only knowing about an act is indisputable, the actor may treat carelessly the consequences of this offense.

Thus, mandatory indications of administrative offenses in the field of intellectual property are their social harm (it is manifested in causing harm to or in the creation of the threat of public relations in the field of intellectual property), administrative unlawfulness (illegal lawfulness of illegal acts in the field of intellectual property, enshrined in the law on administrative liability), punitive (the threat of administrative influence imposed by the law on administrative liability for the commission of such an administrative offense) and subjectity (commitment of an unlawful act by the actor of an administrative offense in the field of intellectual property).

[11] Шоптенко С. С. Зміст і стадії провадження в справах про адміністративні право порушення. *Науковий вісник Харківського державного університету. Серія : Юридичні науки.* 2017. Випуск 5. Т. 2. С. 74–77. С. 75.

3. Mechanism of realization of measures of administrative liability for infringements in the field of intellectual property in Ukraine

The implementation of administrative liability for violations in the field of intellectual property is carried out in the form of enforcement, that is, the power of authorized agents, which consists in applying administrative law to specific facts of committing legally significant actions. In this case, enforcement involves the implementation by the authorized state authorities and officials of the actions foreseen by law to bring the perpetrators of intellectual property offenses to administrative liability.

Analysis of the current legislation allows us to speak about the existence of two types of proceedings in cases of administrative violations in the field of intellectual property: the use of administrative penalties to individuals under the rules of the CUAO and the use of administrative penalties to legal entities, which the CUAO is not regulated. And if the use of administrative penalties to individuals, despite the existence of certain legal gaps, is still regulated in detail by the CUAO, then the imposition of penalties on legal entities is unsystematized. Moreover, the use of penalties for violation of different legal norms has, accordingly, some differences in the order of imposing penalties. However, for the above-mentioned groups of subjects of administrative offense, proceedings concerning such offenses have certain common features. Therefore, the following stages of the proceedings in cases of administrative violations are traditionally distinguished: a violation of an administrative offense; consideration of a case concerning an administrative offense and ruling-making; appeal and appeal against a ruling on an administrative offense; execution of a ruling, imposing of administrative penalty[12].

Such system of stages is also inherent in proceedings in administrative offenses in the area of intellectual property, taking into account the specifics of the syllables of the corresponding administrative offenses.

The first stage – the prosecution of an administrative offense in the field of intellectual property – consists of three following stages: the official registration by the authorized body (official) of the actual data on the violation of intellectual property rights, the official activity of the authorized bodies to clarify the circumstances of the offense and drafting the protocol. Much of the researchers agree with the fact that the initial

[12] Шоптенко С. С. Зміст і стадії провадження в справах про адміністративні право порушення. *Науковий вісник Харківського державного університету. Серія : Юридичні науки.* 2017. Випуск 5. Т. 2. С. 74–77. С. 75.

stage of proceedings in administrative offenses is in existence. In the opinion of the aforementioned authors, the first stage of proceedings in cases of administrative offenses begins with the drafting of the protocol and is called the stage of initiation of a case concerning an administrative offense. The second stage of the stage of infringement proceedings in cases of violations in the field of intellectual property is related to the official activities of authorized agents to clarify the circumstances of the offense. It is often associated with the use of administrative-procedural safeguards.

The second stage – the consideration of the case on an administrative offense in the field of intellectual property – is aimed at analyzing the actions conducted by a judge within the specified stage for solving the tasks of proceedings in cases of administrative violations in the field of intellectual property. At this stage, there are four stages that have specific goals and objectives and are characterized by a certain logical sequence and completion: preparation for consideration of the case; substantive consideration of the case; making and execution of a ruling in a case; announcement of the ruling. According to Art. 221 CUAO, cases on administrative offenses, stipulated by Art. Art. 51-2, 107-1; 164-3, 164-6, 164-7, 164-8, 164-9 and 164-13 of the CUAO are considered by the court. That is why, after the completion of the first stage of writing the minutes for the case materials in the manner specified in Art. 257 of the CUAO are sent for further consideration to the relevant court.

At the first, preparatory stage, the judge, to whom the case has been received, clarifies the issues specified in Art. 278 of the CUAO: whether it belongs to the competence of the consideration of the case (as chapter 17 of the CUAO review of cases on administrative offenses within the jurisdiction of 46, the validation of determining jurisdiction is important for the timely and proper resolution of each case); whether the protocol and other materials of the case about an administrative offense have been correctly drawn up (improper registration of the protocol on violation of the rights to the object of intellectual property and other materials of the case testifies to insufficiently complete investigation of the event of the offense and the person who committed it).

One of the main procedural documents when considering a case about an administrative offense, including violation of rights to an object of intellectual property rights, is a protocol. Practice shows that often the cases are without persons brought to administrative liability, they have no data on call witnesses and victims, violated the terms of consideration, not

specified information about physical evidence, possible disqualification and rejection, denial person being imposed to administrative proceedings or his/her representative or counsel. All this results in the loss of information that may be of importance to the supervisory authority in verifying the correctness of the ruling made by the court.

The adoption of one of the resolutions provided for in Part 1 of Art. 284 of the CUAO is the culmination of the stage of consideration of a case[13]. A resolution on imposing an administrative penalty shall be made in the event that the materials of the case prove the guilt of a person in committing an administrative offense, unless there are circumstances that exclude administrative liability and there are no grounds for dismissing a person from administrative liability. Determination of the type of penalty is carried out within the limits established by Art. Art. 51-2, 107-1, 156-3 (in the part relating to the objects of intellectual property), 164-3, 164-6, 164-7, 164-8, 164-9 and 164-13 of the CUAO, in exact compliance with the legislation on administrative violations and taking into account the principles of legislation on administrative offenses. In particular, for violation of intellectual property rights by the legislator in the sanction of Art. 51-2 of the CUAO provides for the imposition of a fine of ten to two hundred non-taxable minimum incomes of citizens with the confiscation of illegally manufactured products and equipment and materials intended for their manufacture. The disadvantage of the practice of imposing fines on this category of cases is the lack of a methodology for calculating the amount of fines for violation of the rights to the object of intellectual property.

The significance of the resolution to impose administrative penalties is due to the fact that this act occupies a special place among the acts issued in the course of proceedings. It is the decision that implements the judge's resolution to enforce the penalty. The resolution to impose an administrative penalty generates legal obligations both for the offender and for the state authorities regarding its implementation.

In the end, the final stage of this stage is the announcement of the ruling[14]. It should be noted that in practice, only the resolution part of the

[13] Михайлов Р. І. Окремі питання удосконалення законодавства щодо виконання постанов про накладення адміністративних стягнень. *Проблеми правознавства та правоохоронної діяльності.* 2015. № 1. С. 22–27. С. 23.

[14] Строцький Р. Є. Поняття та особливості провадження щодо виконання постанов у справах про адміністративні правопорушення. *Науковий вісник Львівського державного університету внутрішніх справ. серія юридична.* 2014. Вип. 3. С. 175–187. С. 180.

resolution is rarely announced, which is a violation of the norms of Art. 285 of the CUAO because it should be announced in full immediately after the case is completed. It is also necessary to conduct all procedural actions provided for by the administrative law.

One of the tasks of the proceedings in cases of administrative offenses, stipulated by Art. Art. 51-2, 107-1, 156-3 (in the part relating to the objects of intellectual property), 164-3, 164-6, 164-7, 164-8, 164-9 and 164-13 of the CUAO, is identifying the causes and conditions conducive to the commission of these offenses. The court, when considering a case about an administrative offense in the field of intellectual property, establishes the specific reasons and conditions that facilitate the commission of the said offenses and makes a request to the relevant organizations and officials to take measures to eliminate these reasons and conditions.

At the next stage – the stage of reviewing the rulings in the case of administrative violations in the field of intellectual property – an analysis of procedural actions aimed at restoring the violated rights of protected citizens is marked by the optional nature of this stage of proceedings in cases of violation of intellectual property rights.

The reason for the revision of the ruling in the case is Art. 55 of the Constitution of Ukraine, which guarantees every person the right to appeal to the relevant authorities and to appeal against decisions and actions of state authorities. The implementation of these constitutional norms in the legislation is carried out through the creation of special procedural institutions, among others, and the stage of reviewing the rulings adopted in the administrative proceeding.

The final stage of proceedings in cases of administrative offenses, stipulated by Art. Art. 51-2, 107-1, 156-3 (in the part relating to the objects of intellectual property), 164-3, 164-6, 164-7, 164-8, 164-9 and 164-13 of the CUAO, is the stage of execution of the resolution on imposing an administrative penalty, the general provisions of which are laid down in Section V of the CUAO. Its tasks in relation to this category of cases are to ensure the implementation of the issued resolution, protection of legal rights and interests of individuals and legal entities in the field of intellectual property, prevention of administrative offenses provided for in Art. Art. 51-2, 107-1, 156-3 (insofar as it relates to intellectual property objects), 164-3, 164-6, 164-7, 164-8, 164-9 and 164-13 of the CUAO, and crimes stipulated by art. Art. 176, 177, 203-1, 229, 231 and 232 of the Criminal Code of Ukraine (the last two articles in relation to illegal gathering for the purpose of use or use, as well as disclosure of information

constituting commercial secrets). During this stage, the specific administrative-procedural legal relations, which differ from the legal relations characteristic of other stages, the object and the subject structure, are drawn up.

For violation of the rights to the object of intellectual property rights, the basic penalty is a fine. Art. 27 of the CUAO defines a fine as a cash penalty. The disadvantage of the practice of applying fines to this category of cases is the lack of a methodology for calculating fines for violating intellectual property rights. The legislator has set the following limits for the amount of fines: from ten to two hundred non-taxable minimum incomes of citizens – but under what circumstances one or another amount applies, what factors influence its size is not clear. Note that the actor of the offense provided for in art. 51-2 of the CUAO, may be both an individual and an official – and, of course, an official should be punished more severely than a physical one. It should be noted that even in the Criminal Code of Ukraine the amounts of fines are differentiated. Therefore, in our opinion, the position of T. O. Kolomoyets, who suggests in the perspective administrative legislation to provide a differentiated approach to determining the amount of fines depending on the person to whom it is imposed: for individuals, for officials and individuals-business entities, for legal entities[15].

CONCLUSIONS

The establishment of administrative liability for the commitment of administrative offenses in the field of intellectual property is an integral part of public administration, since the successful resolution of the problem of administrative and legal protection of intellectual property rights depends not only on the effectiveness of the implementation of the tasks of public administration in this area, but also on the preservation and enhancement of intellectual capital of our country, the growth of its international authority, the degree of development of its civilization, and in the end, and the level of democracy in Ukrainian society. Administrative liability for violation of the rights to the object of intellectual property rights can be defined as the implementation of an administrative-legal sanction, which appears in the imposition by the

[15] Коломоєць Т. О. Адміністративно-процесуальне право – самостійна галузь національного права (в аспекті пошуку нової моделі предмету адміністративного права України). *Публічне право.* 2016. № 1. С. 27–34. С. 28.

court to the guilty person who committed an administrative offense in the field of intellectual property, the punishment provided by the CUAO, in accordance with the procedure established by law. The only generic object of these administrative offenses is a group of social relations of intellectual property, which are protected by the law on administrative liability. The subject of this group of public relations are objects of intellectual property. Subjective features of administrative offenses of this group are represented by their actor, and the subjective side is characterized by the fact that they are committed only intentionally.

Traditionally they distinguish the following stages of proceedings on administrative offenses: initiation the case of an administrative offense (it consists of three stages: official registration by the authorized body (official) evidence of infringement of intellectual property rights, the official activities of the competent authorities to find out the circumstances of the offense and drafting a protocol); proceedings on administrative violations and taking action (at this stage should be divided into four stages: preparation for trial; the merits, making and execution of ruling, announcement of the ruling); appeal and protest against a ruling on an administrative offense; execution of a ruling, imposing of administrative penalty.

SUMMARY

The article deals with description of peculiarities of administrative liability for violation of legislation in the field of intellectual property. The definition of administrative liability for violation of intellectual property rights has been proposed. The basis of use of administrative liability for violation of intellectual property rights has been established. The composition of administrative offenses in the field of intellectual property and their objective and subjective features have been determined. The unique generic object of these administrative offenses has been disclosed. The objective signs of administrative offenses in the field of intellectual property have been singled out. Subjective signs of administrative violations of this group have been studied. The essence of the mechanism of realization of administrative liability for infringements in the field of intellectual property is established and the stages of proceedings in cases of administrative violations in the field of intellectual property have been established: the initiation of a case concerning an administrative offense; hearing the case about an administrative offense and a ruling (preparation for hearing case, hearing the case in fact, the

making and execution of a ruling in a case, the announcement of a ruling); appeal and protest against a ruling on an administrative offense; execution of a ruling, use of administrative penalty.

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DILEMA OF CORRUPTIALIZATION: LEGAL AND PSYCHOLOGICAL ENTITY

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INTRODUCTION

In today's conditions of social organization, due to globalization tendencies, the complexity of the construction of the state mechanism and the integrity of the regulatory regimes, which fall under the power and administrative influence of its components, are becoming increasingly important. Therefore, the effectiveness of the functioning of the state and its institutions is a guarantee of social prosperity, the development of social space, proper organization of the fundamental legal institutions, priority of fundamental social values. Therefore, any factors (subjective or external) of a destructive type, localized in the field of public administration, lead to diametrically opposed to pre-defined consequences: obstruction and stagnation of civil society institutions.

One of the dominant problems of the modern-type state mechanisms is corruption. Despite the variety of conceptions of identification of its social significance, it is obvious that there is insufficiency and some inconsistency in the doctrinal, and therefore in the normative measurements of its definition, determinative subsystems, that, in their combination, lead to the ineffectiveness of specialized preventive anti-corruption measures being carried out in the state. Effective counteraction to corruption and its manifestations is the key to the progressive development of the state and civil society institutions, which emphasizes the importance of conducting systematic research in the paradigm of identifying and neutralizing determinants of corruption as the social phenomenon.

Obviously, the socio-psychological content of this phenomenon should be taken into account, since corruption is defined as the primary deviant form of relations, as a result of which a certain life style of a person oriented to the status, power and money is formed and, in the majority, material values dominate upon the original tasks of the public officer. In the communicative sphere, corruption schemes contribute to informal "mutually beneficial communication" (domination of interpersonal relations with only "necessary" and "profitable" people), an attempt to move as quickly and successfully as possible on the social and career ladder with any means necessary.

Creating a corrupt environment through coercion involuntarily weakens the mechanism of psychological resistance of the individual towards corruption and "draws" it into the system of these destructive ties. Therefore, creation of a type of a person who is oriented on higher values, with a well-formed moral imperative, with a desire for self-realization, an adequate level of mental stability is the key of minimizing corruption processes in society.

Effective counteraction to corruption and its manifestations is the key to the progressive development of country and civil society institutions, which emphasizes the importance of conducting systematic research in the paradigm of identifying and neutralizing determinants of corruption of the authorities.

The scientific aspects of the clarification of the different aspects of corruption is positioned in researches of: V. Averyanova, A. Andryjko, L. Arkusha, L. Bagriy-Shahmatov, O. Bandurka, D. Bahrahha, Y. Bytiak, H. Bosak, R. Kalyuzhnyj, Z. Kisil, R.-V. Kisil, V. Kovalenko, R. Klitgard, A. Komzyuk, Y. Shemshuchenko, V. Shkarupa and others.

The basis of the doctrinal study of the problem of corruption in the public system, in the vide sense, was presented in the scientific researches of S.-P. Ackerman[1], M. Melnik[2], E. Nevmerzhytsky[3]. The notification of these scholars as the fundamentalists in the field of working out the features of corruption is based on the proposed innovative concept of "integrity" of its content, manifestations and determinants of corruption, among which, unlike the conservative vision of the rest of the researchers, those innovators included both legal and social, psychological, economic and political factors and expressions of this phenomenon, but the identification of psychological factors of corruption in the researches of these scientists is reduced only to the statement of the presence of the named realm on corruption manifestation.

In the context of current article, it is needed to underlined that various attempts to determine the role of psychological factors in the emergence

[1] Susan Rose-Ackerman.Corruption and Government Causes, Consequences, and Reform. [Електронний ресурс] CAMBRIDGE UNIVERSITY PRESS – Режим доступу : https://edisciplinas.usp.br/pluginfile.php/841106/mod_resource/content/0/1999_Rose-Ackerman.Corruption20and20Government_20Causes2C20Consequ20-20Susan20Rose-Ackerman.pdf.

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of corruption were manifested in the studies of V.I. Dobrenkov and N. R. Ispravnikova (individual psychological determinants of corruption were stated to be: the length of professional activity, the presence of primary orientation to committing corruption crimes and low level of professional consciousness of the employee) [4], Z. R. Kisil, R.-V. Kisil (the role of professional deformation and aberration of the employee as a trigger for his further corruption activity)[5] [6]. Thus, on the basis of the analysis of the doctrinal realm of the research on the problem of psychological determination of corruption in the activity of officials, there is a lack of systematic analysis of this aspect of the problem that greatly complicates the understanding of this phenomenon and reduces the effectiveness of potential psychocorrection in the sphere of prevention of this phenomenon.

A. Zhuravlev and A. Yurevich in their researches paid a great attention to the psychological aspects of mass consciousness models with minimal tolerant attitude towards corruption. It was underlined that not the acts of corruption themselves, but to the amount of material remuneration and domination of double standards that are generated by this phenomenon is highly destructible for social institutions and state mechanism[7].

In the concept of O. Vanovskaya we encounter the pinpoint of "corruption-friendly personality" existence, which is a special social type with a high degree of propensity to corruption and low corruption resistance [8].

It is believed that the tendency to corrupt behavior is inherent for almost all adults. However, the cornerstone of the personality of a corruptor is the system of motives of dominance in social sphere, gaining influence, power and attitude to risk behavior. The peculiarity of the self-concept of the personality of the corruptor contains the low level of self-perception with negative assessment of the meaning of one's own life.

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However, it has been proved that “corrupt” people are satisfied and successful in their personal lives, have successful families, gain high achievement in the public service, are characterized as the persons with a high level of efficiency. Mainly they are persons with a stable personal psychology and posses a well-formed consumer outlook on life.

Thus, based on the analysis of the doctrinal researches in the realm of the problems of the psychological determination of corruption in the activity of officials, it is obvious that a lack of systematic analysis of this aspect of the problem can be found in modern science, which significantly complicates the understanding of this phenomenon and reduces the effectiveness of potential psycho-correction in the sphere of prevention of manifestations of this phenomenon.

In the context of complex administrative reform and democratic restructuring of the public administration algorithm in Ukraine, the problem of the formation of the newest and, most importantly, high-performing, system of detection of manifestations and factors of corruption with their further operational neutralization, which necessarily requires a prism review, is particularly acute. Reflection of the phenomenon of corruption from the narrow branch into the wide system (integrative, interdisciplinary) reflection, in particular, through the cooperation of psychologists with legal experts is highly needed.

In the context of complex administrative reform and democratic restructuring of the public administration algorithm in Ukraine, the problem of the formation of the newest and, most importantly, highly effective, system of detection of manifestations and factors of corruption and their further neutralization, which necessarily requires a prism review, particularly demands the reflection of the phenomenon of corruption from the narrow prism into the wide system (integrative, interdisciplinary).

The purpose of the article is to investigate the problem of corruptionogenesis in the legal-psychological dimension.

The task is to identify corruption as a social phenomenon, the effectiveness of identification and correction of its indicators is directly dependent on the level of its systematic research using combination of legal and psychological methods; to propose practical measures, integration of which in the system of prevention of corruption will reduce the level of influence of this phenomenon on the social (including public-law) environment.

1. Tasks

1. To identify corruption as a social phenomenon, the effectiveness of definition and correction of which is directly dependent on the level of systematic form of research with use of combined legal and psychological methods.

2. To substantiate expediency of the spectrum of manifestations and determinants of corruption by integrating psychological deviations and subjective factors of public officers (management styles, psychological climate in a team, sphere of activity of an official, etc.) into the paradigm of its forms and determinants.

3. To propose practical measures, integration of which in the system of prevention of corruption will reduce the impact of this phenomenon on the social (including public law) environment.

2. Methods of research

To solve the tasks of this research a set of general scientific and special methods and techniques of scientific knowledge were used. The system approach was used to provide an opportunity to carry out a comprehensive study of the mechanism for preventing and counteracting corruption in Ukraine as well as to indicate ways to improve these processes. With the help of a dialectical approach, the essence of corruption as a complex legal and psychological phenomenon was defined and theoretically reflected. Historical and legal method served to consider the genesis and transformation of the phenomenon of corruption. Comparative legal method provided the opportunity to work out the immanent functional-chronological and legal characteristics of the continuum of corruption delinquencies in both transnational and national legal dimensions. The logic-semantic method allowed to provide the analysis of the conceptual apparatus. Methods of abstraction, analysis, synthesis and modeling were used to develop proposals for improving of the mechanism of preventing corruption. The method of scientific generalization was applied to the classification of the determinants of corruption cases. The method of synthesis gave an opportunity to summarize the data obtained in the process of scientific research.

To solve the tasks of forming general scientific and special methods and techniques of scientific identification of corruption. The system approach contributed to a comprehensive study and further development of an anti-corruption model for improving the quality of domestic anti-corruption system.

A number of proven research methods have been used to diagnose corruption indicators: Pearson correlation analysis method, V. Gosset's t-criterion differentiation, generalization of statistical surveys of the "Corruption Index" by the international organization Transparency International and the National Comparative Study "State of Corruption in Ukraine" etc.

3. Results of the research

Corruption is a negative social phenomenon, which is a set of social factors which, having reached a critical level of intensity, leads to the bifurcation of the teleological parameters of the functioning of the public apparatus of a certain state, the formally-identified manifestations of which are the different forms of delinquency (criminal, legal, administrative, disciplinary) of the state officers.

According to international analytical organizations, the level of corruption in Ukraine is close to that observed in the most corrupted countries of the world, which, along with a high level of political and legal attention to the problem of elimination of the manifestations of this phenomenon in the national legal system, determined the rapid rise of the rational interest to the reasons to the current problem. The threatening and low level of efficiency of the actual anticorruption system of Ukraine is obvious.

Any typical system is a set of organizational, procedural and methodological components, the interaction of which allows the state to achieve the desired result in a certain area of social life. By applying this model on the domestic anti-corruption system, we can provide the following content for each of the components of the typical system:

• The organizational and institutional component is represented by a system of public authorities (both specialized and general), civil society institutions, private law entities and relations that arise between them in the context of prevention and counteraction to manifestations and factors of corruption;

• The procedural component is the actual algorithm for the implementation of normative, jurisdictional, interpretative and other law enforcement measures, determined by the fact of the existence of corruption as a phenomenon or the discovery of its certain legally significant manifestations;

• The methodological subsystem is a set of methods the practical implementation of which is aimed for ensuring compliance with legality and social efficiency as the key characteristics of legal institutes.

Ukraine refers to the group of countries in which political, high-level and domestic corruption are deeply rooted in various spheres of life and became an organic element public relations. Corruption leads to collapse of the state and negative tendencies for the population as a result such as ineffective use of budget funds, poor quality of public services. It also should be mentioned that corruption also increases the uncertainty of the environment in which economic agents and households cannot provide the top effective production of social goods.

However, evaluating this phenomenon in Ukraine, an impartial researcher faces problems, since international ratings primarily measure only perceptions of corruption, while economic assessments of losses from corruption and, consequently, winnings from overcoming it is acutely lacking. During 2014-2018, the struggle against corruption in Ukraine was identified as one of the key priorities of public policy. Thanks to a number of successful episodes some international organizations have also noted some progress in overcoming corruption.

Reforms introduced during these years helped to move Ukraine from 144 place in 2013 year on the 130th place by the Corruption Perceptions Index in the world ratings.

In general, two main directions of action (strategies) that reduce the level of corruption can be distinguished in Ukraine in present time:

- narrowing the opportunities for corruption of public officers through reforms in various sectors;
- creation of an effective system of institutions for combating corruption.

In this paper, the emphasis is primarily on the first direction of change. These changes provided by reforms aimed at increasing transparency of the activity of the state as an institute and improvement of efficiency of public administration as the result.

One of the main ways of government anticorruption policy is to reduce corruption opportunities for officials and the main instrument for that goal is to use deregulation. Its content is to create a favorable business climate by eliminating excessive administrative burdens on business and reducing excessive control over business sector with the help of the simplification of the relevant regulatory procedures.

As the result of a deregulation the number of mandatory licenses and permissions, in particular realm of business activities, as well as simplification of tax administration were achieved.

An important step in the direction of implementation of deregulation was the introduction of a simplified registration of business subjects at the end of 2017.

At the same time, the process of deregulation should be intensified. After all, in accordance with the information of DRSU4 on the state of implementation of the Government Action Plan on deregulation of economic activity Ukraine determined repositioning of Ukraine from 112 points of ineffectiveness of national business to 48, 9. The rest goals are to be achieved soon and this is about half of the planned actions that were yet completed.

As the analysis shows, the total annual economic gain from anti-corruption measures is about 6% of state budget or about $ 6 billion dollars of USA.

It worth to be mentioned that not only legal of economic measures have proved their effectiveness in the realm of minimization of corruption, thus this article is devoted to illustrate the probable ways of use of interdisciplinary composure of anticorruption activities that should improve the effectiveness of national law enforcement system in this realm.

In modern conditions, the system of anti-corruption measures consists of three main components:

1) Preventive (the legal formalization of the content of corruption and the forms of response of the legal system to its manifestation; professional selection and testing of candidates for employment in state bodies; the current regulatory influence on administrative activities of the officials);

2) Investigation procedures (realization of the investigative actions in the cases of the possible existence of corruption offenses or conditions that may facilitate its commission);

3) Jurisdictional (realization of legal measures of responsibility in the cases of corruption offences).

The implementation of the operational-search and jurisdictional components of the system of prevention of corruption belongs to the subject of legal regulation of criminal, criminal-procedural, administrative and labor law branches, and therefore does not belong to the subject of scientific research of this article. The focus of this study will be made on the procedure of prevention of corruption, namely on the inherent part of this subsystem – current control and self-correction of service activities.

In our opinion, the ineffectiveness of measures aimed at preventing corruption is indicated due to the lack of attention of the role of internal imperative in the day-to-day service of the state officers. The conceptua-

lization of the role of the internal imperative as a factor in the prevention of corruption is reduced to the following aspects:

1) With the formal domination of external forms and methods of control over the official activity of the state officers, more effective is the inside part of corruption neutralization that is manifested both in the intolerance of the certain official to corruption activity in his own procedures and in the general area of the activity of the public institute of authority (within the service team);

2) The formation of the internal imperative of an official occurs when the official perceives the domination of social preferences provided by the integration into the system of the public service (as a result of acquiring the status of the public officer) over the potential benefits offered in the course of a corrupt transaction;

3) The effectiveness of the subjective (mental) factor in the prevention of corruption cases is essential in neutralizing other factors of potential corruption, and is stated to be the main way of production of a systematic approach to the implementation of anticorruption strategy.

Carried out by the authors, comprehensive studies of the problem of corruption in its legal and psychological dimension are obtained by means of discretionary statistics, in particular through conducting complex correlation analysis, the results of which indicate a clear relationship between certain features of the official (management style, sphere of activity) with the degree of corruption.

Based on the data of empirical research among the employees of the bodies of the National Police in Lviv (sample of 100 employees according to the methodology adapted by Kleijberg Y.A.), authors revealed correlations of the tendency of officials to corruption on the basis of the diagnosis of certain features of the National Police officers (Digest 1).

As the result it can be stated that the tendency of the public officers to commit corruption offences is directly dependent on a number of psychological addictions and deviant tendencies, the identification of which by special methods should be introduced into the procedure of official selection of candidates for the replacement of civil service positions and significantly reduce the potential corruption in public apparatus in general.

As a legal-psychological category, the internal imperative of an official is based on the successful combination of key psycho-modifying factors that determine the expediency of a particular model of individual behavior. Such factors are:

Digest 1

Ш	0				1				2				t	%
	M	Vc	+δ	±m	M	Вк	+δ	±m	M	Вк	+δ	±m		
1	*45,3	45	11,1	1,88	46,9	43	10,4	0,32	*51,3	3	7,2	1,7	2,4	13,2
2	*51,5	52	9,26	1,56	*50,6	52	8,6	1,09	51,4	55	5,9	1,4	0,5	1
3	*39,8	35	8,14	1,37	42,7	43	9,18	1,16	*45,3	45	8,9	2,0	2,2	14
4	*42,9	40	8,6	1,45	*40,7	40	8,18	1,04	41,7	48	8,8	2,0	1,2	5
5	28,3	25	5,68	0,96	28,9	25	4,58	0,58	29,3	30	5,4	1,2	-	-
6	37,6	38	7,58	1,28	*37,3	40	7,17	0,91	*39,8	43	7,3	1,7	1,3	7
7	*39,6	33	6,49	1,09	41,5	45	8,6	1,09	*44,5	39	7,2	1,7	2,4	12
8	24,9	23	8,63	1,46	*29,8	28	6,35	0,8	*34,3	30	10,5	2,4	1,8	15
9	*40,2	35	7,37	1,24	42,7	46	8,6	1,09	*44,7	45	8,5	2	1,9	11
10	*36,8	35	8,41	1,42	41,5	45	8,32	1,05	*45,8	40	7,3	1,7	4	25

Digest 1. Averaged statistical indicators of predisposition to corruption based on the data of the sample of officials of the National Police of Ukraine according to the types of activity of the questionnaire by Kleijberg Y.A. (adapted)

Symbols in digest 1: M – the average value; Vc – value of the influence of the parameter on the person's predisposition to corruption behavior; ± δ – means the square deviation; ± m – error in the arithmetic mean; t – Student criteria; * – mini-max values in metrics; % – ratio – differences between indicators; 0 – investigators; 1 – district police inspectors; 2 – candidates for service in the bodies of the National Police; 1 – propensity to overcome norms and procedures, 2 – predisposition to addictive behavior, 3 – tendency to self-destructive and self-destructive behavior, 4 – predisposition to aggression and violence, 5 – volitional control of emotional reactions, 6 – tendency to illegal behavior, 7 – dissatisfaction with persons own status, 8 – negative attitude to leadership in the institution, 9 – material dissatisfaction, 10 – perception of corruption as a norm of society.

- Fear of legal responsibility afterwards the participation in the corruption event.

In determining the admissibility of a particular model of activity, an individual conducts a series of analytical and comparative processes based on empirical experience, taking into consideration the possible risks and measuring them in combination with potential assets. In the area of corruption offences, among the potential risks include the form and extent of legal responsibility, indicated by the national legal system. In actual realities of the national legal system, the forms of legal responsibility varies in the range of financial penalties (a fine in the amount of 300 to 1500 non-taxable incomes of citizens), in the form of deprivation of special law (the prohibition to hold certain positions or to engage in activities related

to management for a term from 1 to 3 years) or period of personal restraint of liberty (arrest for a term of 3 to 6 months, imprisonment from 2 to 12 years).

In our opinion, actualization of this factor of auto-exclusion of corrupt activity of the public officers is possible through the implementation of the implemented experience of certain foreign countries in the realm of creation of an effective system of the corruption prevention. As the English researcher Susan Rose-Ackerman states: "... the practice of Israel represents the effectiveness of high level of severity of legal responsibility measures that are used towards the property and functional limitations of employees who committed corrupt crimes. Contrary to the means used by other states to prioritize the value of restriction of liberty as a main form of legal response to the fact of the corruption activities of a particular subject, the Legislative Assembly of Israel has chosen the best method of punishment – huge fines and lifetime prohibition to be engaged in activities related to management in public authorities ... The low level of corruption in the state and rare cases of corrupt practices testify to the correctness of the vector of anticorruption policy of this country"[9].

- Awareness of the inevitability of legal responsibility in case of committing a corruption offence.

Experience of Singapore confirmed the effectiveness of systemic and operative transformation of a totally corrupt state apparatus into a testament of functionality and legality. For the purpose of anti-corruption resetting of public service in the state, as pointed out by Lee Kuan Yu (former Prime Minister of Singapore): "... it was necessary to completely reconsider the structure, competence and the attitude towards the public service institute. However, the most significant effect was achieved due to the absence of any exceptions – independent experts, beginning with the state head-leaders (including my family), began to examine the whole hierarchy of the state administration. When any suspicions of illegal enrichment was identified, an official was immediately restrained from exercising public functions, which made administrative pressure impossible"[10].

[9] Susan Rose-Ackerman.Corruption and Government Causes, Consequences, and Reform. [Електронний ресурс] CAMBRIDGE UNIVERSITY PRESS – Режим доступу : https://edisciplinas.usp.br/pluginfile.php/841106/mod_resource/content/0/1999_Rose-Ackerman.Corruption20and20Government_20Causes2C20Consequ20-20Susan20Rose-Ackerman.pdf.

[10] Ли Куан Ю. Сингапурская история 1965–2000 гг. Из третьего мира – в первый. – М.: МГИМО-Университет, 2011. 656 с.

In order to restructure the mental archetype of a public officer in national practice, it is necessary to implement two key innovations:

a) Reloading of public apparatus should be started from senior officials and not from the basic low-level units;

в) Administrative anticorruption reform should be totally systemic rather than fragmentary.

4. Results of empirical research

During the research, a comprehensive comparative analysis of the criteria for corruption genesis was conducted (based on data from previous empirical studies with sample data that was conducted in a private consulting institution, the activity of which is also associated with the interpretation of legislation and law-enforcement; 25 employees responded by the method of t -criterion proposed by William Gossett (the method of "Student").

Two subgroups of the subjects were distinguished, in which a comparison was made between representatives of the public sector with pronounced leadership skills in psychotype (50%) and representatives of the private sector with leader traits in psychotype (50%). The research carried out by the private and diametrically opposite – the public sector was conducted for the purposes of identification of the main differences between these opposing segments of the state mechanism (Digest 2).

Digest 2

Features	**t-criterion in main features of comparison**			
	t private	**t public**	**Corruption affect**	**Possible correlation**
Neuropsychiatric stability of the individual	2,10	1.3	-2.2	,001
Democratic style of management	2,89	0.75	1.75	,005
Competitive environment	2,93	1.3	-2	,005
Team support	3,07	-1.5	-3.1	,001
Non-democratic method of management	-2,98	3	-1	,004
Satisfaction with the level of social provision	2,46	-1.5	-3.5	,002
Level of bureaucracy	0,2	3.7	4	,001
Transparency of governmental procedures	2,35	-1.5	-3	,005

Digest 2. Differentiation by t-criterion of V. Gosset on the basis of indicators of personality features and main styles of management

Thus, according to the main indicators, the differences in the baseline of the indication parameter “Neuropsychiatric stability of the individual” (the t public = 1,3, t private. = 2,10, the corruption affect of the criteria = -2.2, and p <0,001) were indicated. This indicator confirms that private sector employee are more stable and posses the higher level of psychological endurance in comparison with employees of state institutions, and therefore the first group indicate less predisposition to corruption. This result is quite natural because the employee of a private institution must adhere not only to legislative, but also moral and ethical standards, which is a prerequisite for the formation of the properties of neuropsychiatric stability of the individual.

There is also a difference in the scale of the indication “democratic style of management” (the indicator is t private = 2,89, t public = 0,75, the corruption affect of this criteria is 1.75, and p <0.005). This management style is more inherent for private institutions, due to that the state organizations are positioned as rather conservative and addicted to an authoritarian method of management (index t private = -2.89, t public = 3, influence on corruption-1, at p <0.004). In turn, as has already been demonstrated, the democratic management style is more favorable for the emergence of corruption than in non-democratic.

The factor influencing the degree of corruption is also the:

- development of the competitive environment (index t private= 2,93, t public = 1.3, impact on corruption-2, at p <0.005);
- support for the team (the t private = 3.07, t public = -1.5, the effect on corruption -3.1, at p <0.001);
- the satisfaction of employee with the level of social provision (the indicator is t private = 2,46, t public = -1.5, the effect on corruption is -3.5, at p <0.002);
- the level of bureaucracy (the t private = 0.2, t public = 3.7,
- the effect on corruption= 4, at p <0.001);
- transparency of government procedures (t private = 2,35, t public = -1.5, influence on corruption-3, at p <0,005).

An important factor in preventing corruption is also the minimization of manifestations of professional deformation and burnout.

Corruption is often indicated in synergy with such psychic phenomena as professional deformation (changing of the vector of perception of public service, during which social interests are replaced by the personal mercantile interests of the public officer, with the means of corruption offences) and professional burnout (loss of enthusiasm and

professional self-criticism due to the long and monotonous professional activity that is not provided with sufficient level of motivation). In our opinion dominant methods of counteracting these phenomena are the periodic rotation, the use of the institute of advanced training on a voluntary basis as a method of determining candidates for further career growth, etc.

CONCLUSIONS

Corruption as a social phenomenon is endowed with a variety of manifestations and determinants, among which not only legal, but also socio-psychological are indicated. This fact underlines the need for a systematic approach to solving issues related to the development of an effective mechanism of corruption in Ukrainian society prevention.

In our opinion, the key methods of preventing corruption as a legal and psychological phenomenon are:

1. Ensuring an adequate level of socio-economic provision of public officers on the basis of competition and optimization of state institutions structure.

2. Minimization of manifestations of professional deformation and professional burnout.

3. Reformatting the competence and procedural aspects of management in public institutions.

The formation of a an effective national corruption-prevention system is de-facto impossible without a structured and consistent doctrinal study of the reasons and conditions of the corruption emergence in the public apparatus. That puts a challenge to the scholars of various realms, and therefore, the aspect of interpreting corruption, that is proposed in this article is only the beginning of the long way of development of scientific interpretation of this phenomenon.

SUMMARY

In this article a systemic analysis of the immanent (personal, subjective) factors (determinants) of the typical forms of manifestations of corruption in the professional activities of public officers has been made, as well as comprehensive analysis of the forms and methods of psychological, organizational, legal, and social prevention of obstructive transformation in the procedure of public administration, conducted by these subjects.

Methods of scientific research that were used in the article: the analysis of specialized sources, deductive and inductive approaches to the

operationalization of thoughts, generalization of scientific achievements, method of Pirson's correlation analysis, W. Goset's method, statistical interpretation of data, provided by Transparency International and Ukrainian State buro of statistic.

One of the dominant problems of public government mechanism's of the modern countries is undoubtedly the phenomenon of corruption. Despite the axiom of identification of corruption as the destructive phenomenon it is obvious that there is insufficiency and some inconsistency in the doctrinal, and thus in the normative realm of representation of definitive and determination components, which leads to the ineffectiveness of specialized preventive anti-corruption measures being conducted in the state. Effective counteraction of corruption is the key to the progressive development of public administration and civil society institutions as the factor that underlines the importance of conduction of complex research in the paradigm of identification and methodology of neutralization of the forms of corruption manifestation.

The goal of scientific research was to identify corruption as a social phenomenon, the effectiveness of identification and correction of which is directly relevant with the level of systematic (integrative) approach to its analysis conduction. The main reason for the expansion of the forms of manifestations and types of determinants of corruption with the means of psychological deviations was stated to be the lack of practical effectiveness of current anti-corruption measures.

Psychological-legal vector of the interpretation of the problem of corruption as an independent paradigm of this phenomenon identification is connected with a number of propositions of development and stabilization of effective model of the prevention of corruption, including exogenous (monitoring, collective influence, the status of the employee) and endogenous (formation of the immanent imperative regarding resistance to corruption factors) means.

As a conclusion corruption is stated to be a social phenomenon that is represented with a variety of manifestations and is caused by various determinants, that are stated to be not only legal, but also socio-psychological by their nature. That fact stimulates the need for a complex approach to the solution of issues related with the development of an effective mechanism of the prevention of corruption in Ukrainian society.

The key methods of preventing corruption as a legal and psychological phenomenon are stated to be:

1) Ensuring of an adequate level of social and economic provision of public officers on the basis of competition between them with total functional optimization of state institutions.

2) Minimization of manifestations of professional deformation and professional burnout of public officers.

3) Reformation of the jurisdictional and procedural aspects of public management.

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SPECIAL ASPECTS OF ADMINISTRATIVE AND LEGAL REGULATION OF ACTIVITIES OF LOCAL SELF-GOVERNMENT BODIES

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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 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

[1] Швець М., Калюжний А., Гавловський В., Цимбалюк В. Інформаційне законодавство України: концептуальні основи формування. Право України. 2001. № 7. С. 50–53. С. 51.

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 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

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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. 656 с. 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. С. 84.

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

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].

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

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

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

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 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.

[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. 336 с. С. 125.

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". 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 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

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[8] Цимбалюк В. С. Проблеми кодифікації норм правовідносин щодо інформації : матеріали круглого столу «Актуальні проблеми правового регулювання суспільних відносин у сфері інформаційно-телекомунікаційних технологій (ІКТ)» (м. Ірпінь, 28 вересня 2006 р., НУДПС України). Ірпінь, 2006. С. 129–133. С. 130.

[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.

[10] Європейський досвід нормативно-проектного забезпечення розвитку інформаційного суспільства: висновки для України : аналіт. доп. Київ : НІСД, 2014. 76 с. С. 47.

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 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.

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[11] Легеза Ю. О. Інформація як об’єкт правовідносин. Науковий вісник Юридичної академії Міністерства внутрішніх справ. 2003. № 2 (11). С. 68–72. С. 70.

[12] Жиляєв І. Б. Інформаційне право України: теорія і практика : монографія. Київ : Парлам. вид-во, 2009. 104 с. С. 22–23.

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 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 organi zation 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

[13] Чубарук Т. В. Конституційні засади правового регулювання інформаційної сфери. Правова інформатика. 2010. № 3(27). С. 61–65. С. 62.

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 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

[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. 136 с. С. 97.

[16] Кохановська О. В. Теоретичні проблеми інформаційних відносин у цивільному праві : монографія. Київ : Київ. ун-т, 2006. 463 с. С. 109.

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”.

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 behavior.

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

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 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.

[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. 368 с. С. 191.

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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DYNAMISM VS. STABILITY IN UKRAINIAN TAXATION

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INTRODUCTION

Tax legislation of Ukraine is constantly changing. New taxes are being introduced; the old ones are being abolished. The existing taxes are being renamed. New mechanisms of tax administration are being introduced and existing mechanisms are constantly changing. All this is accompanied by organizational reform. The state tax bodies are being established, restructured, winded up or renamed. In 2019 the State Fiscal Service was divided into the State Tax Service and State Customs Service. Previously they were united in 2012 and named Ministry of Revenue and Duties[1].

Among the most important functions of taxation are promoting and regulating functions, due to which the state regulates (or should regulate) economic processes and ensures an economic growth. That is why the Ukrainian government has been looking for the best set of taxes since the independence and until today (including tax rates and taxable items), which will give a possibility to meet political, economic and other demands in the nearest years and ensure economic growth in the future.

Unfortunately, each year the taxation reforms are carried out in violation of the stability principle established by the law, without proper transition period, which in many cases allows business to adapt its activity to new terms resulting in negative impact on relations between the government and business, as it reduces essentially trust of business with regard the government.

Our **purpose in this work** is to consider system disadvantages hindering compliance with the taxation stability principle, to develop the approaches in tax and legal regulation, which should ensure prevention from its violation.

[1] Про Міністерство доходів і зборів України. Указ Президента України від 18 березня 2013 р. № 141/2013. URL: https://zakon.rada.gov.ua/laws/show/141/2013 (дата звернення: 02.09.2019); Про утворення Державної фіскальної служби. Постанова Кабінету Міністрів України від 21 травня 2014 р. № 160. URL: https://zakon.rada.gov.ua/laws/show/160-2014-п (дата звернення: 02.09.2019).

Necessity to achieve this goal promotes a solution of this general economic and legal issue of legal coverage of developing business-friendly governance and investment attractive economy in Ukraine.

Ukrainian scientists I.S. Volokhova, D.O. Hetmantsev, O.R. Zeldina, Yu.A. Koval, M.P. Kucheriavynko, H.N. Meskhiia, O.A. Musyka-Stefenchuck, M.V. Nechai, L.V. Tovkun, I.V. Yasko and others have considered the taxation principles, in particular, stability principle, in their works. We will consider the system trends with regard to non-compliance with the stability principle, typical for domestic tax policy, and we will define the direction of its improvement. Opinions, propositions and approaches with regard to operation of law in time (timely publishing, establishment of transition period, procedure for entering into force) and with regard to legal writing have a basic legal bearing.

D.O. Hetmantsev, Yu.A. Koval, M.V. Nechai note that the taxation stability principle is a mechanism of compliance with the taxation certainty, envisaging, on the opinion of Adam Smith, that the taxpayers should be aware in advance of the amount, type, time of payment[2].

When talking about system violation of the taxation stability principle, we understand, first of all, the next system trends, which will be gradually analysed in our work.

– non-compliance with the rules of law with regard to enforcement of tax and legal regulations with a transition period of not less than 6 months;

– adoption of tax laws in package with the State Budget empathizing absence of taking into account strategic and long-term goals in legal regulation of taxation, and on the contrary its subordination, first of all, to the current governmental purposes and tasks;

– more frequent, in comparison with adoption of other laws, availability of technical errors in the text of the tax laws based on its significant volume, quick passing through the parliament (basically an express consideration, sometimes in a package with the budget);

– sometimes absence even of a minimum transition period;

– quick radical changes without privilege period (with regard to penalties);

– laws publication with delay;

[2] Гетманцев Д.О., Коваль Ю.А., Нечай М.В. Адміністрування податкових платежів: проблеми теорії та практики: наук.-практ.посіб. – К., 2017. – С. 50.

– introduction and abolition of the retail taxes (affecting a wide segment of people and retailers) upon the date of publication (essentially day-to-day);

– imposition of the new tax without compliance with the stability principle.

In the process of consideration of the issue, we will show the examples of the changes of the tax laws adopted in violation of the taxation stability principle. Having no intention to itemize them, we will show consistency and stability of this issue in order to develop its efficient solution.

1. Main violations of stability principle

Non-compliance with the 6-month transition period. The stability principle in the tax law of Ukraine appeared in the Law of Ukraine "On Taxation System", as amended by Law No. 3904-XII as of February 02, 1994 in accordance with Article 7, envisaging that taxation rate and amounts of other binding payments shall not be changed within the fiscal year, unless otherwise provided for by the legislative instruments of Ukraine[3].

This amended Law, as it was set forth by Law No. 77/97-BP as of February 18, 1997 that entered into force as of March 20, 1997, contained the rule, pursuant to which the amendments and additions to this Law, to other Laws of Ukraine on Taxation with regard to the benefits, taxation rates and duties (binding payments), the mechanism of payment thereof shall be introduced to this Law, other laws of Ukraine on taxation not later than six months prior to the beginning of a new fiscal year and shall enter into force from the beginning of a new fiscal year. This new version of the Law (in Article 3) contains a legal list of the principles of the taxation system. The stability principle was laid down as follows: "stability means ensuing invariability of taxes and duties (binding payments) and their rates, as well as tax benefits during a fiscal year"[4].

[3] Про систему оподаткування. Закон України. В редакції Закону України «Про внесення змін і доповнень до Закону Української РСР «Про систему оподаткування»» від 2 лютого 1994 року № 3904-XII. URL: https://zakon.rada.gov.ua/laws/show/3904-12/ed19940401 (дата звернення: 02.09.2019).

[4] Про внесення змін до Закону України «Про систему оподаткування». Закон України від 18 лютого 1997 року № 77/97-ВР. URL: https://zakon.rada.gov.ua/laws/show/77/97-вр/ed20000331 (дата звернення: 02.09.2019).

Approximately in this version (with the regulation with regard to amendments to the tax laws should be available at least 6 months prior to the beginning of the fiscal year), the stability principle was envisaged in all further laws defining the system and principles of taxation, particularly, in the current Tax Code of Ukraine.

In some new versions, the Parliament envisaged the possibility of waiving this rule, however, for the most part the Parliament was not concerned about it and, if necessary, they amended the tax laws and brought them into force immediately or with a much shorter transition period than 6 months.

Thus, part 5 of Article 1 of the Law "On Taxation System", as amended by Law No. 1523-III as of March 02, 2000, envisaged that amendments to this Law, other laws of Ukraine on taxation in respect of granting privileges, changes in taxes, duties (binding payments), the mechanism of payment thereof shall be introduced to this Law, other laws of Ukraine on taxation not later than six months prior to the beginning of a new fiscal year and shall enter into force from the beginning of a new fiscal year. However, this part established the following conclusion: this rule shall not be applied in cases of reduction of the amount of tax rates, duties (binding payments) or cancellation of the taxation benefits and other rules causing violation of the rules of competition and creation of tax privileges to the certain business entities or individuals[5].

In general, such conclusion raises a quite important philosophic and legal issue: if the statute is deficient, unlawful or there is another important system problem then why should we wait for full 6 months if we may change or abolish this regulation now?

However, the philosophic and legal answer to this question is obvious: the legislator, showing his own unwillingness to comply with the law, demonstrates absence of the rule of law in Ukraine. After all, one element of the concept of the rule-of-law state is that the state is not above the law, but itself is bound by the rules of law. The legislator (as a public authority) is also bound by the rules of law.

It is considered that the body of legislative power should first and foremost consistently demonstrate adherence to the rule of law in its activities. It is the Parliament that sets the pace for functioning of the

[5] Про внесення змін до деяких законодавчих актів України з питань оподаткування. Закон України від 2 березня 2000 р. № 1523-III. URL: https://zakon.rada.gov.ua/laws/show/1523-14/ed20040101 (дата звернення: 02.09.2019).

entire legal system. Of course, both the Government and the President do not have to draft and submit to the Parliament any bills on amendments with regard to the issues of taxation (now – the Tax Code) that do not provide for at least a 6-month transition period. Unfortunately, the Government and the Head of the State today do not follow this approach, showing the intentions to implement radical tax changes without observing the transition period. It is not always possible to make them pass through the Parliament, but use of such approaches by the Government is also not beneficial to development of the rule of law in Ukraine. For example, on October 05, 2017, the government news portal reported that the Government had approved the draft law on Tax on Withdrawn Capital and intended to implement it from 2018[6].

The President of Ukraine submitted to the Parliament the draft law on Amendments to Tax Code of Ukraine on Tax on Withdrawn Capital on July 5, 2018 (draft law No. 8557 as of July 05, 2018); this draft law was marked by the President as urgent[7]. It envisaged that the law would enter into force on January 01, 2019 (i.e. without observing the stability principle). In 2019 after new President and Parliament elections a lot of bills on amendments to the Tax Code were introduced without observing the transition period[8].

Pursuant to sub-paragraph 4.1.9. of the Tax Code of Ukraine, stability is one of the principles serving the basis for the tax legislation of Ukraine[9]. And according to this principle, changes to any elements of taxes and fees may not be made later than six months before the start of the new budget period in which the new rules and rates will apply; taxes and fees, their rates, and tax relief cannot be changed during the fiscal year. The regulation in this wording has existed since the initial revision of the Code of 2010. However, tax changes are very common, including the radical ones, introduced without observance of the transition period.

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[6] Уряд схвалив законопроект щодо запровадження податку на виведений капітал. URL: https://www.kmu.gov.ua/ua/news/250326805 (дата звернення: 02.09.2019).

[7] Картка законопроекту. Проект Закону про внесення змін до Податкового кодексу України щодо податку на виведений капітал. Реєстр. №8557 від 05.07.2018. URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=64356 (дата звернення: 02.09.2019).

[8] Економічні законопроекти від нових депутатів, зареєстровані в ВРУ. Дебет-Кредит. URL: https://news.dtkt.ua/state/laws-and-regulations/57423 (дата звернення: 02.09.2019).

[9] Податковий кодекс України від 2 грудня 2010 р. URL: https://zakon.rada.gov.ua/laws/show/2755-17/ed20190101 (дата звернення: 02.09.2019).

For example, Law No. 71-VIII "On Amendments to Tax Code of Ukraine and Certain Legislative Instruments of Ukraine on Tax Reform", known among Ukrainian businesses, was adopted on December 28, 2014. It entered into force on January 01, 2015. This Law radically changed the taxation system, changed the list of taxes; the taxation mechanism in the part of the corporate income tax has been radically changed (essentially a new object of taxation with this tax was introduced – accounting income adjusted for the difference stipulated by the law, instead of the financial result calculated according to the rules of tax accounting) – section III of the Code "Corporate Income Tax" was stated completely in a new wording[10].

If the state has adopted a certain concept – as noted with regard to the stability of tax legislation by D.O. Hetmantsev, Yu.A. Koval, M.V. Nechai, then it acts unlawfully if it deviates from the stated behaviour or policy[11].

Adoption of changes simultaneously with the State Budget. The taxation stability principle is associated with the principle of early promulgation of laws affecting the revenue or expenditure part of budgets contained in the Budget Code of 2001 (Article 27)[12] and contained in the current Budget Code 2010 (Article 27). According to the current wording of Part 3 Article 27 of the Budget Code, laws of Ukraine or separate provisions thereof, that affect budget indicators (reduce budget revenues and/or increase budget expenditures) and are adopted: not later than the 15th of July of the year preceding the planning one, and shall be enacted not earlier than the beginning of the planned budget period; after the 15th of July of the year preceding the planning one, and shall be enacted not earlier than the beginning of the budget period following the planning one[13].

Important, although according to the abovementioned approach, the negative Ukrainian tradition is to adopt amendments to tax laws simultaneously with the State Budget for the relevant year. In due course, the Parliament practiced incorporating amendments to the laws directly into the text of the Law "On State Budget", which was repeatedly the

[10] Про внесення змін до Податкового кодексу України та деяких законодавчих актів України щодо податкової реформи. Закон України від 28 грудня 2014 року № 71-VIII. URL: https://zakon.rada.gov.ua/laws/show/71-19 (дата звернення: 02.09.2019).

[11] Гетманцев Д.О., Коваль Ю.А., Нечай М.В. Адміністрування податкових платежів: проблеми теорії та практики: наук.-практ.посіб. – К., 2017. – С. 50.

[12] Бюджетний кодекс України від 21 червня 2001 р. URL: https://zakon.rada.gov.ua/laws/show/2542-14 (дата звернення: 02.09.2019).

[13] Там само.

subject of review by the Constitutional Court of Ukraine. When deciding on the subject matter and content of the Law "On State Budget of Ukraine", the Constitutional Court referred to the decision in the case of social guarantees of citizens, according to paragraph 5 of the reasoning of which the Parliament of Ukraine, when adopting the Law "On State Budget of Ukraine", shall not be empowered to include therein provisions on amendments to the current laws of Ukraine, suspend certain laws of Ukraine and/or in any way change the legal regulation of social relations defined by other laws of Ukraine[14].

In recent years, the legislator has not practiced incorporation of amendments to the laws into the text of the Law "On State Budget", but often these changes are adopted on the same day with the adoption of the State Budget, that is, in essence, a package of bills. Existence of a "budget package" for 2019 with the law envisaging amendments to the Tax Code of Ukraine was reported in the press[15].

Similar information with regard to availability of the budget package appeared in the press when the State Budgets for 2016[16] and for 2017[17] were adopted.

Adoption of amendments to the tax legislation for changing the budget indicators of a particular tax year, in our opinion, does not take into account the stimulating and regulating functions of taxation, points out to the fact that the tax policy only adheres to current goals and objectives, without taking into account strategic and long-term goals. It is worth mentioning that in some cases, the relevant objectives even are implied by the legislative instrument. Such is the Law "On Amendments to Tax Code of Ukraine and Certain Legislative Instruments of Ukraine on Balancing Budget Revenues in 2017" No. 1791-VIII as of December 20,

[14] Рішення Конституційного Суду України від 22 травня 2008 року № 10-рп/2008 у справі щодо предмета та змісту закону про Державний бюджет України. URL: https://zakon.rada.gov.ua/laws/show/v010p710-08 (дата звернення: 02.09.2019); Рішення Конституційного Суду України від 9 липня 2007 року № 6-рп/2007 у справі про соціальні гарантії громадян. URL: https://zakon.rada.gov.ua/laws/show/v0a6p710-07 (дата звернення: 02.09.2019).

[15] Рада прийняла перший законопроект із «бюджетного пакету». Економічна правда. URL: https://www.epravda.com.ua/news/2018/11/22/642920/ (дата звернення: 02.09.2019).

[16] Бюджетний пакет Мінфіну: стабілізація недорозвиненості. URL: https://dt.ua/macrolevel/byudzhetniy-paket-minfinu-stabilizaciya-nedorozvinenosti-_.html (дата звернення: 02.09.2019).

[17] Бюджетний «пакет» в аграрному розрізі: головні новели. URL: https://agropolit.com/blog/184-byudjetniy-paket-v-agrarnomu-rozrizi-golovni-noveli (дата звернення: 03.09.2019).

2016. It entered into force on January 01, 2017[18]. As its name implies, this law amends the Tax Code in order to ensure balancing budget revenues in 2017. It is interesting that the amendments made by this law did not cease to be valid at the end of the year, but continue to operate as regulations of permanent nature.

On November 23, 2018, the Parliament adopted Law No. 2628-VIII "On Amendments to Tax Code of Ukraine and Some Other Legislative Instruments of Ukraine on Improving Administration and Revision of Rates of Certain Taxes and Fees"[19]. This Law came into force on January 01, 2019, pointing out to the fact that breach of the taxation stability principle is ongoing and systematic.

No transition period with regard to penalties. When the Tax Code was adopted, the legislator imposed a moratorium on penalties, envisaging the rule in paragraph 7 subsection 10 section XX "Transitional Provisions" of the Code, according to which penalties for violation of the tax legislation for the period from January 01 to June 30, 2011 shall apply in the amount of not more than 1 UAH for each violation[20].

Subsequently, this approach was supported, and having incorporated in 2012 the regulations on the simplified system of taxation of small business entities in the text of the Code, the Parliament by its Law No. 4834-VI as of May 24, 2012 envisaged that penalties against single tax payers for violations in 2012 of the procedure for calculation, accuracy of filling tax returns of single tax payer and completeness of payment of single tax amounts by the payers shall not be applied[21]. However, then the approaches changed. Even radically changing the taxation system without a proper transition period, the legislator now rarely imposes moratoriums on penalties. It is necessary to cite as an example, however, the provision of the aforementioned Law No. 71- VIII,

[18] Про внесення змін до Податкового кодексу України та деяких законодавчих актів України щодо забезпечення збалансованості бюджетних надходжень у 2017 році. Закон України від 20 грудня 2016 р. URL: № 1791-VIII. https://zakon.rada.gov.ua/laws/show/1791-19 (дата звернення: 03.09.2019).

[19] Про внесення змін до Податкового кодексу України та деяких інших законодавчих актів України щодо покращення адміністрування та перегляду ставок окремих податків і зборів. Закон України від 23 листопада 2018 р. № 2628-VIII. URL: https://zakon.rada.gov.ua/laws/show/2628-viii (дата звернення: 03.09.2019).

[20] Податковий кодекс України від 2 грудня 2010 р. URL: https://zakon.rada.gov.ua/laws/show/2755-17/ed20190101 (дата звернення: 03.09.2019).

[21] Про внесення змін до Податкового кодексу України щодо удосконалення деяких податкових норм. Закон України від 24 травня 2012 р. № 4834-VI. URL: https://zakon.rada.gov.ua/laws/show/4834-17#n516 (дата звернення: 03.09.2019).

under which, according to the results of activity in 2015, penalties (financial sanctions) against payers of corporate income tax for violation of the procedure for calculation, accuracy of filling tax returns of single taxpayer and completeness of payment thereof shall not be applied. At the same time, this law introduced systematic changes not only to the procedure for payment of income tax, but also to almost every tax for which there was no moratorium on penalties.

Introduction and abolition of retail taxes "today starting from today". Sometimes, without any transition period, the legislator essentially establishes or abolishes taxes that apply to an extremely wide range of taxpayers and require substantial preparatory work, since their collection requires the use of certain organizational and technical mechanisms. To do this, we would like to cite two important examples with regard to introduction and abolition of retail excise tax.

The first example. The mentioned Law No. 71-VIII introduced a retail excise tax – excise tax on retail trade in excisable goods (fuel, alcohol, tobacco). This tax had to deal with the maximum retail price for tobacco products and was added to the retail price for alcohol and tobacco by retailers. Thus, the law, which was adopted on December 28, 2014 and entered into force on January 01, 2015, applied to every retailer of excisable goods. Accordingly, each of them had to re-equip (reconfigure) the cash registers in the short term so as to be able to pay this tax, keep its accounting and provide reporting. It is clear that it is impossible to do this in 1-2 days all over Ukraine, so for a certain period in January-February 2015, entrepreneurs and legal entities had to pay this tax from at their own expense (during the period when retail sales of excisable goods were made, however, these entities have not yet managed to reconfigure the cash registers). This example shows that entrepreneurs have incurred real losses as a result of non-compliance by the legislator with the taxation stability principle.

The first example also confirms that adherence to the stability principle is objectively necessary, since the mechanism of taxation with certain taxes requires the use of technical means, and objectively requires some time. In addition, despite the fact that ignorance of the laws does not exempt from liability, it is objectively necessary to provide taxpayers with the opportunity to read the texts of the laws. The laws on amendments to the Tax Code of Ukraine set forth in several dozen pages cannot always be read in one day. Of course, one should not assume that most taxpayers will do it. And it follows that the taxpayers will

unconsciously violate the law in the initial stages, and for elimination of such violations they will have to resort to falsification (drafting accurate documents retroactively) or will be held liable for the offenses, committed, essentially not due to their fault.

Almost as interesting is the second example. Law No. 1791-VIII "On Amendments to Tax Code of Ukraine and Some Legislative Instruments of Ukraine on Balancing Budget Revenues in 2017" was adopted on December 20, 2016 and enacted on January 01, 2017. This Law abolished the excise tax on retail trade in fuel[22]. It can be assumed that, for a few days or weeks, all retail fuel business entities that had cash registers and were ready to pay excise tax, prior to reverse cash registers adjustment, collected this tax from customers and eventually left it to themselves, and did not pay it to the budget, and if they did, they did it without a tax obligation to pay it.

2. Legal technique peculiarities

Laws publication with delay. We also consider it necessary to raise the issue of timely publication of the tax laws adopted in the last days of the year. For example, the aforementioned Law No. 71-VIII was published in the special issue of the "Holos Ukrainy" (Voice of Ukraine) newspaper (official newspaper of Ukrainian parliament) on December 31, 2014. Official information on the website of the Parliament states that Bill No. 1578 which later became Law No. 71-VIII was signed by the Chairman of the Verkhovna Rada of Ukraine on December 31, submitted for signing to the President on December 31 and returned by the President on the same day, on December 31, 2014. Of course, the law could have not been physically promulgated on December 31, 2014. And if the special issue of the "Holos Ukrainy" newspaper was published or even printed on December 31, 2014 (after the Law was signed by the President), it is unlikely that one of the readers could have read the text of the Law on December 31, 2014[23].

[22] Про внесення змін до Податкового кодексу України та деяких законодавчих актів України щодо забезпечення збалансованості бюджетних надходжень у 2017 році. Закон України від 20 грудня 2016 р. № 1791-VIII. URL: https://zakon.rada.gov.ua/laws/show/1791-19 (дата звернення: 03.09.2019).

[23] Про внесення змін до Податкового кодексу України та деяких законодавчих актів України щодо податкової реформи. Закон України від 28 грудня 2014 року № 71-VIII. URL: https://zakon.rada.gov.ua/laws/show/71-19 (дата звернення: 03.09.2019).

According to the author's own mentions, which unfortunately cannot be verified with credible scientific evidence, this special issue appeared on the website of the "Holos Ukrainy" newspaper on January 02, 2014, when it went on sale in newsstands – it is quite difficult to say (considering the fact that on the 1st of January – New Year's Day is an official holiday in Ukraine, not a business day).

Therefore, urgent adoption and enforcement of the tax laws leads to possible delays in their publication, which in its turn means that for some time legal relations are governed by the unpublished law. At the same time, since business operates on public holidays, this may be relevant for taxation of business transactions taking place on such public holidays, and further emphasizes the necessity for publication of laws in advance (with a proper transition period).

Technical errors in the texts of laws. Adoption of amendments to the tax laws in packages, non-compliance with established parliamentary procedures and the 6-month transition period under consideration lead to far more technical errors in the texts of the tax laws than may be acceptable. Sometimes such errors remain uncorrected for several years in a row, resulting in legal uncertainty or creating an area of poor legal regulation. Perhaps, the most well-known of these regulations-errors is the technical regulation on enactment of the regulation on abolition of the tax militia (police organisation for tax criminal investigation), contained in Law No. 1797-VIII "On Amendments to Tax Code of Ukraine on Improving Investment Climate in Ukraine" as of December 21, 2016. The whole section was excluded from the Tax Code only due to inaccurate reference to the item number in the text of the amendment.

Paragraph 134 of Section I of this Law envisaged exclusion of Section XVIII-2 "Tax Miliia" from the text of the Criminal Procedure Code. On the whole, the Law entered into force on January 01, 2017. However, the procedure under which it entered into force contained the regulation with the exception as regards entry into force of "paragraph 133, Section I (with regard to exclusion of Section XVIII-2) – upon the date of entry into force of the law defining the legal grounds for arrangement and activity of a central executive body charged with the duty to ensure prevention, detection, termination, investigation and disclosure of criminal offenses the subject of which is the financial interests of the State and/or local authorities, falling within its jurisdiction under the Criminal Procedure Code of Ukraine and other persons with whom such body interacts." Inherently, in preparation and

editing of the text of amendment, the numbering of items was moved up and paragraph 133 became paragraph 134. However, as a result, the Section of the Tax Code of Ukraine on tax militia was deleted on January 01, 2017[24].

In his interview in 2018, the Finance Minister of Ukraine acknowledged that the tax militia existed outside the law but the budget funds were still allocated for its needs[25]. Undoubtedly, given that the tax militia is the pre-trial investigation body, this situation in law is absolutely unacceptable.

The second known serious technical error is Article 78 of the Tax Code of Ukraine envisaging the grounds for unscheduled on-site inspections of taxpayers, in particular, as a result of their failure to respond to a mandatory written request from the supervisory authority. Thus, paragraph 78.1.1 of the Tax Code of Ukraine as amended by Law No. 909-VIII "On Amendments to Tax Code of Ukraine and Certain Legislative Instruments of Ukraine on Balancing Budget Revenues in 2016" as of December 24, 2015, which entered into force on January 01, 2016, provides for the possibility of an unscheduled audit in case of "receipt of tax information pointing out to violation by the taxpayer of currency and other legislation laws that have not been regulated by this Code, the control of which is vested upon the regulatory bodies". The possibility to carry out an unscheduled audit in case of detection of any breach of the tax legislation disappeared in a strange way from the text of the regulation (which is quite logical, since it is a matter of the Tax Code and regulatory bodies are tax inspections)[26]. This technical error was corrected only by Law No. 1797-VIII as of December 21, 2016[27].

From the point of view of legal technique, it is quite interesting that the amendments have been introduced twice to paragraph 78.1.2 of the

[24] Про внесення змін до Податкового кодексу України щодо покращення інвестиційного клімату в Україні. Закон України від 21 грудня 2016 року № 1797-VIII. URL: https://zakon.rada.gov.ua/laws/show/1797-19 (дата звернення: 03.09.2019).

[25] Мінфін: податкова міліція вже більше року існує поза законом. URL: https://www.5.ua/polityka/minfin-podatkova-militsiia-vzhe-ponad-rik-isnuie-poza-zakonom-165557.html (дата звернення: 03.09.2019).

[26] Про внесення змін до Податкового кодексу України та деяких законодавчих актів України щодо забезпечення збалансованості бюджетних надходжень у 2016 році. Закон України від 24 грудня 2015 р. № 909-VIII. URL: https://zakon.rada.gov.ua/laws/show/909-19 (дата звернення: 03.09.2019).

[27] Про внесення змін до Податкового кодексу України щодо покращення інвестиційного клімату в Україні. Закон України від 21 грудня 2016 року № 1797-VIII. URL: https://zakon.rada.gov.ua/laws/show/1797-19 (дата звернення: 03.09.2019).

Tax Code of Ukraine by two different laws, dated December 28, 2014. Law No. 71-VIII supplemented the provision of this paragraph by certain words, and Law No. 72-VIII outlined the provision of this paragraph in a new wording. Both laws entered into force on January 01, 2015. It is difficult to say which of the amended regulations prevails[28].

We assume that when the Parliament has sufficient time to review, elaborate and edit the bill, its review in accordance with the regulation and without violating the regulations of other laws, then the possibility of technical errors is significantly reduced.

3. Why does the stability principle not work?

When a legislator enacts a law which, contrary to the provisions of the Tax Code of Ukraine (TCU) and the Budget Code, changes the taxation rules without establishing at least a 6-month transition period, the taxpayers and regulatory authorities receive two laws that contradict each other. One of the laws – the Tax Code of Ukraine, establishing the relevant principle, prohibits to amend the tax law under such procedure. The second law, violating this prohibition, makes such amendment and sets other taxation rules. In other words, the second law contradicts the first one. When settling a conflict of the legal rules with the same legal effect, we prefer a special regulation, that is the regulation making an amendment. Because the regulation-principle is always general in relation to a specific regulation that contains an indication of certain rights and obligations. However, there are no constitutional or organic laws in Ukraine, and therefore the regulations of all laws, except for the Constitution, have the same legal effect.

This problem may be solved by a specific taxpayer only if the regulatory authority charges the tax and/or holds the taxpayer liable for the tax offense under the amended regulation, and the taxpayer will prove in court that the tax was charged against the law and/or he was held liable for the offense committed not due to his fault, and it occurred solely as a result of violations committed by the legislator when adopting the amendments to the tax law and determining the procedure for its entry into force.

Such situations may be observed in the case law. The most well-known are the dozens of litigations concerning implementation of a transport tax without observing the transition period.

[28] Про внесення змін до Податкового кодексу України щодо удосконалення податкового контролю за трансфертним ціноутворенням. Закон України від 28 грудня 2014 р. № 72-VIII. URL: https://zakon.rada.gov.ua/laws/show/72-19 (дата звернення: 03.09.2019).

Tax imposition without observing transition period. Some of the said cases have already been submitted to the Supreme Court and have been mainly settled in favour of the taxpayer. Thus, the Supreme Court by its decision dated August 21, 2018 in case No. 820/6986/16 upheld the decisions of the administrative court of first instance and administrative appellate court, taken in favour of the taxpayer in the dispute, under which the authority charged the transport tax with a person for 2015, introduced on January 01, 2015 by Law No. 71-VIII dated 28.12.2014, based on the regulations of the Tax Code of Ukraine (taking into account the amendments made by the said Law) and the corresponding decision of the local council, since the transport tax is (in our opinion, technically) a local tax necessarily imposed by the local councils.

The position of the regulatory authority in this case is interesting, which is quite typical in such cases. Thus, in order to substantiate its requirements, the tax inspection noted that "the stability principle is applied in the case of amendments to the elements of taxes and duties, and not in the adoption of new taxes, whereas a new transport tax was introduced by Law of Ukraine No. 71-VIII "On Amendments to Tax Code of Ukraine and Some Laws of Ukraine on Tax Reform" as of December 28, 2014[29].

Settling this dispute, the Supreme Court pointed out that "the decisions of local councils with regard to the transport tax, taken in 2015, could not be applied in the same year 2015. Such decisions could determine only 2016 as a planning year, and it the transport tax could be considered established by the local council only starting from this year". Substantiating this decision, the Supreme Court refers to the stability principle (cl. 4.1 of the Tax Code), Article 58 of the Constitution of Ukraine (stating that the laws have no retroactive effect), Article 57 of the Constitution (according to which everyone is guaranteed the right to know his/her rights and obligations)[30] and the ECHR decisions in the cases of Shchokin v. Ukraine and Sukhanov and Ilchenko v. Ukraine[31].

We can draw an important conclusion from the above decision of the Supreme Court. The stability principle applies not only to amendments to

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[29] Постанова Верховного Суду від 21 серпня 2018 року у справі №820/6986/16. URL: http://www.reyestr.court.gov.ua/Review/76002788 (дата звернення: 03.09.2019).

[30] Конституція України від 28 червня 1996 р. URL: https://zakon.rada.gov.ua/laws/show/254к/96-вр (дата звернення: 03.09.2019).

[31] Case of Shchokin v. Ukraine (Applications nos. 23759/03 and 37943/06). URL: http://hudoc.echr.coe.int/eng?i=001-100944 (дата звернення: 03.09.2019) ; Case of Sukhanov and Ilchenko v. Ukraine (Applications nos. 68385/10 and 71378/10). URL: http://hudoc.echr.coe.int/eng?i=001-145014 (дата звернення: 03.09.2019).

the elements of taxes and duties, but also to the introduction of new taxes. Besides, the mention in the decision of the Constitutional Court concerning any person's right to know his/her rights and obligations is extremely important. In the above situations, the publication of amendments to tax laws with delay, their late adoption undoubtedly infringes this constitutional right.

One of the problems related to tax policy in disputes with taxpayers is that the regulatory authorities implement the practice of appealing against court decisions taken not in their favour, even in cases where the law (and in some cases – the relevant case law) is clearly not on their side (as we can see in the above case). In our opinion, this is unreasonable. If a court decision is taken in favour of taxpayers, the regulatory authority should really assess its chance of "winning the case" in court on the basis of the results of appeal and cassation review. In such a case, where the case law is clearly not in favour of the regulatory authorities (which proves the illegality of their decisions, actions or omissions actually contested by the taxpayer), the appeal of the court decisions is a waste of the taxpayers' money and, in our opinion, does not contribute to the establishment of the rule of law (when the public authority insists on the accuracy of its manifestly unlawful position). Of course, the heads of regulatory authorities, when taking decisions upon the results of the audits, should also evaluate the case law and sufficiently examine the taxpayer's explanations and objections, so that the decisions of the regulatory authorities would be lawful and justified. In order to reduce the number of taxpayers' claims in court, K. Priamitsyn proposes to legislate personal responsibility of the officials of the regulatory authorities for making unreasonable decisions on imposing tax liabilities[32]. The above question is a problem that requires more detailed independent scientific research.

O. R. Zeldina, emphasizing that real, not declared tax stability should be one of the directions of reforming tax policy, therefore proposes to establish responsibility for law-makers who violate the stability principle[33].

[32] Пряміцин К.Ю. Судовий збір у податкових спорах як фактор обмеження доступу до правосуддя. // *Вісник Національного технічного університету України «Київський політехнічний інститут». Політологія. Соціологія. Право.* – 2018. – № 3. – С. 150.

[33] Зельдіна О. Напрями модернізації податкової політики України. // *Юридична Україна*. 2017. – № 1-2. – С. 103–110.

In our opinion, given the high importance of the problem for tax regulation, it is necessary to provide for a rule of tax stability at the level of the Constitution. It is expected to lead to a more prudent tax and customs policy and make a positive impact on economic development, increase business confidence in the authorities and promote the rule of law.

CONCLUSIONS

1. Tax legislation of Ukraine is more dynamic than stable. The Tax Code of 2010 is one of the largest and most complicated and, at the same time, the most amended laws of Ukraine. Notwithstanding, the tax laws of Ukraine have restrictions, existing over 25 years, on amending the basic elements of tax laws after July 1 of the year preceding the tax year. The Government and Parliament traditionally violate this rule.

2. One of the main manifestations of modern tax policy should be the real observance of the stability principle, according to which amendments to the tax legislation and adoption of its new regulations should be made in compliance with the statutory requirements for a minimum 6-month transition period for their entry into force.

Observation of the principle of the stability in tax regulation and tax policies should be ensured in the light of the following:

– as a manifestation of observance of the principle of the rule of law by the legislative and executive bodies in the form of non-performance of actions prohibited by the law;

– due to physical inability of taxpayers to study amendments to the tax laws in due time, inasmuch as they have traditionally large volume, and, as result, it violates the constitutional right of a person to know his rights and obligations;

– in order to ensure the higher quality of the amendments to the tax laws, it is advisable to adopt them without any deviation from the standard procedure, without recognizing them as urgent and without including in various kinds of “packages”, when the members of Parliament are not able to read in detail and propose and consider amendments to the bill;

– due to the need for applying organizational and technical measures and means in taxation with some taxes (for example, setting up and reconfiguring registrars of accounting transactions, computer programs for accounting and reporting automation, updating forms, etc.), which need some time for setting in the event of significant changes in the tax mechanism.

3. In order to comply with the stability principle, tax policy should be based on the following approaches:

– the subjects of legislative initiative have no right to draft and submit to the Parliament bills that envisage amendments to the Tax Code with their entry into force contrary to the stability principle established by the Tax Code (without observing the minimum 6-month transition period);

– the Parliament should not adopt such bills if they are received; and if such a bill is to be adopted, it will have to be amended in order to take effect from the next fiscal year following the planning year;

– in the event of such amendments being adopted by the Parliament, the regulatory authorities have to consider the relevant amendments to be effective only from the next fiscal year;

– in the event of a dispute over the entry into force of the tax rule (both when declaring taxes by the taxpayer, and when levying by the regulatory authority, upon the results of the audit or in the course of court proceedings), it must be resolved in favour of the taxpayer, to the extent of tax regime maximum favourable to the taxpayer.

4. In order to ensure the effective functioning of the stability principle in tax policy, it is reasonable to provide for a regulation of tax stability at the level of the Constitution. For this purpose, the author proposes to supplement Article 67 of the Constitution of Ukraine with the sentence (new part) with the following content:

"The new taxes and duties cannot be introduced, and the laws on introducing the new taxes and duties and amendments to tax and duties rules cannot be adopted and published later than six months before the start of the new fiscal year, in which the new taxes, rules and rates will be applicable"[34].

5. Within the framework of the current legislation, in the event of any disputes between a taxpayer and a regulatory authority, the courts should take a decision in favour of the taxpayer in the cases when amendments to the tax laws introduced without compliance with the stability principle have led to imposition of taxes, recovery of duties and/or application of sanctions).

[34] Кравчук О. О. Стабільність оподаткування має стати ключовим принципом податкової політики. // *Вісник Національного технічного університету України «Київський політехнічний інститут». Політологія. Соціологія. Право.* – 2018. – № 4. – С. 127–135. URL: http://nbuv.gov.ua/UJRN/ (дата звернення: 03.09.2019).

6. Under the current Tax Code, taking into account the case law of the Supreme Court, the stability principle in taxation applies not only to amendments to the elements of taxation, but also to introduction of new taxes.

Development of an attractive investment economy in Ukraine requires the stability and clarity of tax legislation. Therefore, the Government and Parliament should take this into consideration in the course of drafting amendments to tax policy, tax laws and implementing thereof.

SUMMARY

System disadvantages hindering compliance with the taxation stability principle are considered. The stability principle in the tax law of Ukraine appeared in the Law of Ukraine "On Taxation System" in 1994 and it is provided by tax legislation all 25 years from 1994 till 2019. Due to stability principle amendments to the tax laws should be available at least 6 months prior to the beginning of the fiscal year. However, the Parliament was not concerned about stability principle and, if necessary, they amended the tax laws and brought them into force immediately or with a much shorter transition period than 6 months.

Under the current Tax Code, taking into account the case law of the Supreme Court, the stability principle in taxation applies not only to amendments to the elements of taxation, but also to introduction of new taxes.

Approaches in tax and legal regulation, which should ensure prevention from violation of stability principle are proposed. In order to comply with the stability principle, tax policy should be based on the following approaches. The subjects of legislative initiative have no right to draft and submit to the Parliament bills that envisage amendments to the Tax Code with their entry into force contrary to the stability principle established by the Tax Code (without observing the minimum 6-month transition period). The Parliament should not adopt such bills if they are received; and if such a bill is to be adopted, it will have to be amended in order to take effect from the next fiscal year following the planning year. In the event of such amendments being adopted by the Parliament, the regulatory authorities have to consider the relevant amendments to be effective only from the next fiscal year.

In the event of a dispute over the entry into force of the tax rule (both when declaring taxes by the taxpayer, and when levying by the regulatory authority, upon the results of the audit or in the course of court

proceedings), it must be resolved in favour of the taxpayer, to the extent of tax regime maximum favourable to the taxpayer.

In order to ensure the effective functioning of the stability principle in tax policy, it is reasonable to provide for a regulation of tax stability at the level of the Constitution.

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ADMINISTRATIVE AND BUSINESS LAW AS PART OF ADMINISTRATIVE LAW

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INTRODUCTION

Administrative and business law (administratyvno-hospodarske pravo) as a scientific issue is theoretically justified and developed in the articles, textbooks and monographs of the Ukrainian researchers published in recent years, but its origins are found in German administrative law. The effectiveness of legal regulation largely depends on the extent, to which the content of legal impact meets the needs of public relations, plans and trends of the development of the state and society. The role, scope and ratio of the main components of law, namely its institutions, branches and legitimate associations, change, allowing for these needs. This process may result in the differentiation of a set of legal instruments that leads to the emergence of new branches, the formation of new legal entities and institutions. Accordingly, the bodies of rules of law that determine the legal status of public administration entities and regulate the instruments they use in their activities, morphs into a new form. The current level of the development of relations in the field of public administration, as well as the task of forming a democratic, social and legal state, which is enshrined in the Constitution of Ukraine, necessitate further improvement of the legal status and organization of public administration, and hence the clarification of scientific ideas about its meaning and content.

At present, the issue of administrative and business law as part of administrative law, which regulates the activities of public administration entities involved in the implementation of state policy in the field of economic management, is of particular relevance.

1. Social purpose of administrative and business law

Administrative and business law is a relatively new part of administrative law, which is on the rise. The external manifestation and legal arrangements of public interest in the sphere of economic management is carried out by means of administrative law (rules, relations, legislation, competence of subjects, methods of implementing rules).

Public interest is the interest of social community that is recognized and satisfied by the state. The recognition of publicity of interest is made by means of its legal support (enshrinement in rules and implementation arrangements). The population of Ukraine at large may be considered as such community. The most striking example of recognition of publicity of their interests is the provisions of the Constitution of Ukraine. Thus, the Constitution contains a number of regulatory concepts covered by the general concept "public interest". Although this concept is not explicitly used, it is based on the preamble provisions. This, for example, in consolidating "the sovereign will of the people", on the basis of the exercise of the right to self-determination, ensuring human rights and freedoms and dignified human existence, intensifying social harmony and consensus in Ukraine, develops and strengthens the democratic, social, legal state. These formulas of public interest lay the foundations of the constitutionally established state order enshrined in Articles 1-20, which are inviolable and basic for all state and legal institutions.

The Constitution of Ukraine has legally enshrined the rights and obligations of the state to actively influence the life of society, including the economic sphere. The implementation of this task is directly assigned to the public administration, which by means of power and administrative activities (public administration) exercises control over business relations. The ultimate goal of such activities is to ensure human rights and freedoms in the implementation of business activities. Public administration reconciles the selfish interests of individual members of society, the contradictions of private, individual and general, using legal means in carrying out business activities. Through public administration, public interests in the sphere of economic management are optimally taken into consideration and ensured in order to develop a socially-oriented market economy. "The main goal of this transformation is... to ensure an optimal balance between freedom, in particular, economic one, on the one hand, and legal equality and social justice, on the other[1]".

Public administration in a market economy is objective in nature, conditioned upon the needs of society in the market. Market is never all-powerful in addressing many vital issues, in particular, relating to the environment, social justice, full development of the human personality[2].

[1] Кубко Є.Б., Селиванов В.М. Культурно-правовий вимір вітчизняного підприємництва // Правова культура і підприємництво. Київ, Донецьк, 1999. С. 3–4.

[2] Economic Growth with Equity? World Bank Discussion Paper 407. 1999. P. 123.

Focus only on the market is likely to be detrimental and may lead to negative results. Although the market mechanism operates on the principle of equivalence, people have different opportunities and, as a result, their income varies notably. Unrestricted market mechanisms inevitably lead to social polarization, unemployment and social tension. In addition, each enterprise, industry and region operate under the principle of self-interest, whereby their activities are somewhat spontaneous and self-oriented, and focused on quick win. Along with this, enterprises have competitive relations, and there are contradictions in the interests of the whole and the parts between an enterprise and the state[3].

In such circumstances, it is the influence of public administration on business entities that enables to make the operation of the market economy more conscious, coordinated and coherent, to ensure its long-term accelerated development and the adherence to the constitutional principle of social justice, according to which a person, his or her life and health, honor and dignity, inviolability and security are recognized as the highest social values (Article 3 of the Constitution of Ukraine).

Proceeding that the fundamental importance of business activities for the existence, welfare and progressive development of the population, is now universally recognized, no state refuses to create public and business administration. This fact is evidence of the state's responsibility for the economy and underlines the paramount importance of this sphere among other state and legal functions.[4]

Even liberal states establish a framework of legal conditions, thus providing an opportunity for business activities and expressing their attitude to these activities. This requires public and business administration established to a greater or lesser extent. Therefore, administrative and business law is an integral part of the legal system of European states. This does not mean, however, that it is a separate legal matter. The solution to this issue depends on neither the specific legal rules relating to administrative and business law, nor the degree of their development. A decisive factor is the theoretical and practical need to systematize and develop the basic structure and features of this sphere of law. The dynamics of development are heterogeneous. For the Anglo-American legal system, such matter as administrative and business law is

[3] Ходов Л.Г. Основы государственной экономической политики: Учебник. М.: БЕК, 1997. С. 12–13.

[4] Cane Peter. An Introduction to Administrative Law. 1992. 422 p.

alien. In this case, the main directions of business regulation are contained in the administrative common law. In addition, certain aspects of administrative and business law are covered by some regulatory legal acts, which govern the activities of the nationalized industry, consumer protection, competition support, property issues, trading, etc. In Austria, Switzerland and Germany, as well as in the Asian legal system, administrative and business law, on the contrary, is developing as an independent branch of law[5].

As for Ukraine, we believe that it is too early to talk about administrative and business law as an independent branch of law, but the process of its formation is certainly going on, and it is possible that over time its independent subject matter will take a definite shape. As things stand now, administrative and business law is a system of rules, in which heterogeneous legal material, related to the implementation of the state policy in the field of economic management by the public administration entities to a greater or lesser extent, is combined by the subjective and purpose-oriented features. The subjective feature of such combination is the nature of regulated social relations that arise, change and cease in the process of public administration, the application of its specific tools in the field of economic management, the provision of guarantees in respect of its legitimate implementation. The main feature of combining legal material is the need for legal protection of the rights of business entities from arbitrariness on the part of public administration, the legal regulation of its activities in order to ensure the stability and efficiency of power and administrative impact, to create optimal conditions for its implementation and participation of business entities in this process[6].

Researchers are unanimous that a key and determinative element of the mechanism of enforcement of the rights and freedoms of citizens is, for sure, the rule of law. The rule of law is a general mandatory rule (pattern) of behavior, which establishes for an entity both the possible mode of behavior – subjective legal rights, and the required mode of behavior – subjective legal obligations. The specific task of the rule of law in the mechanism of legal support is to determine the common circle of people it covers; to define the content of social relations (the content of the subject's behavior), as well as objects of legal relations; to specify

[5] Хольцер М. Производительность, государственное управление, демократия. М.: Юрид. лит., 1999. С. 5.

[6] Кравцова Т.М. Державне регулювання господарської діяльності: адміністративно-правові аспекти: Монографія. Суми: ВВП «Мрія», 2006. 184 с. С. 59.

the circumstances, in which a person must follow the rule of conduct; to disclose the rule of conduct specifying the rights and obligations of participants in the relations being regulated, the nature of their relationships with each other, as well as the enforcement measures applied by the government to persons in the event of their failure to fulfill legal obligations. The rule of law acquires external expression, as a rule, in a regulatory legal act that ensures its effectiveness. Regulatory legal acts serve the regulatory framework of the legal support mechanism. The clarity and effectiveness of the legal support mechanism depend on the correct interpretation of the rules of law.[7] Thus, the mechanism of ensuring the rights and legitimate interests of business entities in the field of public administration predetermines, first of all, the regulation of social relations with the participation of the rules of administrative and business law.

2. The essence and content of administrative and business law

Discussions about the essence of a particular body of legal rules (branches of law) in the system of domestic law are traditionally entered into by defining its subject and method of legal regulation. However, we support the opinion of the professor R. S. Melnyk[8] that the named criteria may not be the basis for allocation of separate constituent elements in the system of law as it is impossible to make a distinction between the branches of law on their basis. Against this background, the branches of public law may be distinguished on the basis of the functions performed by public administration. Each such function requires separate legal support since, as follows from part 2 of Article 19 of the Constitution of Ukraine, public authorities, local self-government authorities and their officials shall act only under, within the powers of and in the manner provided for by the Constitution and laws of Ukraine. The performance of one or another public function is carried out by certain entities that are part of public administration, so the latter should have at their disposal, so to say, the relevant rules of conduct, which form separate branches of public law.

[7] Цвік М. В. Загальна теорія держави і права: підр. для студ. юрид. спец. вищ. навч. закладів освіти / М. В. Цвік, В. Д. Ткаченко, Л. Л. Богачова, О. В. Петришин, С. М. Олейников; М. В. Цвік (ред.) / Національна юридична академія України ім. Ярослава Мудрого. Х.: Право, 2002. С. 331.

[8] Мельник Р. С. Система адміністративного права України : дис. ... д-ра юрид. наук : 12.00.07 / Мельник Роман Сергійович; Харк. нац. ун-т внутр. справ. Х., 2010. 415 с. С. 329–332.

Public functions in the sphere of economic management are performed by the public administration entities, which in their activities are governed by the rules of administrative and business law. The criteria for the operation of administrative and business law as part of administrative law include the need for an independent and separate legal regulation of the activities of public administration entities related to the implementation of the state economic policy. The goal of this separation is to ensure the rights and legitimate interests of business entities in the implementation of public administration in the field of economic management.

In the legal literature[9], the rules of administrative and business law are fairly divided into two groups:

1) rules that determine the legal status and arrangement of activities of public administration entities involved in the implementation of the economic function of the state;

2) rules that define the procedure for interaction between public administration and business entities.

The first group of rules defines the content of activities and the scope of powers (competence) of public administration entities in the field of economic management. It is the competence that distinguishes the latter from other parties to public relations in the sphere of economic management. At the same time, the implementation of power and administration functions depends on the level of authority of the public administration entity that determines the selection of forms and methods of its activities.

The legal status of public administration entities in the sphere of economic management is not the same, and is determined by those, who bear the status: legal entities (government and non-government authorities, enterprises, organizations, institutions), the state and its structural units, the people, social communities, etc. The legal statuses of collective legal actors are formed and take a definite form with the development of the state, civil society, the formation of the needs and interests of persons, uniting in groups. However, they may not be considered as the sum of individual legal statuses. They have qualitatively different properties determined by the tasks and functions of the state

[9] Мельник Р.С., Мосьондз С.О. Адміністративне право України (у схемах та коментарях):навчальний посібник. /за ред.. Р.С. Мельника. Київ: Хрінком Інтер, 2019. 344 с. С. 193.

(legal status of government authorities, state enterprises, organizations, institutions), the goals and interests of collective entities (political parties, public associations, commercial organizations, etc.)[10].

This group includes the rules that establish the rule-making competence of public administration in the sphere of economic management, as well as the rules that provide for the responsibility for its activities both to the top-ranking officials and the court under the complaint lodged by business entities.

This group may include the rules that determine the procedure for implementing the regulatory activities in the field of economic management, namely regulate the procedure for the initiation, preparation, analysis, examination, adoption, monitoring of the effectiveness and review of regulatory acts, as well as the control over the implementation of the state regulatory policy.

The second group of rules of administrative and business law establishes the organizational and legal regulation of business activities, which is associated with the implementation of both direct administrative influence on a business entity (control, bringing to legal responsibility) and indirect – in the form of public service activities (registration, licensing, granting, etc.).

By performing the control function, public administration applies a mechanism for ensuring the conditions, when business activities are carried out legally, and do not endanger the health and safety of citizens, the rights of employees or the environment. When properly applied, the control function supports the relatively unhampered development of entrepreneurship and at the same time ensures that violators either have the opportunity to remedy the violation or are fairly punished for their wrongful acts. With the transition to market relations, the granting of independence to economic agents, the very content of the concept "control" and possible forms of its implementation are broadened. To control means not only to check, to count, but also to be aware and informed of the matter in question. Therefore, it is essential to widely use such forms of control as: awareness; continuous analysis of data received; examination of materials on individual issues, industry, scope of activities. The difference between these new forms of control is that the consequence of their application is the adoption of specific decisions.

[10] Скакун О.Ф. Теорія держави і права (Енциклопедичний курс): підручник. 2-е видання, перероблене і доповнене. Харків: Еспада, 2009. 752 с. С. 551.

Proposals are prepared on them, conclusions of a recommendatory nature are grouped by specific issues and types of control[11]. Control should be a method of improving the efficiency of the economy, ensuring the turnover of resources in accordance with restrictive (according to legislation) parameters, full payment of taxes and mandatory payments, blocking any activities that threaten national security, monopolize markets, gear at organizing the production of goods and services prohibited by the state, pose significant social risks to the interests of large groups of citizens, violate the legitimate interests of the state, economic agents and society as a whole[12].

The indirect organizational and legal regulation of business activities is made through the implementation of public service activities. The provision of Article 4 of the Constitution of Ukraine, which provides that the goal of the state is to ensure personal rights and freedoms of citizens, quite logically develops in the Concept of Administrative Reform in Ukraine, which declares the rendering of administrative services as a means of realizing such rights and freedoms. That is, the "state's serving" interests of a person involves the provision of various types of services by its bodies and employees. And this makes perfect sense as we should finally agree that the state power itself is not only the exercise of powers that oblige the citizen, but also the performance of certain duties of the state to the citizen, for which it is fully responsible to him or her[13]. Therefore, by rendering administrative services, the state performs a duty to business entities aimed at legal arrangements of the conditions required to ensure the proper exercise of their rights and interests protected by law during the implementation of their business activities.

Administrative services are provided to business entities subject to such pre-conditions:

- they are provided on the initiative (application) of business entities in order to meet their legitimate requirements, needs and interests;

- the necessity for and, accordingly, the possibility of obtaining a specific administrative service are expressly provided for by law;

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[11] Вітвіцький С.С. Форми та методи державного контролю у сфері підприємницької діяльності // Вісник Національного університету внутрішніх справ. 2002. № 20. С. 188–192.

[12] Горшнев В.М., Шахов И.Б. Контроль как правовая форма деятельности. М.: Юрид.лит., 1987. С. 65.

[13] Державне управління: проблеми адміністративно-правової теорії та практики / За загальною ред. проф..В.Б. Авер'янова. К.: Факт, 2003. С. 38.

- the law vests relevant public administration entity with the authority to render each administrative service;

- provision of such services is aimed at creating (observing) statutory conditions for business entities to realize in full the rights belonging to them and to perform their duties. Therefore, in order to obtain administrative services, business entities shall meet certain requirements set forth by law;

- administrative service has the final form of an individual administrative act, in which its addressee that is "service consumer" is specified;

- business entities are entitled to use, at their own discretion, deliverables of the services rendered to them.

In the current legislation, the following groups of administrative services aimed at implementing the rights and legitimate interests of business entities may be distinguished by the content-related features:

- issuance of permits (for example, to engage in certain types of business activity; patenting, standardization and certification of goods, works and services);

- registration with the maintenance of registers (for example, registration of business entities, licensing);

- verification (validating certificates of origin of goods from Ukraine).

Therefore, both groups of the characterized legal rules form in the aggregate the most important part of administrative law – administrative and business law. For such allocation, there are all necessary conditions.

Firstly, there is a specific subject of regulation – public relations in the field of economic management, which are a specific kind of relations of public administration. Such relations require a kind of legal regulation, which is carried out by means of the rules of administrative and business law.

Secondly, the peculiarity of administrative and business law is expressed in the fact that it is formed within the framework of the system of administrative law, incorporates all the features and peculiarities of the latter. The process of forming administrative and business law has become a logical consequence of, on the one hand, the recognition of the theory of division of law into private and public by the Ukrainian scholars as a fundamental principle of formation of system of national law, and, on the other, further differentiation of the rules of administrative law related to the formation of new branches of law, one of which is administrative and business law, within the system of administrative law[14].

[14] Мельник Р.С., Мосьондз С.О. Адміністративне право України (у схемах та коментарях):навчальний посібник. /за ред.. Р.С. Мельника. Київ: Хрінком Інтер, 2019. 344 с. С. 193.

Thirdly, administrative and business law as a part of administrative law characterizes such a feature as legislative separateness. The rules of administrative and business law are enshrined in legislative and regulatory acts. At present, the structure of administrative and business law includes a list of basic laws and regulations. These include: the Constitution of Ukraine, the Economic Procedural Code, laws and regulations.

The constitutional framework of public administration in the field of economic management is enshrined by determining by the Constitution of Ukraine the organization of power (Article 6), the specific objectives of building a democratic society and legal state (Article 1), social life, which is based on the principles of political, economic and ideological diversity (Article 15). In this regard, the constitutional framework of activity of public administration entities in the field of economic management should be considered as the rule of law, legitimacy, democracy, separation of powers, publicity, free speech, namely, the rigid principles of the constitutionally established state order enshrined in Chapter 1 of the Constitution of Ukraine. It is expedient to refer to the above the provisions of the Constitution, defining the fundamental principles of state policy in the sphere of economy, which obliges the Cabinet of Ministers of Ukraine to ensure the implementation of financial, pricing, investment and tax policy (paragraph 3 of Article 116), the determination of the legal bases and guarantees of entrepreneurship, competition and fair trade rules and antimonopoly regulations exclusively by laws (paragraph 8 of Article 92), etc.

The starting point of the constitutional framework of public relations in the field of economic management is the principle that public authorities, local self-government authorities and their officials shall act only under and within the powers of and in the manner provided by for the Constitution and the current laws of Ukraine (part 2 of Article 19). Such powers stem from the very essence of the constitutional state and the principle of the rule of law: the law shall dominate the government authorities, prevent possible arbitrariness on the part of the latter, provide the possibility of civil society's control over the state activity, including the exercise of governmental authority in the field of economic management.

The provisions of the Code of Commercial Procedure of Ukraine (hereinafter – CCPU) establish the legal basis for the state participation in business activities (Article 8) and relations of business entities with local self-government authorities (Article 23), define the basic means of government control over business activities and the general principles of

their application (Article 12), as well as the legal basis of individual means of state regulation: government order and government assignment (Article 13); licensing, patenting and quota allocation (Article 14); standardization and certification (Article 15); grants, subventions and other means of state support (Article 16). In addition, the provisions of the Code of Commercial Procedure of Ukraine establish the principles of application of taxes in the mechanism of state regulation of business activities (Article 17) and the principles and scope of government control over business activities (Article 19). Defining the limits of intervention of public authorities and local self-government authorities, the Code of Commercial Procedure of Ukraine states that they are authorized to exercise government control and supervision over business activities in the areas specified in the Code, which are fully listed in Article 19 of the Code of Commercial Procedure of Ukraine.

The laws of Ukraine authorize the public administration to exercise public authority in the sphere of economic management (for example, the right to license, state registration, standardization, patenting, government control over business activities, etc.), thereby determining their legal status and capacity in public relations in the sphere of economic management.

The regulations governing public administration in the field of economic management include: decrees of the President of Ukraine, decrees and orders of the Cabinet of Ministers of Ukraine, orders of State Regulatory Service of Ukraine as the central executive authority that ensures the formation and implementation of the unified state regulatory policy in the sphere of business activities, orders of ministries and other central executive authorities, which are sectoral oriented, decisions and orders of local executive authorities and local self-government authorities.

Thus, the above examples of the current regulations, governing the activities of public administration in the field of economic management, indicate the formation of administrative and business legislation as a separate institution of legislation. This is an objective process, which is generated by the development of public relations arising from the exercise of public authority in the field of economic management.

3. The system of administrative and business law

The system of administrative and business law is a set of rules and institutions of administrative and business law, brought together for a common purpose and objectives of legal regulation and applied in a certain logical sequence.

Public administration performs a vast number of tasks in the field of economic management, which are the continuation of the economic function of the state. In view of this, it should have at its disposal a sufficient list of tools, by means of which it will actually perform the assigned duties. We support the opinion of administrative law scholars[15], that the tools or mechanisms of public administration may not be exclusively coercive or based only on force or persuasion, as this will inevitably lead to the blocking of its activities. In modern conditions of development of the state and law, as well as the formation of civil society in Ukraine, it is rather difficult to answer a question, what instruments of activity (coercive or non-coercive) public administration entities should have more. Only one thing is clear. They should exist in all their diversity, provided that their application is based on the rule of law, as well as other principles of good governance (appropriate legislation, legality, transparency in decision-making, access to information, etc.).

Therefore, proceeding from the diversity of public influence on business relations, the system of rules of administrative and business law may include a fairly broad combination of legal rules divided into groups, each of which regulates a separate instrument of public administration in the field of economic management and represents a legal institution. Thus, the elements of administrative and business law include:

- institute of state registration of business entities;
- antimonopoly regulation institute;
- state order institute;
- licensing institute;
- patenting institute;
- quota allocation institute;
- certification and standardization institute;
- standard and limit application institute;
- price and tariff regulation institute;
- investment, tax and other allowance institute;
- institute of granting subsidies, compensation, dedicated innovation and grants;
- institute of control measures, etc.

[15] Державне управління: європейські стандарти, досвід та адміністративне право / В.Б. Авер'янов, В.А. Дерець, А.М. Школик та ін. ; за заг. ред. В.Б. Авер'янова. – К., 2007. – С. 276.

The institute of state registration of business entities combines the rules of administrative and business law that regulate the activities of public administration entities associated with the certification of the fact of creation or termination of a business entity, as well as the commission of other registration actions by making appropriate entries in the Unified State Register.

The antimonopoly regulation institute is a set of rules of administrative and business law that establish legal support for administrative measures of public administration aimed at restricting monopoly in the economy. Such restriction implies direct state regulation in specific monopolized markets or the activities of specific monopolistic entities through the centralized establishment of quantitative and qualitative indicators.

On the basis of the rules of the *state order institute,* public administration forms, on a contractual basis, the composition and volumes of products (works, services) required for state needs, placement of government contracts for the supply (purchase) of these products (performance of works, provision of services) among business entities, regardless of their form of ownership.

The licensing institute is the institute of administrative and business law, the rules of which regulate the activities of public administration entities related to the consideration of the application of a business entity for the issuance (renewal) of a license and the adoption of a decision on the results of such consideration.

The rules of the *patenting institute* regulate the public administration activities for the issuance of trade and special patents for certain types of business activities in areas related to trade for cash (cash, checks, as well as using other payment methods and payment cards in Ukraine), the exchange of cash currency values (including transactions with cash denominated in foreign currency and payment cards), in the field of gambling and consumer services, and other areas defined by law.

The quota allocation institute defines the rules, by which public administration entities act, protecting the economic and social interests of the state, society and individual consumers by setting limits (quotas) of production or turnover of certain goods and services. The legal rules of this institution establish a regime for the issuance of individual licenses, and the total volume of export (import) under these licenses shall not exceed the established quota.

Standardization and certification as an institution of administrative and business law bring together the rules regulating a special type of

activity of authorized entities of public administration, which involves the establishment of provisions for common and repeated use in relation to existing or potential problems and is aimed at achieving an optimal degree of order in a certain area, the result of which is to increase the degree of conformity of products, processes and services to their functional purpose, promotion of scientific and technical production.

The rules of *the price and tariff regulation institute* establish the procedure for forming, determining and using prices by the Cabinet of Ministers of Ukraine, executive authorities, bodies engaged in the state regulation of activities of natural monopoly entities, local self-government authorities and business entities that operate on the territory of Ukraine, as well as the implementation of state control (supervision) and monitoring in the field of pricing.

The institute of granting subsidies, compensation, dedicated innovation and grants regulates the activities of public administration entities related to the allocation of funds from public budgets to business entities for the satisfaction of public interests, for example, to support the manufacture of vital food products, the production of vital medical drugs and assistive devices, etc. Moreover, the rules of this institute of administrative and business law determine the procedure for the provision of financial or other support by public administration entities to stimulate the development of certain types of business activities.

The institute of control measures is a set of rules of administrative and business law, which regulate the activities of legally authorized entities of public administration aimed at identifying and preventing violations of applicable legal requirements by business entities and ensuring the interests of society, in particular the proper quality of products, works and services, the permissible level of danger to the population, the environment, etc.

Thus, having analyzed separate legal institutions, it is possible to formulate the concept of the system of administrative and business law: the system of administrative and business law is a set of regulatory documents logically and consistently posted by legal institutions, the rules of which taken together enshrine the basic principles, tools and procedure of public administration in the field of economic management. The rules of this part of administrative law in a certain sequence and interrelation are grouped into various legal institutions that regulate the relevant relations associated with the use of certain instruments of public administration in business activities. Each type of such relations is

relatively independent in public administration and regulated by the same relatively independent group of legal rules, which in aggregate form the institutions of administrative and business law.

CONCLUSIONS

Summarizing the above, it should be noted that administrative and business law is a system of rules, in which heterogeneous legal material, related to the implementation of the state policy in the field of economic management by the subjects of public administration, is combined by the subjective and purpose-oriented features.

Administrative and business law is a relatively new part of administrative law, which is on the rise. The external manifestation and legal arrangements of public interest in the sphere of economic management is carried out by means of administrative law (rules, relations, legislation, competence of subjects, methods of implementing rules).

The criteria for the operation of administrative and business law as part of administrative law include the need for independent and separate legal regulation of the activities of public administration entities related to the implementation of the state economic policy. The goal of this separation is to ensure the rights and legitimate interests of business entities in the implementation of public administration in the field of economic management.

The necessary conditions for the allocation of administrative and business law as part of administrative law are as follows:

- a specific subject of regulation – public relations in the field of economic management, which are a specific kind of relations of public administration;
- the peculiarity of administrative and business law, expressed in the fact that it is formed within the framework of the system of administrative law, incorporates all the features and peculiarities of the latter.
- legislative separateness – the rules of administrative and business law are enshrined in legislative and regulatory acts.

The system of administrative and business law is a set of regulatory documents logically and consistently posted by legal institutions, the rules of which taken together enshrine the basic principles, tools and procedure of public administration in the field of economic management. The elements of administrative and business law include: institute of state registration of business entities; antimonopoly regulation institute; state

order institute; licensing institute; patenting institute; quota allocation institute; certification and standardization institute; standard and limit application institute; price and tariff regulation institute; investment, tax and other allowance institute; institute of granting subsidies, compensation, dedicated innovation and grants; institute of control measures, etc.

SUMMARY

The scientific and theoretical study of administrative and business law as part of administrative law is made in the scientific article. Administrative and business law is a system of rules, in which heterogeneous legal material, related to the implementation of the state policy in the field of economic management by the subjects of public administration, is combined by the subjective and purpose-oriented features. The article analyzes the social purpose, essence and content, as well as the system of administrative and business law. It also focuses on the definition of the conditions necessary for the allocation of administrative and business law as part of administrative law, namely: a specific subject; the peculiarity of administrative and business law; legislative separateness.

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FEATURES OF ADMINISTRATIVE AND LEGAL STATUS OF CERTAIN CATEGORIES OF PUBLIC OFFICIALS

Lehka O. V.

INTRODUCTION

Today, economic and social reforms, informatization, processes of globalization, Ukraine's intentions to join the European community, and new requirements for the formation of the apparatus of civil servants, as it is the state service plays an important role in the system of power relations, acting as one of the leading factors of the unity of the state, about The unification of the efforts of the branches of power, ensuring the arrival of the most experienced civil servants to the state administration bodies.

The need for reform of the civil service in Ukraine has been recognized as one of the priority reforms of our state as a national one (Ukraine-2020 Sustainable Development Strategy and National Security Strategy of Ukraine) and internationally (Resolution of the Parliamentary Assembly of the Council of Europe "The Functioning of Democratic Institutions in Ukraine" from January 25, 2017 (paragraph 10.4.) and the updated Memorandum on Economic and Financial Policies between Ukraine and the International Monetary Fund of March 2, 2017 (paragraphs 17 and 21 b). As we see, the process of civil service reform Ukraine has been given a powerful impetus by adopting a new version of the Law of Ukraine "On Civil Service".

The main stories of the Law of Ukraine of 2015 are the with drawal of political positions and positions of patronage service beyond the limits of its limits, positions of employees who perform maintenance functions and auxiliary functions; the establishment of an institution of state secretaries, open competitive selection and political impartiality of civil servants; the establishment of requirements for candidates for the post of senior civil service requirements to know not only the state language, but also one of the official languages of the Council of Europe.

"The study of the civil service system and the construction of its general theory is a complex, multidimensional problem that has not yet

received a holistic scientific interpretation", noted V.B. Averyanov[1]. The modern legal institute of civil service is, first of all, a system of legal norms regulating the relations that are formed in the process of organization of the civil service itself, the status of civil servants, guarantees and procedures for its implementation, as well as the mechanism for passing civil service. According to V.B. Averyanov, the civil service is a comprehensive legal institution that regulates the organization and activities of all civil servants and consists of legal norms of various branches of law. The complexity of the civil service institute is that, firstly, it combines the legal norms of other branches of law, and secondly, consists of separate subinstitutions (service of service, principles of civil service, etc.)[2].

Y.P. Betyak claims that traditionally the civil service is considered in three aspects: social, political and legal. However, the lawyer emphasizes that the notion of civil service should be comprehensive, take into account all aspects, but when it is developed, it is necessary to abandon a number of elements that can be considered as independent phenomena or those that have little effect on the notion of civil service. In his opinion, the civil service is carried out on the basis of the Constitution, the laws of Ukraine on the formation of the apparatus of state bodies and other state organizations, the professional activities of persons holding positions in state bodies and state organizations, on the practical implementation of functions and socially important tasks of the state, provision of the rights and freedoms of citizens, which is paid at the expense of state funds"[3].

G.I. Lelikov believes that the civil service is a complex, integral system, which has the following aspects: political – a link that connects citizens with the state; legal – practical fulfillment of official duties and powers in the state apparatus; social – the fulfillment of the goals and functions of the state in society. Its state-legal form, administrative-legal and procedural mechanisms of realization are based on the actions of social functions and social nature and are determined by them[4]. S.D. Dubenko,

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[1] Державне управління: проблеми адміністративно-правової теорії та практики / за заг. ред. В. Б. Авер'янова. К.: Факт, 2003. 384 с.

[2] Державне управління: теорія і практика /за заг. ред. В. Б. Авер'янова. К.: Юрінком Інтер, 1998. 432 с.

[3] Битяк Ю. П. Державна служба в Україні: організаційно-правові засади: монографія. Х.: Право, 2005. 304 с.

[4] Леліков Г. І. Організаційно-правові засади формування і функціонування державної служби в Україні: дис. ... канд. юрид. наук: 12.00.07. К., 1999. 173 с.

investigating the legal aspect of the civil service, argues that this is a system of legal norms regulating state service relations, that is, rights, duties, restrictions, prohibitions, incentives, employees' liability, civil service, the order of occurrence and termination of official relations[5].

Thus, acting as an element of a state-organized society, the civil service has a number of peculiarities, in particular: it represents the sphere of professional activity (the content, forms and methods of the activity of civil servants are aimed at ensuring the powers of state bodies); is intended to protect the rights, freedoms and legitimate interests of participants in public relations (the constitutional provision that a person, his rights and freedoms is the most important value[6], acts as the main pillar in the activities of civil servants, regardless of official status); a peculiar form of reflection of public relations and relations, an indicator of the degree of humanity and existing in the society of the order; public service not only reflects social relations and relations, it has a social orientation aimed at bringing the constitutional ideal of a legal democratic state closer to objective reality[7].

Consequently, the civil service represents an integral part of public administration, is its leader, embodies all tasks set before the state and is the object of administrative influence.In the context of reforming the system of public administration, improving the current legislation on public service and adapting the civil service institution to the standards of the European Union, the issue of the legal status of a civil servant and the peculiarities of its legal regulation becomes especially relevant, as the construction of a professional and efficient civil service is impossible without highly qualified civil servants with the corresponding level of professional competence.The study of the legal status of a civil servant was given attention by V.B. Averyanov, D.V. Baluch, L.R. Bila-Tyunova, Y.P. Bytiak, V.V. Vasylkivska, I.P. Golosnichenko, S.D. Dubenko, M.I. Inshin, S.V. Kivalov, T.O. Kolomoets, L.M. Kornuta, I.V. Megadin, N.R. Nizhnik, G.V. Padalko, O.M. Stets and others.

However, the development of the public service, the adaptation of the civil service institute to the standards of the European Union, and the improvement of the current legislation on civil service (the adoption of the Laws

[5] Дубенко С. Д. Державна служба і державні службовці в Україні. К.: Видавничий Дім «Ін-Юре», 1999. 242 с.

[6] Конституція України. Відомості Верховної Ради України. 1996. № 30. Ст. 141 (із змінами).

[7] Іншин М. І. Особливості правового регулювання державної служби в Україні: сучасний стан, проблеми, перспективи розвитку. *Форум права*. 2013. № 2. С. 165–179.

of Ukraine “On Civil Service”, “On Prevention of Corruption”) necessitate a rethinking of a whole range of scientific and theoretical provisions, the part concerning the legal regulation of the status of a civil servant.

1. Legal regulation of the status of civil servant

According to Part 2 of Art. 1 of the Law of Ukraine “On Civil Service”, a civil servant is a citizen of Ukraine who holds a civil service in a government body, another state body, his staff (secretariat), receives wages at the expense of the state budget and implements the established for this office powers directly related to the execution of the tasks and functions of such a public authority, and also adheres to the principles of civil service[8].

The tasks and functions of the civil service by their nature predetermine the need to consolidate the duties first and then – service rights. Duties of the civil servant determine the essence of his official activities, outline the tasks set, determine the boundaries of the required occupational behavior. The rights are also aimed at ensuring the proper conditions for the performance of official activities, the creation of real opportunities for the performance of official tasks.

Legal regulation of civil service, in accordance with Art. 5 of the Law of Ukraine “On Civil Service” is implemented by the Constitution of Ukraine, other laws of Ukraine, international treaties, the consent of which is binding on the Verkhovna Rada of Ukraine, resolutions of the Verkhovna Rada of Ukraine, decrees of the President of Ukraine, acts of the Cabinet of Ministers of Ukraine and central executive authorities, which ensures the formation and implementation of public policy in the field of civil service. The features of the legal regulation of the civil service in the justice system are determined by the legislation on the judicial system and the status of judges[9].

Legislative regulation of the status of a civil servant, depending on the type of civil service, has certain features:

- administrative service: a) general legislative acts (laws of Ukraine “On Civil Service”, “On Prevention of Corruption”, “On Purge of Power”, Code of Administrative Justice of Ukraine); b) special (Law of Ukraine “On Diplomatic Service”, etc.);

[8] Про державну службу: Закон України від 10 грудня 2015 р. № 899-VIII. *Офіційний вісник України*. 2016. № 3. Ст. 149. [Електронний ресурс]. URL: http://zakon. rada.gov.ua.

[9] Там само.

- specialized service (there is no general legislative act, the action of which would extend to this type of service, each subspecies of this type of service has its own special law);

- militarized service (integral substantially defined subordinate legal structure, which is made up of relatively independent subspecies of this kind of service (military service, border guard service, SBU, law enforcement service, state security service, civil protection, special communication service, etc.), which are characterized by general legislative acts (statutes), and special legislative acts.

The division of civil servants is carried out according to different criteria depending on which the following types of civil servants are distinguished: a) by the nature of labor and the volume and nature of their official powers: managers, specialists, technical executors; b) by the nature and volume of authority: officials (representatives of the authorities, administrative and auxiliary staff, functional (operational, main) personnel); c) by type of service in which persons are: employees of ordinary (civil) service; employees of the special (militarized) service; d) according to the distribution of state power: civil servants of the legislative branch; civil servants of executive power; civil servants of the judiciary.

Public service positions in state bodies are divided into categories, depending on the order of appointment, the nature and extent of powers and the necessary qualifications and professional competence of civil servants for their fulfillment. Three categories of civil service positions are established:

- category “A” (senior civil service) – positions: State Secretary of the Cabinet of Ministers of Ukraine and his deputies, state secretaries of ministries; heads of central executive bodies, who are not members of the Cabinet of Ministers of Ukraine, and their deputies; the heads of the apparatus of the Constitutional Court of Ukraine, the Supreme Court, the high specialized courts and their deputies, the heads of the secretariats of the High Council of Justice, the High Qualifications Commission of Judges of Ukraine and their deputies, the Chairman of the State Judicial Administration of Ukraine and his deputies; heads of civil service in other state bodies whose jurisdiction extends over the entire territory of Ukraine;

- category “B” – positions: heads of structural subdivisions of the Secretariat of the Cabinet of Ministers of Ukraine and their deputies; heads of structural subdivisions of ministries, other central bodies of executive power and other state bodies, their deputies, heads of territorial bodies of these state bodies and their structural subdivisions, their

deputies; heads and deputy heads of structural subdivisions of local state administrations, the apparatus of local state administrations, their structural divisions; heads of the courts of appellate and local courts, heads of structural divisions of court apparatus, their deputies; deputy heads of civil service in other state bodies, whose jurisdiction extends over the entire territory of Ukraine; category "B" – other positions of the civil service not classified in categories "A" and "B".

The positions of civil servants are classified according to the organizational and legal level of the body, the scope and nature of the authority of a person in a particular position, the role and place of position in the structure of a public authority. The following 3 types of positions are distinguished in state authorities: political, administrative and patronage.

The status of civil servant includes the following elements: rights, responsibilities, restrictions, incentives and guarantees, responsibilities that are organically interlinked. Specific duties and rights of civil servants are determined on the basis of typical qualification characteristics and are reflected in the positions and instructions approved by the heads of relevant state bodies within the limits of the law and their competence.

The subjects of legal regulation of the status of a civil servant are state bodies that, in their competence, exercise their powers in matters of civil service and, in particular, on the right to civil service. For example, the establishment of this right is regulated by the Verkhovna Rada of Ukraine by adopting relevant laws; definition and provision of this right – the Cabinet of Ministers of Ukraine, the National Security Service through the issuance of relevant legal acts and the implementation of, respectively, state and functional management in the field of civil service; Protection of this right – administrative courts (judicial protection) and the National Security Service (administrative protection).

2. General principles of activities and status of civil servants

The general principles of activity, as well as the status of civil servants working in state bodies and their apparatus, are defined in the Law of Ukraine "On Civil Service". In general, with the adoption of the Law of Ukraine "On Civil Service" in 2015, "reform" took place in the sense of the administrative and legal status of a civil servant. Thus, Section II of this Law defines the legal status of a civil servant, establishes, in addition to basic rights and obligations, and subordination as a consequence of the powers provided for by law. In addition, the principle of political impartiality is an integral element of the legal status

of a civil servant, that is, "a civil servant must impartially perform statutory orders (orders), orders from directors irrespective of their party affiliation and their political beliefs", he "has no right to demonstrate his political views and other actions or inaction that can in any way testify to his particular attitude towards political parties, to negatively affect the image of the state body and the blasts you trust the government or threaten the constitutional order, territorial integrity and national security, health and the rights and freedoms of others"[10].

Also, according to the Law of Ukraine "On Civil Service", the requirements of the educational and qualification level of a civil servant have been reduced. Thus, for example, paragraph 5, part 2, art. 20 stipulates that from persons applying for the post of civil service of category "B", the presence of higher education only the junior bachelor's or bachelor's level and the fluency of the state language is required. However, there are no requirements for the professional level and, accordingly, the length of service. And such civil servants will form the main body of civil service.

The peculiarities of the legal status are also determined by certain general and specific restrictions defined by the civil servants in the Law of Ukraine "On Prevention of Corruption", for example, restrictions on the receipt of gifts (Article 23 of the said Law), restrictions on the combination and combination with other types activities (Article 25), restrictions on the work of close relatives (Article 27). The special legal status of civil servants determines the specifics of their social security, that is, the system of state support and servicing of civil servants.

It is worth paying attention to the fact that today there is no single legal approach from the side of scientists to determine the content of the concepts of "legal status", "legal status of a civil servant", "administrative and legal status". For example, "legal status" is understood as: a set of rights and obligations of individuals or legal entities[11]; the system of rights, freedoms, responsibilities and responsibilities of the individual enshrined in regulatory legal acts and state guaranteed by the state[12]; a set of all rights, duties and legitimate interests of subjects of law[13].

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[10] Про державну службу: Закон України від 10 грудня 2015 р. № 899-VIII. *Офіційний вісник України*. 2016. № 3. Ст. 149. [Електронний ресурс]. URL: http://zakon. rada.gov.ua.

[11] Юридична енциклопедія: в 6 т. /за заг. ред. Ю. С. Шемшученка та ін. К.: Українська енциклопедія, 2003. Т. 5: П-С. 736 с.

[12] Про судоустрій та статус суддів: Закон України від 7 липня 2010 р. № 2453-VI. *Офіційний вісник України*. 2010. № 55/1. Ст. 1900.

[13] Загальна теорія держави та права: підручник /М. В. Цвік, О. В. Петров, Л. В. Авраменко та ін.; за ред. М. В. Цвіка, О. В. Петришина. Х.: Право, 2009. 584 с.

Discussions about the status of a civil servant in Ukraine, indicate a certain instability of its norms, due in part andpolitical nature of the relations in which a civil servant is. At the same time, different approaches to the characterization of the status of a civil servant are noticeable among Ukrainian scholars.

For example, according to IV Meghedin, the main elements of the legal status of a civil servant are: integrity; systematic legal status; the ratio of authority of the position he occupies with the rights and duties arising from the fact of being in the public service; established legal incentives and motivation for the interest of the civil servant in the effective performance of duties; the mechanism of legal liability of civil servants through institutes of administrative, criminal responsibility, norms of labor, financial law, etc.; ensuring the stability of the status of a civil servant with appropriate guarantees, social protection[14].

Y.P. Bitiyak notes that the legal status of civil servants reflects the essence and content of state-service relations, combines elements of the civil service institute from admission to it until completion. He, in the opinion of the author, is a set of rules of the civil service – rights, duties, restrictions, prohibitions, guarantees, social protection, responsibility[15].

V.V. Vasilkivska believes that, depending on the type of civil service, the rights of a civil servant are rather diverse, not by subject, but by the way of their normative and legal definition. For servants of the state administrative and state militarized service it is characteristic that their rights are determined by the general (for the administrative service – the Law "On Civil Service") or general (for militarized service – the relevant laws, which applies to all state militarized employees, regardless of the type service) – basic rights, and special laws that regulate in detail the rights of a civil servant depending on the state authority (administrative service) or the type of military service (mileage arisen service) – special rights. In addition, a civil servant has the rights that he has been allocated depending on his position (official rights), which are determined by job descriptions. Instead, for employees of the state specialized service, the rights defined by special laws are characteristic, since they have no general legislative act (special rights) and job descriptions (office rights). V. Vasilkivska's legal status of civil servants

[14] Мегедин І. В. Особливості правового статусу державного службовця. *Науково-інформаційний вісник.* Серія: «Право». 2013. № 7. С. 157–163.

[15] Битяк Ю. П. Державна служба в Україні: проблеми становлення, розвитку та функціонування: автореф. дис. … докт. юрид. наук: 12.00.07. Х., 2016. 38 с.

and the procedure for passing the public service is considered in conjunction with the moral and legal requirements for the behavior of employees, the anti-corruption orientation of the legal principles of the formation and functioning of the civil service, and the problems of training personnel for executive authorities and local self-government[16].

According to O. Petrishin, the specificity of the activity and legal status of civil servants is "... implementation of internal organization on the basis of direct subordination of management of the relevant team"[17]. After all, any official, being the holder of authority, performs organizational and administrative functions within the limits of his official duties and has the right to apply coercive measures. In addition to the powers envisaged by the post, this category of employees is also entitled to represent the interests of a particular organizational structure, or organizations in general, in relationships with other actors, in connection with which acts as a special subject of the management process, reflected in his legal status. Therefore, the concept of "legal status" can be formulated as a certain system of capabilities of the person, determining its legal status in the state, distinguishing, in this case, its general and special legal status.

N.R. Nyizhnik formulates the definition of the legal status of a civil servant as established and guaranteed by the state measure of the necessary and possible behavior of a civil servant in the field of state service relations[18].

There is no consensus among jurists and the definition of the term "administrative and legal status". For example, O. F. Skakun believes that the guarantees of the realization of the rights and obligations of citizens, enshrined in the norms of administrative law, as well as the guarantees of the implementation of these rights and freedoms, are secured by the mechanism of their protection by the authorities for the exercise of rights, freedoms, duties will remain "statements of intentions". However, general social (economic, political, ideological, etc.) and special-social (legal) guarantees are factors for realizing the legal status of a person, and not elements of the structure of his system, since the content of lawful

[16] Васильківська В. В. Правове регулювання статусу державного службовця в Україні: автореф. дис. … канд.. юрид. наук: 12.00.07. Одеса, 2018. 24 с.

[17] Петришин О. В. Статус службової особи: природа, структура, спеціалізація. К.: НМКВО, 1990.

[18] Нижник Н. Р. Державна виконавча влада в Україні: формування та функціонування. К.: Вид-во УАДУ, 2000. Ч. 1. С. 166–167.

conduct of a person reveals rights, freedoms and responsibilities, with a specific the type and extent of possible or compulsory behavior. Their external fixation is found in the rules of law. And this means that their realization takes place in certain legal relationships[19].

A. Vasiliev argues that the content of the administrative and legal status of a citizen is a specific and detailed constitutional rights, freedoms and duties of citizens, enshrined in the norms of administrative law, as well as guarantees of the realization of these rights and freedoms, provided by the mechanism of their protection by the state authorities and local self-governance[20].

Y.O. Tikhomirov, the administrative and legal status of a citizen defines the rights, duties and responsibilities of a citizen, established by the law and other legal acts, which ensures his participation in the management of the state and the satisfaction of public and personal interests through the activities of state bodies[21].

In our opinion, the peculiarity of the administrative and legal status of civil servants is that they represent the personnel (or personnel) of executive authorities and local governments. It is through them that the tasks and functions of executive power are implemented at various levels as employees of the relevant state bodies. They are the link of the state management mechanism, through which the state executive authority is implemented, concrete management decisions and the legal acts of management based on them are implemented. Taking into account how properly the civil servants understand the functions, powers and responsibilities assigned to them, the effectiveness of the functioning of practically every state body and the system of public administration depends on the correct way.

It should be noted that a person acquires status only if he is recognized as a legal person.

The legal status of a person determines her place in society, characterized by a certain set of rights, duties, guarantees of their security and liability for non-fulfillment of duties. One of the types of legal status of a certain category of persons is the type of professional activity that is the public service.

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[19] Скакун О. Ф. Теория государства и права: учебник. Х.: Консум; Ун-т внутр. дел, 2000. 704 с.

[20] Васильев А. С. Административное право Украины. Х.: Одиссей, 2002. 288 с.

[21] Тихомиров Ю.А. Курс административного права и процесса. М., 1998. 799 с.

3. Features of the legal status of certain categories of civil servants

Let's consider the peculiarities of the legal status of certain categories of civil servants.

For example, the general status of public servants of the prosecutor's office is determined by the Constitution of Ukraine, a special status reflecting the passage of the civil service in the prosecutor's offices, is determined by the tasks and functions of the prosecutor's office, which are envisaged by the Law of Ukraine "On Prosecutor's Office"; the individual administrative and legal status of public servants of the prosecutor's office is determined directly by the relevant official instructions.

Employees of the prosecutor's office are a special kind of civil servants. They perform administrative and law enforcement functions, which are different from other civil servants legal status, since they carry out executive and administrative, control and supervisory, criminal-procedural powers of the law-enforcement order on behalf and on behalf of the state. At the same time, each level of legal status of civil servants of the prosecutor's office is characterized by a certain amount of rights, duties, restrictions, guarantees and responsibilities.

In the opinion of V.I. Babenko, the main characteristics of the administrative and legal status of civil servants of the prosecutor's office include: 1) its settlement with the norms of administrative law; 2) the presence in its composition of certain elements, the main of which are rights and obligations; 3) taking into account the differences between public servants of the prosecutor's office and other civil servants and employees working in the prosecutor's offices; 4) reflection of the essence and content of public-service relations in the prosecutor's offices throughout the term of service – from admission to the civil service until its completion[22].

In the administrative legal status of civil servants of the public prosecutor's office there are two groups of elements: 1) elements which are enshrined in the status of the corresponding position (official rights and responsibilities, responsibility); 2) elements that are not enshrined in the status of the post (general rights and obligations, restrictions and prohibitions, liability, which apply to civil servants in general and civil servants of the prosecutor's office, in particular).

[22] Бабенко В.І. Сутність адміністративно-правового статусу державних службовців органів прокуратури. *Наше право*. № 4. С. 56–59.

For the public servant of the prosecutor's office, primary duties are those which determine in general the limits of his legal status. In the process of exercising his rights, the employee operates within the legal limits specified by his duties, including prohibitions. At the same time, taking into account the fact that in the norm of the law there is only a general model of behavior, and specific life situations are much more meaningful, in practical activity of a public servant of the public prosecutor's office there is often a discretion, the scope of which is established by the rules of law that regulate the goals, tasks, institutes of the necessary defense , extreme necessity, and others.

The legal status of civil servants of the internal affairs bodies is regulated by the laws of Ukraine "On Civil Service", "On the National Police". This is a special category of civil servants who perform administrative and law enforcement functions, have a legal status different from other employees, execute executive and regulatory powers of law enforcement nature on behalf and on behalf of the state. In addition, they enter into legal relations that derive from the content of their official authority not only in the middle of the body or subdivision, but also outside, that is, they enter into relations with citizens, other state and non-state bodies. Speaking in the said relationship on behalf of the state, they may apply the measures required to comply with lawful requirements, in particular coercive measures. Consequently, employees of the law-enforcement bodies are endowed with powers of state power and are able to enforce the mechanism of state coercion.

In essence, the legal status of a civil servant in the organs of the internal affairs is the measures established and guaranteed by the state and compulsory and possible behavior in the sphere of state service relations. With their change, the legal status of the employee of the internal affairs bodies (for example, increase, decrease, release, retirement, retirement) is transformed.

Thus, the legal status of an officer of the internal affairs bodies is the system of rights, freedoms, duties, restrictions, moral and legal requirements and guarantees of professional activity of a separate category of employees of services and units of the Ministry of Internal Affairs of Ukraine that perform law enforcement tasks in the normative-legal acts. the field of public safety and order, the fight against the offenses, their social and legal protection and the peculiarities of legal liability.

The legal status of civil servants of the judiciary is determined by the laws of Ukraine "On Civil Service", "On the Judiciary and Status of

Judges". However, the civil service in the judiciary is not limited to the fulfillment of the tasks and functions provided for by the Law of Ukraine "On the Judiciary and Status of Judges". It is a complex state-legal and social institution that establishes and regulates state relations with court employees; covers the formation of administrative, procedural and socio-psychological foundations of the state apparatus; construction and legal description of the hierarchy of positions; identification, selection, preparation, development, promotion, evaluation, promotion and responsibility of civil servants.

The main features that determine the peculiarities of the administrative and legal status of civil servants of the judiciary include: civil servants of judicial bodies carry out activities in the civil service; carry out practical functions of the state in carrying out judicial oversight of observance of laws in Ukraine; carry out tasks aimed at strengthening the rule of law and protection against unlawful encroachments: the independence of the republic established by the Constitution of Ukraine, the social and state system, political and economic systems, the rights of national groups and territorial entities; guaranteed by the Constitution, other laws of Ukraine and international legal acts of socio-economic, political, personal rights and freedoms of man and citizen; the basis of the democratic system of state power, the legal status of local councils, bodies of self-organization of the population; receive wages at the expense of the state; officials.We are impressed by the position of Y.S. Zolotareva, according to which "the legal status of civil servants of judicial bodies" is a complex of concretely defined subjective rights and obligations that are enshrined in the relevant subject of administrative law. It implies: firstly, the presence of power powers of both internal-organizational and external nature; secondly, the opportunity to speak, within the limits of its competence, on behalf of the state, when exercising supervision over the observance and correct application of laws by public authorities and local self-government bodies, individuals and legal entities, enterprises, institutions and organizations; thirdly, the presence of restrictions imposed both during entry into the civil service and during its passage; Fourthly, the existence of guarantees of social and legal protection; fifth, increased responsibility for both their own actions and for the activity (inactivity) of their subordinate employees[23]".

[23] Золотарьова Я. С. Адміністративні процедури проходження державної служби в судових органах України: автореф. дис. … канд. юрид. наук: 12.00.07. К., 2016. 24 с.

The legal status of a civil servant is a generic concept in relation to more specific statuses – a public servant of a public administration body, a judicial administration, etc., which, in turn, perform the same role as more specialized statuses (for example, the status of an employee of the state administration, the status of a civil servant the body of internal affairs). That is, the status of a civil servant of a judicial body is a generic notion of such a category as the legal status of a public servant of a public administration.

It is worth paying attention to the fact that, in accordance with the current Law of Ukraine "On Civil Service", from the list of positions that fall under the civil service, unreasonable withdrawal of aide judges. On this fact the chairman of the Supreme Court of Ukraine A.M. Romanyuk noted: "The volume and nature of the work of the assistant judge can not go beyond the limits of the implementation of a judge of state power through the administration of justice. Moreover, failure to provide the status of civil servants to auxiliary judges will lead to the fact that the Law of Ukraine "On Prevention of Corruption" does not extend to this category of persons, and this can not be considered correct. The absence of a special law that envisages the status of such persons will not only lead to a reduction in the effectiveness of the anti-corruption law, but also to the complete absence of legislative norms, which would determine the legal status of a judge's assistant[24]".

As to the legal status of civil servants of local self-government, the latter is regulated by the Constitution of Ukraine, the Laws of Ukraine "On Local Self-Government in Ukraine", "On Local Elections", "On Elections of Deputies of Local Councils and Village, Settlement, City Mayors", "On the Service in the bodies of local self-government", "On the status of deputies of local councils" and other legislative acts. An undeniably important aspect of their legal status is the theoretical and practical justification of the current conditions of classification, as well as its role and influence on the formation of the special legal status of civil servants of local self-government. Such a classification, according to G.V. Padalko, makes it possible to establish the real place of civil servants of local self-government in the municipal service hierarchy, to identify their role in local self-government (self-government, municipal administrative) process, to determine the conditions and procedure for service in local self-

[24] Висновок на проект Закону України «Про державну службу» Верховного Суду України. [Електронний ресурс]. URL: http://www.scourt.gov.ua.

government bodies, to determine the peculiarities of the implementation of organizational and regulatory functions, which, ultimately, will contribute to improving the legal regulation of this type of public service[25].

In addition, it should be noted that Article 6 of the current Law of Ukraine "On Civil Service" defines a list of civil service positions that fall into the category "A", "B", "B". It should be noted that, unlike the Law of Ukraine "On Civil Service" in 1993 (Part 3, Article 25), which provided for the right of the Cabinet of Ministers of Ukraine to attribute existing and new civil servants to the relevant category not included in the law, the current law does not provide such a right is neither for the Cabinet of Ministers of Ukraine nor for any other state body or its head. That is, the legislator has established an exhaustive list of only positions of categories "A" and "B", which can be changed only by amending this law. According to the explanations of the National Agency of Ukraine on Civil Service dated 10.05.2016 № 6-p/s, "the positions of heads of structural divisions as independent, and in the composition of independent structural subdivisions of the local state administration, their deputies and heads of structural divisions the apparatuses of these administrations belong to the category "B"[26]. However, Art. 6 of the Law to the category "B" refers only to heads of structural subdivisions of "ministries, other central bodies of executive power and other state bodies, their deputies, heads of territorial bodies of these state bodies and their structural subdivisions, their deputies".

In this regard, district state administrations and their departments are ranked within the category "B", in others, both in the category and in the category "B", the heads of the structural units (in particular, the heads of departments and the heads of the sectors) have been assigned rayon administrations and their vehicles. The analysis of available information from open sources (the sites of the district administrative districts) made it possible to state that the practice of assigning these managers to the category "B" and assigning them the corresponding (6, 7, 8, 9) rank of civil servant was not sufficient. But with the appointment of the head of the apparatus of local state administrations to the category of civil servants, the situation is the opposite. Despite the position of the National Agency of

[25] Падалко Г. В. Конституційно-правовий статус посадових осіб місцевого самоврядування в Україні. *Держава і право*. Вип. 55. С. 184–190.

[26] Роз'яснення Національного агентства України з питань державної служби «Щодо віднесення посад керівників структурних підрозділів місцевих державних адміністрацій до відповідних категорій посад державної служби» від 10.05.2016 р. № 6-р/з [Електронний ресурс]. URL: http://nads.gov.ua/page/shchodo-vidnesennya-posad-kerivnykiv.

Ukraine on Civil Service, according to which "the position of the head of the apparatus of local state administrations is not currently envisaged in the list of civil service positions of category "B", in a significant number of rayon state administrations the position of the head of the staff is classified as "B". And only in some cases – to the category "B".

Another controversial issue is the appointment of heads of local state administrations to the category of civil service positions and the assignment of their respective ranks. From May 1, 2016, the President of Ukraine issued only one Decree "On the Appointment of a Civil Servant", which was awarded to the heads of six oblast state administrations as a civil servant. However, on the website of the Official Online Presidential Office of the President of Ukraine and in the database "Legislation of Ukraine" of the Verkhovna Rada of Ukraine, there are no acts of the Head of State regarding the assignment of the rank of a civil servant to the heads of district state administrations. According to Part 2 of Art. 25 of the Law of Ukraine "On Civil Service" in 1993, the positions of the heads of district state administrations belonged to 3 categories, and they were assigned 7, 6, 5 rank. And according to Art. 6 of the current Law of Ukraine "On Civil Service", positions of heads of local state administrations, incl. heads of district state administrations fall into the category "A" (1, 2, 3 rank). In turn, Part 4, 5 of Art. 39 of the current Law determines that the ranks are assigned to civil servants at the same time as their appointment only by the appointment subject, which is the President of Ukraine in relation to the heads of the MDA (Part 4, Article 118 of the Constitution of Ukraine). That is, the heads of district state administrations appointed to these positions by the President of Ukraine were not assigned to a rank of a civil servant in accordance with the new wording of the Law of Ukraine "On Civil Service".

The specified ambiguity of the application of the Law of Ukraine "On Civil Service" by the subjects of appointment leads to a violation of one of the basic rights of a civil servant – remuneration depending on the position occupied, the results of service activity, seniority of the civil service and rank.

CONCLUSIONS

Summing up the above, we came to the conclusion.

1. The legal status of a civil servant is derived from the content of the civil service as a legal and organizational institution.

2. The administrative and legal status of a civil servant is a list of subjective rights, legal obligations, guarantees of their implementation, as

well as restrictions that, in their aggregate, ensure implementation of the authority by the civil servant within the functions and tasks of the civil service, as determined by the current legislation.

3. The status of a post is determined by its establishment and characterizes the position of the civil servant, stipulates the content of the requirements to the applicant for its employment, reflects the essence and content of state-service relations, is a set of rules of the civil service – rights, duties, restrictions, prohibitions, guarantees, social security, responsibility. Through these categories, status is developing, and, consequently, the change in public-service relations leads to a change in the legal status of civil servants. The specific rights and obligations of civil servants are determined on the basis of typical qualifications and are reflected in the positions and instructions.

4. The legal status of civil servants and the procedure for passing the public service are considered in combination with the moral and legal requirements for the behavior of employees, the anticorruption orientation of the legal principles of the formation and functioning of the civil service, and the problems of training personnel for executive authorities and local self-government.

5. The subjects of legal regulation of the status of a civil servant are the state bodies which, in their competence, exercise their powers in matters of civil service and, in particular, on the right to a civil service.

6. The question of the administrative and legal status of a civil servant, taking into account the specifics and peculiarities of legal regulation of civil servants, depending on the type of a particular body, not only remain relevant, important and timely, but also become of particular importance in the context of reforming the system of public administration, improving the current the legislation on civil service and the adaptation of the civil service institute to the standards of the European Union.

SUMMARY

The essence and peculiarities of the concepts of “state service”, “civil servant”, “legal status”, “administrative-legal status”, “legal status of a civil servant” are determined on the basis of complex research, analysis of the doctrinal positions of lawyers and current legislation of Ukraine. It is defined: peculiarities of legislative regulation of the status of a civil servant, criteria of division and categories of civil servants, general principles of activity and subjects of legal regulation of the status of a civil servant, general and special nature restrictions. The essence of the administrative and

legal status of civil servants of the prosecutor's office, the court, internal affairs, and local self-government is disclosed. Their main components are determined, taking into account the differences between these categories of civil servants. The theoretically justified opinion on the ambiguity of the interpretation of certain provisions of the current Law of Ukraine "On Civil Service" and suggests ways to improve it.

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STATE EXECUTIVE SERVICE AS ADMINISTRATIVE LAW ACTOR

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INTRODUCTION

The most important feature of a democratic society and a rule of law is: the free and effective exercise of human rights and freedoms. Today, this statement is an axiom of modern civilized progress. The decisive role in the legal protection of such a change belongs to administrative law. Indeed, it is administrative law that is a necessary condition and means of functioning of public authority for ensuring the rights and freedoms of man and citizen by enforcing laws and other legal acts of the state. Ukraine as a rule-of-law state is characterized not only by the prevention of violations of legislation, human rights and freedoms, but also by the creation of appropriate safeguards for the restoration of these rights.

However, the decisions made by the court without guarantees of a clear and timely implementation of them, as well as decisions of other state bodies, loses every sense of the very existence and activity of courts and bodies producing decisions. Effectiveness of the functioning and efficiency of decisions of all branches of state power, of course, depends on the full and timely implementation of its decisions. This prompted the legislator to adopt in 1998 the Law of Ukraine “On State Executive Service”. By this time, enforcement of court decisions in Ukraine was entrusted to bailiffs. The Law of Ukraine “On State Executive Service” marked the beginning of a new stage in the development of domestic enforcement proceedings: the institute of bailiffs was liquidated, and instead a new civil service was created, with the provision of an appropriate autonomy to it – the state executive service. Supplemented the legal status of this service with the rules of the Law of Ukraine “On Enforcement Proceedings”.

It is the state executive service, restoring the violated rights and freedoms, to ensure the inevitability of property and other legal responsibility of bad debtors in civil and economic circulation. The issue of effective legal protection and the actual restoration of violated rights and legitimate interests at the present stage of the state-building of Ukraine acquire a basic, if not paramount importance. In this regard, the special status is restored by a court or other jurisdictional body of the

violated right by satisfying the requirements of the person concerned. To date, the overwhelming majority of such requirement are met through special administrative coercive measures applied by the State Executive Service of Ukraine.

1. Ukrainian model of the state executive service in the system of public authority

In order to characterize the administrative and legal status of the state executive service, the meaning of a more general notion, the "state body", is of fundamental importance, since the executive service is the executive body of the state. And only the disclosure of common features, inherent to all without exception to the state authorities, allows to analyze the peculiarities of the activity of the state executive service, taking into account its specifics.

The sign of state authority is the appropriate legal means to ensure the implementation of acts adopted by the state through the use on its behalf of appropriate measures of education, persuasion and encouragement. It is clear that such measures are widely used by non-governmental organizations, however, they differ in importance and social importance, which are not inherent to those applied by public organizations (for example, the awarding of orders, medals, the awarding of the honorary title of Ukraine, etc.). An important feature of state power authorities is the presence of the right of a state body to protect against acts of violation issued on behalf and in the interests of the state through the use of measures of state coercion. In order to prevent and detect violations of the issued act, the state body carries out supervisory and control activities in compliance with the requirements of the legal act. All of the above-mentioned actions of the state bodies are obligatory and secured by its authority and force. It is entirely natural that their obligation to citizens and public organizations is related only to the issuance of normative legal acts.

In the Concept of Administrative Reform in Ukraine, the notion of executive power as one of the three branches of state power is assigned, which, in accordance with the constitutional principle of separation of state power, is designed to develop and implement a state policy to ensure the implementation of laws, governance of public life, primarily the state sector of the economy[1]. In the above definitions attention is drawn to the existence

[1] Про заходи щодо впровадження Концепції адміністративної реформи в країні : Указ Президента від 22.07.1998 р. № 810/98. *Офіційний вісник України*. 1999. № 21. Ст. 32.

of the actual unity of executive and administrative (managerial) qualities of executive power, which are difficult to separate from each other.

Thus, the question of specifying the content of the legal status of a state body needs further resolution. Clarification of the content of the legal status of the executive authority is possible provided that analysis of the features of legal relations in the field of its functioning is carried out, because these features determine the content of subjective rights and legal obligations as the basis of legal status.

After analyzing the general theoretical provisions of the functioning of state bodies of executive power, we consider it possible and expedient to proceed to the analysis of the specifics of the activity of the State Bailiff Service, which the Law of Ukraine "On Enforcement Proceedings" imposes on the enforcement of court decisions and other jurisdictional bodies. In accordance with the Law of Ukraine "On Enforcement Proceedings" of April 21, 1999, No. 606-XIV, enforcement proceedings were defined as the final stage of judicial proceedings and the enforcement of decisions of other bodies (officials) – a set of actions of the authorities and officials specified in this Law, which are directed on the enforcement of decisions of courts and other bodies (officials), which are conducted on the grounds, within the limits of authority and in the manner specified by this Law, other normative legal acts adopted in accordance with this Law and other laws, as well as decisions that are subject to enforcement in accordance with this Law. In accordance with the Law of Ukraine "On Enforcement Proceedings" of June 2, 2016, No. 1404-VIII, enforcement proceedings as the final stage of judicial proceedings and the enforcement of court decisions and decisions of other bodies (officials) are defined as a set of actions provided for in this Law bodies and persons , which are aimed at enforcement of decisions and are conducted on the grounds, within the limits of authority and in the manner defined by the Constitution of Ukraine, this Law, other laws and regulations adopted in accordance with this Law And decisions that according to this law enforceable[2]. By contrasting these two definitions, we notice the main difference in them, namely, the definition in the Law of Ukraine "On Enforcement Proceedings" in 1999 is a set of actions of bodies and officials, and in the Law of Ukraine "On Enforcement Proceedings", 2016, it is a set of actions defined in this Law bodies and

[2] Про виконавче провадження: Закон України від 2 червня 2016 року № 1404-VIII. *Урядовий кур'єр від 20.07.2016*. № 134.

individuals. Thus, the range of subjects implementing enforcement proceedings has expanded at the expense of non-executives who, in accordance with the new concept of a mixed system of decision-makers, are private executors.

The status of the state executive service as a body of executive power is also fixed by the Decree of the President of Ukraine dated April 6, 2011, which approved the Provision on the State Bailiffs Service of Ukraine. This Regulation stipulates that the State Bailiffs' Service of Ukraine is a central executive body whose activities are directed and coordinated by the Cabinet of Ministers of Ukraine through the Minister of Justice of Ukraine, is included in the system of executive power bodies and ensures implementation of state policy in the sphere of the organization of enforcement of decisions of courts and other bodies respectively to the laws. The main tasks of the ICE of Ukraine in accordance with this legal act are: 1) implementation of state policy in the field of compulsory execution of decisions; 2) making suggestions on the formation of state policy in the field of implementation of decisions; 3) ensuring timely, complete and impartial performance of decisions in accordance with the procedure established by law; 4) implementation of educational and explanatory work on issues of implementation of decisions[3].

In accordance with clause 1 of the Model Regulations on the management of the state executive service of the main territorial departments of justice of the Ministry of Justice of Ukraine in the Autonomous Republic of Crimea, in the oblasts, cities of Kyiv and Sevastopol, the administration of the state executive service of the main territorial departments of justice of the Ministry of Justice of Ukraine in the Autonomous Republic of Crimea, , the cities of Kyiv and Sevastopol are the body of the state executive service, which is part of the system of bodies of the Ministry of Justice of Ukraine, is subordinated to the Department of state executive service of the Ministry of Justice of Ukraine and is a subdivision of the main territorial departments of the Ministry of Justice of Ukraine in the Crimea, in the cities of Kyiv and Sevastopol[4].

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[3] Про затвердження Положення про Державну виконавчу службу України : Указ Президента України від 6 квітня 2011 р. № 385/2011. URL.: http://president.gov.ua/documents/12584.html.

[4] Про затвердження Типового положення про управління державної виконавчої служби головних територіальних управлінь юстиції Міністерства юстиції України в Автономній Республіці Крим, в областях, містах Києві та Севастополі: Наказ Міністерства юстиції України 20.04.2016 № 1183/5. URL.: http://zakon2.rada.gov.ua/laws/show/z0617-16/paran9#n9.

At present there is no provision that would define the concept of the Department of State Bailiffs' Service (hereinafter – ICE) of the Ministry of Justice of Ukraine and its legal status. Taking into account, unlike the relevant departments and departments of ICE. Taking into account the above, it is suggested to develop and adopt the provisions on the Department of Internal Affairs of the Ministry of Justice of Ukraine and to consolidate the definition we propose: The Department of Internal Affairs of the Ministry of Justice of Ukraine is a body of the State Bailiffs' Service, which is part of the system of bodies of the Ministry of Justice of Ukraine, is its structural subdivision and is subject to it.

According to Art. 8, "Legal status of employees of the bodies of the state executive service" of the Law of Ukraine "On bodies and persons engaged in enforcement of court decisions and decisions of other bodies", state executives, managers and specialists of the bodies of the state executive service are civil servants. The characteristics of the Ukrainian model of the state executive service as a subject of public power will be influenced by the peculiarities of the national model of the public service.

Approaching the model of the state executive service in Ukraine as a law enforcement agency, it should be emphasized that the concept of the majority of law enforcement bodies is enshrined in the relevant laws, for example: The National Police of Ukraine is a central executive authority that serves the society through ensuring the protection of rights and human freedoms, counteraction to crime, maintenance of public safety and order; The Security Service of Ukraine is a special purpose state law enforcement agency that ensures state security of Ukraine; The Prosecutor's Office of Ukraine is a unified system, which, in the manner prescribed by the Law, implements the functions established by the Constitution of Ukraine in order to protect human rights and freedoms, the general interests of society and the state. At the same time, the current laws do not contain the definition of the state executive service, which has a negative effect on the definition of the legal status of the state executive service. Taking into account the new historical conceptual stage of the development of legislation on enforcement proceedings and the practice of its implementation, in our opinion, there is a need for a capital regulatory regulation at the level of the codified act, namely, the Executive Code. In the Executive Code, in Chapter 3, "General Provisions on Bodies and Persons Enforcing Enforcement of Judgments and Decisions of Other Bodies", the first chapter proposes to

envisage the chapter on the state executive service, in which the concept of the state executive service will be affixed.

Thus, one of the most important types of purposeful activity of people, as well as society, is the service. The State Bailiffs Service implements one of the most important types of state-owned activity in forming a professional core in order to fulfill the state's tasks regarding the implementation of the function of protecting human rights and freedoms and ensuring timely, complete and impartial enforcement of decisions stipulated by law.

According to the tasks assigned to it, in accordance with the provisions of this service, the IDU of Ukraine exercises the following functional competences: 1) organizes, within the scope of its powers, the implementation of the Constitution and laws of Ukraine, acts of the President of Ukraine, the Cabinet of Ministers of Ukraine, observance of human and civil rights and freedoms, carries out control over their realization; 2) generalizes the practice of applying legislation on matters within its competence, develops proposals for the improvement of legislative acts, acts of the President of Ukraine, the Cabinet of Ministers of Ukraine, normative legal acts of ministries and, in the prescribed manner, submits them to the Minister of Justice of Ukraine; 3) ensures the enforcement by state executors of the enforcement of decisions envisaged by laws; 4) provides the access of state executives to databases and registers, including electronic ones, containing information on debtors, their property and funds; 5) ensure the maintenance of the Unified State Register of Execution Proceedings; 6) exercise state supervision and control over observance of the law on enforcement, correctness, timeliness and completeness of execution of executive acts by state executors; 7) provides analytical, informational and methodological support to the work of structural subdivisions of territorial bodies of the Ministry of Justice of Ukraine, which ensure the implementation of the powers of the ICE of Ukraine, and others like that.

The purpose of the State Executive Service is to ensure the implementation of the implementation of the decisions of the courts and other bodies in accordance with the laws of Ukraine. This means that it provides a particularly important task, that is, characterizing the state executive service, in our opinion, it is necessary to proceed from the place occupied by the professional activities of state executives in solving the problems that are facing them.

For the effective staffing and organizational provision of its work, the State Bailiffs' Service, in accordance with the Regulation on the State Bailiffs Service of Ukraine, may carry out the following: (1) organizes the work of state executors, checks their activities and takes measures to improve it, manages, controls and checks the organization of work structural subdivisions of territorial bodies of the Ministry of Justice of Ukraine, which ensure implementation of the powers of the ICE of Ukraine; 2) ensure, within the limits of the authority, the implementation of measures for the prevention of corruption and control over their implementation in the apparatus of the Ministry of Internal Affairs of Ukraine and structural subdivisions of the territorial bodies of the Ministry of Justice of Ukraine, which ensure the implementation of the powers of the ICE of Ukraine; 3) carries out the selection of personnel in the apparatus of the internal affairs of Ukraine and in managerial positions in the structural units of the territorial bodies of the Ministry of Justice of Ukraine, which ensure the implementation of the powers of the ICE of Ukraine, forms a staffing reserve for the respective positions, takes part in the organization of work on training, retraining and professional development of employees the apparatus of the Ministry of Internal Affairs of Ukraine and the structural subdivisions of the territorial bodies of the Ministry of Justice of Ukraine, which ensure the implementation of the powers of the ICE of Ukraine; 4) organizes planning and financial work in the internal affairs department of Ukraine, exercises control over the use of financial and material resources, ensures the organization and improvement of accounting in the manner prescribed by law; 5) within the limits of authority, together with the relevant central executive authorities, control over the use of state funds provided for implementation of projects, implementation of programs, including international ones, etc.

These provisions, defining the goals, tasks, rights, functional and organizational powers of ICE, in our opinion, should be updated taking into account the current changes in the legal regulation of enforcement proceedings, supplemented by a list of duties and made in the Law of Ukraine "On bodies and persons who carry out enforcement of court decisions and decisions of other bodies", and in the future they should find their place in the Executive Code of Ukraine.

Thus, the State Bailiffs' Service is a structured, state and law enforcement organization that is part of the Ministry of Justice and is called upon to ensure implementation of state policy in the sphere of enforcement of decisions. Proceeding from the fact that the state

executive service is an integral part of executive bodies, the activity carried out by it, in its essence, is subordinate. Accordingly, the state executive service is a specific element of the state, which enforces enforcement, protects human rights and citizen, and has a great social significance for Ukrainian society.

2. Enforcement of decisions in the activities of the state executive service

The Constitution of Ukraine states the legal nature of the activities of state bodies, by defining in the first article the meaning of the activities of state bodies as the “legal state”. Ukraine is perceived in the world as a democratic state, and this requires the observance of the basic principles of democracy, which are primarily in the distribution, and not in the absolutism of power. The most common in all legal countries, the scheme of construction of the state system has three branches: legislative, executive and judicial. The process of establishing the legal system of Ukraine with the classical distribution of state institutions in the branches of power continued for a long time and continues today. Prior to the adoption of the Law of Ukraine “On State Bailiffship” of March 24, 1998, the judiciary had signs not only of the court but also of executive power. The separation of the state executive service from the direct authority of the court and judges began the period of a new model of the implementation of the state function regarding the implementation of legal acts, including in a forced order. At the present stage, there is a need for a comprehensive systemic rethinking of the administrative and legal status of the state executive service, its legal analysis places in the system of implementation of decisions of mixed type and peculiarities of activity on compulsory execution of decisions.

Both physical and mental influence in the activity of ICE is aimed at obtaining a volitional result: the development of a proper, deliberately-voluntary behavior of the debtor. We believe that psychic influence precedes the physical as a stage of coercion, but they can be vice versa (physical to mental) or simultaneously (complex). Yes, according to Art. 28 of the Law of Ukraine “On Enforcement Proceedings”, the state executor, after the opening of enforcement proceedings, exercises psychological influence by sending a copy of the decision to open the proceedings to the debtor. After the debtor does not volunteer, the state executor turns to physical influence – arrest and seizure of property.

In Art. 1 of the Law of Ukraine “On Enforcement Proceedings” states that the enforcement proceedings as the final stage of judicial proceedings and the enforcement of court decisions and decisions of other bodies (officials) are a set of actions of bodies and persons determined in this Law, aimed at enforcing decisions and conducted on the grounds, within the limits of authority and in the manner defined by the Constitution of Ukraine, this Law, other laws and regulations, adopted in accordance with this Law, as well as decisions according to this law are enforceable. Consequently, enforcement proceedings can be understood in two respects: firstly, as the final stage of judicial review of cases, which has the result of a corresponding decision (the final stage of the adoption by a specific official of a ruling), within which the executive relationship between the sub- the objects of enforcement proceedings, that is, between a person on whom the obligation to enforce the decisions constituting the subject of its activity – the state executor – has been imposed on both parties and other parties, has executed what the proceedings (experts, specialists, translators); and secondly, as procedural activities of the persons designated by the law, which they carry out through the exercise of their powers, that is, by implementing a set of actions aimed at enforcing the decisions of courts and other bodies (officials). As a stage of enforcement proceedings has its own specifics, which is the existence of certain prerequisites for its start and implementation. A prerequisite is the execution of a court decision in accordance with the requirements of procedural law and to execute the procedure for solving a decision before its further execution. For the latter, it is necessary to prepare, on the basis of this judgment, the court’s statutory executive instrument, namely, an executive order, order, decree, etc. The possibilities of other bodies and officials to implement decisions taken by them through forced execution are also related to the necessity of adhering to the procedure for the issuance of documents and requesting them to be further executed. The process of implementation of a decision can not be initiated without a two-way expression of will, that is, the executor of these decisions must formulate his expression of will. Depending on the entity, the implementation of the decision is voluntary or coercive. The latter is typical for the execution of the decisions of the authorities (officials) concerning the restoration of violated rights stipulated by law (courts, bodies of the Ministry of Internal Affairs, the State Tax Service, administrative commissions in executive committees, etc.). The procedure for expressing the will of authorized agents should be based on the

grounds provided for by the procedural law and which determine their right to violate enforcement proceedings and timely decisions enforcement.

We propose executing proceedings to be understood as part of the enforcement process consisting of a combination of actions of the internal affairs agencies of Ukraine, public and private enforcement agencies in a particular enforcement case, which are aimed at enforcing the decisions and are conducted on the grounds, within the limits of authority and in the manner prescribed by the legislation of Ukraine, and subject to enforcement.

In our view, the provisions of Art. 1 of the Law of Ukraine "On Enforcement Proceedings" demonstrate that the legislative definition of the concept of "enforcement proceedings" is rather narrow and does not already reflect the whole complexity of the process of enforcement of decisions that went beyond the above concept. We believe that the executive process consists of a set of implemented proceedings, the realization of which leads to the emergence of procedural legal relationships.

Modern domestic legislation, like the Ukrainian SSR legislation, does not contain the notion of "executive power", the legislator also does not formulate a concentrated list of executive acts in the past either now. Instead, RF legislation resolves this issue. Yes, in Art. 64 of the Federal Law of the Russian Federation "On Enforcement Proceedings" of October 02, 2007 No. 229-FZ, there is an article entitled "Executive actions", which lists the executive acts. Another example of normative ordering of the list of executive acts is Art. 63 "Executive actions" of the Law of the Republic of Belarus "On Enforcement Proceedings" No. 439-3 dated October 24, 2016. As can be seen from the list below, the legislator of the Republic of Belarus also did not completely separate executive actions from the rights of the bailiff, since, in their legal nature, these concepts are closely linked. In our opinion, such a generalization of executive actions, collected in one article of the law improves the system perception of the rules of executive law. The examples presented indicate the need for introduction of the article "Executive actions" and the Law of Ukraine "On Enforcement Proceedings", and in the future and in the Executive Code. Prior to the consolidation of such a list, the definition of executive actions should be set forth in Article 1 of the Law of Ukraine "On Enforcement Proceedings" at the level of the concepts of "enforcement proceedings, executive process, enforcement proceedings, the stage of enforcement proceedings, and executive affairs".

The Law of Ukraine "On Enforcement Proceedings", which had already expired, contained Article 11, which defined the duties and rights of state executors and indirectly through them it was possible to determine the executive actions performed by the executors. The legislator continued the same logic of teaching legal norms that regulate the legal status of performers by combining in one article their rights and responsibilities, but not singling out a list of executive acts.

In the current Law of Ukraine "On Enforcement Proceedings" in the 18th century. "Duties and rights of performers, binding requirements of performers" contains a list of duties and rights of the state executor. The implementation of executive actions, combined by proceedings, which in turn are compiled into the executive process in accordance with the procedural, is carried out in stages according to a certain stage algorithm. The executive process involves certain stages, forming a sequence of executive actions, reflecting the progress of the execution of the requirements of the executive document, and separating the logically related stages.

At present, at the legislative level, enforcement activities are not divided at the stage, but among scholars who are investigating the enforcement proceedings, the question of its stage is not in doubt.

3. Foreign experience of legal regulation of the activities of representatives of state bodies in the enforcement proceedings

The experience of foreign countries in the field of execution of judicial acts and acts of other bodies has a significant impact on the development of approaches to improving the domestic model of enforcement proceedings and is relevant in the implementation of legal regulation of enforcement proceedings in Ukraine. Recently, the State Border Guard Service of Ukraine has been systematically subject to reform, which negatively affects the quality of the service at all through periodic changes in its system and structure. The scientific substantiation of the issue of the status and place of the State Bailiffs Service of Ukraine in the system of law, legislation and state bodies will help to stabilize and improve the functioning of the State Bailiff Service. The stated goal is to be achieved through the implementation of a comparative analysis of the organization of the activities of the bodies for the enforcement of decisions of the jurisdictional bodies of foreign countries[5].

[5] Макушев П. В. Міжнародний досвід правового регулювання діяльності представників державних органів у виконавчому провадженні. *Альманах міжнародного права*. 2014. № 6. С. 33-41. С. 35.

For decentralized systems of executive proceedings inherent in the delegation of state powers in the field of civil enforcement proceedings to non-governmental organizations and individuals. The experience of the Russian Federation is close to the state of the domestic legal regulation of the executive process and the legal status of ICE. The process of formation and the history of the development of compulsory execution of the decisions of our countries was parallel, had a significant fusion of each other. It can be argued, as evidenced by the study of the historical stages of the formation of executive proceedings in Ukraine in the first section of this section, that for much of the historical period, Ukraine and Russia had almost a common history of the formation of the system of executive proceedings, and for some time there was a tendency for Ukraine to copy Russian legal acts.

Investigating the tendency of decentralization of the system of executive proceedings in the Republic of Kazakhstan is changing towards the formation of a mixed model. In accordance with the adopted new concept of enforcement, functions for the execution of judicial acts and acts of other bodies may be performed by state and private enforcement agents. In October 2010, the Law of the Republic of Kazakhstan "On Enforcement Proceedings and the Status of Bailiffs" came into force, which introduced the concept of state and private enforcement agents and defined their legal status. State and private enforcement agents are granted equal rights and obligations with the exceptions provided for by this law[6].

In countries such as the post-Soviet period, Lithuania and Estonia introduced the institution of private enforcement agents. For example, in Lithuania, instead of civil servants, private clerks work, the emergence of which was caused by the low level of performance of public executives[7].

Forced execution of judicial or other acts in the Federal Republic of Germany is a public function, which, in accordance with the law, is implemented by civil servants – bailiffs. They are appointed by the chairman of the higher regional court and the head of the district court.

[6] Мальцева Є. В. Порівняльний аналіз систем виконавчого провадження в Україні та зарубіжних державах : порівняльний аналіз систем виконавчого провадження. *Ученые записки Таврического национального университета им. В. И. Вернадского Серия «Юридические науки»*. Том 26 (65). 2013. № 1. С. 44–48. С. 45–46.

[7] Салашний П. Державна виконавча служба : ефект присутності. *Правове видання. Юридичний журнал*. 2008. № 6 (72). С. 22–24. С. 23.

A court executor carries out his or her professional activity independently, at his own expense and under his responsibility, while having the state power and authority of a civil servant.

In the UK, the mixed principle is used, that is, there are also bailiffs – civil servants and those working on the basis of a license. Thus, the collector has the right to choose to apply to a public or private executor. In England and Wales, enforcement proceedings in courts are carried out by bailiffs who are part of the judicial system. Their work is supervised by supervised bailiffs. Management of activities on many issues is held by a senior clerk of the county court, to which the bailiffs are attached. In turn, the court registrar is responsible for the bailiffs' acts. In general, the Lord Chancellor is responsible for the activities of the executives.

In Scotland, there is a distinction between the sheriff and the bailiff. Sheriff officers perform a state function and are appointed chief sheriff within a certain area. A Sheriff officer is associated with a district civil court. Scotland is divided into six sheriff counties and forty nine local district courts of the sheriff. A Sheriff Officer may act within the area in which he received the appointment, but may also execute a court order for compensation in the whole of Scotland by a decision of the court to which he is assigned.

The system of forced execution of the United States of America is fundamentally different from the institutions we are considering enforcing the decisions of the jurisdictional bodies. Based on the research by S. Shcherbak, it can be noted that in the United States, the regulation of enforcement proceedings is carried out at the state level, therefore, a court decision made in one state must be legalized in another state. In some states, such legalization is carried out by filing a lawsuit, while others are through the registration procedure. The basis for enforcement is an executive letter issued by a clerk in court or by an authorized sheriff in other states. In the United States, enforcement powers are entrusted to the Federal Marshal Service, which is a central marshal apparatus and acts as a member of the Ministry of Justice. Direct enforcement proceedings are carried out by civil servants of the Marshall Service – Sheriffs and their deputies, as well as private legal agencies[8].

The French system for enforcing judgments was established in the nineteenth century. and is significantly different from other systems.

[8] Щербак С. Небезучастная исполнительная служба. *Юридична практика*. .2006. № 5 (423). С. 16-17. С. 16.

For two centuries, the rules for the execution of court acts did not change much and adapted to the requirements of the socio-economic and political situation. It is the stable, somewhat conservative and at the same time flexible nature of the rules of enforcement, adaptation to the socio-economic conditions of the life of French society, demonstrating the viability and effectiveness of legal norms, institutions and the whole field of executive law.

In Belgium and Luxembourg, the Institute for the enforcement of decisions by jurisdictional bodies works on a private basis. Thus, in the specified European countries, the bailiffs are not in the civil service, but perform their duties of enforcement of decisions on the basis of a license. In order to regulate and manage their activities, regional and national chambers of bailiffs who have the status of self-government bodies have been established. Thus, in these countries (as in France) litigation officers belong to the free professions who work under a license. The legal status of a bailiff brings together elements of an independent practitioner and civil servant, and the management of the system of bailiffs is carried out by regional or national chambers, which function as bodies of self-government. Accordingly, the Domestic reform of the system of executive proceedings in 2016, which introduced the institution of private performers and redirected it to a mixed form, brought the domestic sphere of implementation closer to the classic French model, which is so widespread in the world. Thus, for example, the principles of self-government of private performers are defined in Art. 46 Principles of self-government of private executives of the Law of Ukraine "On bodies and persons engaged in enforcing judicial decisions and other bodies' decisions"[9].

In the Netherlands, bailiffs combine in their functional responsibilities the features of a state and private person. They have the right to engage in private debt recovery by mutual consent of the parties, providing legal advice, being tried in court, and building their own activities on the basis of an approved business plan. The existence of such a plan is a mandatory requirement.

The execution of judicial decisions in the Czech Republic is carried out in two ways: by the courts themselves and by the forces of the executors (executors). Moreover, the second method is more widespread.

[9] Про органи та осіб, які здійснюють примусове виконання судових рішень і рішень інших органів : Закон України від 2 червня 2016 р. № 1403-VIII. *Урядовий кур'єр від 27.07.2016*. № 139.

It is used to solve economic and civil disputes. The difference between the forces of the courts and the trial prosecutors lies in the fact that the remuneration of the examiner, if successful, was paid by the debtor. In the case of unsuccessful execution, the examiner, in contrast to the court, has the right to issue confirmation of impossibility of collection, according to which the default can be attributed to the expenses of the enterprise. The Ministry of Justice (in the Czech Republic – the Ministry of Justice) is responsible for supervision of the activities of the executor. The executive body of the executors is the Executive chamber of the Czech Republic [96], which carries out the organizational activities of the examiners.

In Canada, there is no single legislative regulation of enforcement proceedings. The competence includes the development of rules of civil justice, and in accordance with the system of general law, courts can independently regulate the organization of the activities of courts and establish procedural procedures to the extent not inconsistent with applicable law. Functions of forced execution are performed by civil servants (sheriffs) or licensed private attorneys[10].

In Ireland, the case of enforcement proceedings involving the Irish party may take place in another territory. A foreign court will settle all issues related to the payment of costs, which lie on the lender, for filing an action against the debtor (resident of Ireland) to a foreign court. So, this question can become one of the points in the Executive Letter and thus be successful. An appeal to the High Court of Ireland regarding an enforcement order may be filed without the knowledge of the other party.

On the territory of Slovenia, the enforcement of the compulsory proceeding is assigned to the district (district) court. Court officers – persons who directly carry out coercive actions. Parents are appointed by the Minister of Justice within the territory of their district (territorial) courts. In special cases, tribes are appointed by a court order, just as the lender has the right to choose a specific bailiff himself.

In Greece, the main enforcement authorities are the executor and the notary, whose jurisdiction is the enforcement of court orders for the recovery of funds.

As a result of consideration of the systems of bodies of forced execution of foreign states, it can be concluded that the systems of

[10] Макушев П. В. Юридична відповідальність державного виконавця як складова його адміністративно-правового статусу. *Право України*. 2014. № 1. С. 258–265. С. 260.

enforcement bodies are formed in a particular state under the influence of factors of national and state nature. Taking into account the considered examples of implementation of decisions, we consider that there are three types of system of execution of decisions in general: state, private, combined or mixed.

Given the foregoing, it should be noted that, in almost all States, bodies and officials in charge of enforcing the decisions of the jurisdictional bodies, in one way or another, work in the justice system of the country concerned. In Russia, Israel, as in Ukraine, the institution of enforcement of decisions of the jurisdictional bodies was removed from subordination to courts and included in the system of justice bodies. However, the purpose and the essence of all types and forms of institutions for the enforcement of decisions of different states is one single common – the implementation of state policy on the enforcement of decisions of the jurisdictional bodies and as a consequence of the protection and restoration of violated rights of individuals and legal entities. Therefore, in the absence of voluntary enforcement of decisions, and in the absence of a state mechanism and a system of enforcement bodies, a situation is created in which the decision of any jurisdictional state body remains abstract, fixed only on paper, which undermines the state's authority.

CONCLUSIONS

Thus, the factors influencing the peculiarities of the formation of the Ukrainian State Executive Service (SES) model are: historical preconditions, the specifics of the state system and the system of state apparatus, the conditions of public administration, the features of the legal field, the experience of borrowing or the influence of other states in the process of public administration. The national model of the state executive service and enforcement proceedings existing until 2016 does not reflect their practical purpose, which is due to the current problems of their inefficiency. Simple legal documents in the form of separate treaties and decrees governing the process of implementation of decisions as a result of the evolution of enforcement institutions were transformed into codes. That is, the process of codification of legislation in the field of executive proceedings is naturally legal. Accordingly, a new stage in the evolution of legal norms defining executive proceedings in modern Ukraine is the development and adoption of an executive code of modern Ukraine. The proper place and detailed legal regulation in this

document should get the legal status of the SES. Today's laws do not contain the definition of SES, which adversely affects the definition of the legal status of a state executive service that needs legislative regulation. The SES is a structured, state, law enforcement organization that is part of the Ministry of Justice of Ukraine and is intended to ensure the implementation of state policy in the area of enforcement of decisions. Forced enforcement of decisions by SES bodies is a systematic, purposeful, regulatory, organizational and regulatory, law enforcement activity of state executives, aimed at timely, complete and impartial enforcement of decisions of judicial and other jurisdictional authorities in order to restore property and other rights and interests of the collector. Forced enforcement of decisions by SES bodies is a systematic, purposeful, regulatory, organizational and regulatory, law enforcement activity of state executives, aimed at timely, complete and impartial enforcement of decisions of judicial and other jurisdictional authorities in order to restore property and other rights and the collector's interests.

SUMMARY

The article deals with comprehensive study of the state executive service in Ukraine. The place, role and basic principles of enforcement of decisions in the activity of the state executive service in Ukraine have been determined. The peculiarities of foreign experience of legal regulation of the activities of representatives of state bodies in the enforcement proceedings have been researched. The system and structure of the state executive service have been outlined. The principles, functions and powers of the state executive service in Ukraine have been determined. The functional features of the implementation of management activities by the bodies of the state executive service in Ukraine have been established. The content of the administrative and legal status of a state executor in the conditions of a mixed system of execution of decisions has been revealed. The content and features of information support of the activity of the state executive service in Ukraine have been studied. The legal principles of interaction of the state executive service in Ukraine with the subjects of public and private law have been determined. The theoretical approaches to the definition of the essence of control over the activity of the bodies of the state executive service in Ukraine and its employees have been allocated. The essence of the modern legal regime of executive

proceedings and guarantees of observance of human rights has been theoretically substantiated. The elements of enforcement proceedings and their implementation of the state executive service in Ukraine have been described.

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ADMINISTRATIVE AND LEGAL SUPPORT OF INFORMATION SECURITY IN NATIONAL POLICE BODIES OF UKRAINE

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INTRODUCTION

Problem formulation. 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 subjects, as well as the network infrastructure of public authorities and local self-government in the event of various emergency situations, including those that arose during a break-up , intentional damage, cyber-attack, 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 information security policy, which should also take into account all forms and manifestations of information threats and determine effective ways of counteracting it, becomes of great importance.

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 safety and order, can not stand aside the problems related to the information sphere of our state. Indeed, the lack of adequate action against such threats is a factor that leads to the commission of many crimes against the integrity and integrity of our state, property, established procedure of actions of state authorities, etc.

Consequently, the importance of providing information security by the National Police of Ukraine as one of the areas of state information policy does not raise any objections, at the same time it is necessary to clarify the essence of information security, its features and content as the key object of providing the National Police of Ukraine. The above will allow us to determine, at the appropriate level, the directions of optimizing the activity of the police in this area, as well as to develop scientifically grounded proposals for improving the current legislation that regulates the issues of national and information security of our country.

It should be noted that some scholars have devoted their works to the clarification of the content of the notion of “information security”. They are: I. Aristova, O. Baranov, A. Bereza, I. Blyzyuk, I. Bodnar,

L. Borisova, N. Voloshina, O. Dovgan, M. Dzyuba, Y. Zharkov, Ya. Malik, V. Petryk, V. Suprun, V. Tatsiy, V. Tsimbalyuk, M. Shvets and others. However, it must be emphasized that today in the scientific literature there is still a discussion about the definition of this concept. In connection with this we consider the most common views on the content of the term "information security".

1. The concept and content of information with restricted access in police bodies of Ukraine

The processes of assimilation of new rules of work with information in modern realities take place under difficult conditions, and therefore the main task of our state is an adequate response to the social consequences of the leap in the development of information technologies and their reflection in the national legal system.

1. The Fundamental Law of our state declares that "... every person is guaranteed the secret of correspondence, telephone conversations, telegraph and other correspondence. Exceptions can only be established by a court in cases provided for 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 obtain information are impossible. Collection, storage, use and distribution of confidential information about a person is not allowed without his/her consent, except in cases specified by law, and only in the interests of national security, economic welfare and human rights. Everyone has the right to freely collect, store, use and disseminate information orally, in writing or in any other way, of his/her choice"[1].

National police, as a leading maintainer of public safety and order in the country, work with information of various kinds, including those that affect the sphere of state sovereignty, its economic, informational, and environmental security, and therefore, in addition to publicly available information, the National the police of Ukraine must adhere to the special regimes established by the state for certain types of information in terms of its accumulation, distribution and storage.

According to Article 9 of the Law of Ukraine "On National Police", it operates on the principles of openness and transparency and ensures continuous information to public authorities and bodies of local self-government, as well as to the public on its activities in the field

[1] Конституція України : Основний закон України від 28.06.1996 № 254к/96-ВР. URL.: http://zakon.rada.gov.ua/laws/show/254к/96-вр.

of protection and protection of human rights and freedoms, crime prevention, ensuring public safety and order. Police provide access to public information the owner of which is in accordance with the procedure and in accordance with the requirements specified by law, as well as may publish (distribute) restricted information only in cases and according to the procedure established by law[2].

Given the foregoing, the question arises of the study of the nature, types and legal regime of information with limited access in the police bodies and units. And for the beginning it is necessary to find out the content and types of information that is in place in the scientific literature and the current legislation of Ukraine. In the domestic legislation the following classification of information with restricted access is established: 1) confidential information; 2) secret information; 3) service information[3].

Confidential is information about an individual, as well as information access restricted to a natural or legal person, except for the subjects of power. Confidential information may be distributed at the request (consent) of the relevant person in the order specified by him in accordance with the conditions provided by him, as well as in other cases, determined by law. The following information can not be classified as restricted information: the state of the environment, the quality of food and household items; accidents, catastrophes, dangerous natural phenomena and other emergencies that have occurred or may occur and threaten the safety of people; the state of health of the population, its standard of living, including nutrition, clothing, housing, medical care and social security, as well as socio-demographic indicators, the state of law and order, education and culture of the population, etc.

The Law of Ukraine "On Access to Public Information" somewhat broadens the provisions of the Basic Law "On Information". Restricted information is: 1) confidential information; 2) secret information; 3) service information. Restrictions on access to information are carried out in accordance with the law, while complying with the set of requirements: exclusively in the interests of national security, territorial integrity or public order in order to prevent disturbances or crimes, to protect public health, to protect the reputation or rights of others,

[2] Про Національну поліцію : закон України від 02.07.2015 № 580-VIII. URL.: http://zakon.rada.gov.ua/laws/show/580-19.

[3] Про інформацію : Закон України від 02.10.1992 № 2657-XII. URL: http://zakon.rada.gov.ua/laws/show/2657-12.

to prevent disclosure information obtained confidentially, or to maintain the authority and impartiality of justice; Disclosure of information may seriously harm those interests; the disclosure of such information prevails from the public interest in obtaining such information.

If we recall the differences between the document and the information mentioned above, then it may be noted that information is restricted to access, not a document. If the document contains restricted information, access to information is restricted to information. Access to information on the disposal of budget funds, possession, use or disposal of state and communal property, including copies of relevant documents, conditions for obtaining these funds or property, surnames, names, patronymic names of individuals and the name of legal entities, who received these funds or property. The above provision does not apply to cases when the disclosure or provision of such information may harm the interests of national security, defense, investigation or prevention of a crime.

The information specified in the declaration of a person authorized to perform state or local government functions submitted in accordance with the Law of Ukraine "On the Prevention of Corruption", other than the information specified in the paragraph four, part one, Article 47 of this Law, is not part of the restricted information. According to this Law[4], the following definitions of information with restricted access are provided:

1. Confidential information – information access restricted to a natural or legal person, other than the subjects of power, and which may be distributed in the order specified by them at their discretion in accordance with the conditions stipulated by them.

2. "Secret information" means information the access of which is limited in accordance with part two of Article 6 of this Law, the disclosure of which may harm the person, society and the state.

3. The official may include information which: is contained in the documents of the authorities, which constitute internal correspondence, memoranda, recommendations, if they relate to the development of the direction of the institution or the exercise of control, oversight functions of state authorities, the decision-making process and precede public discussion and / or decision-making.

Summarizing the above, it can be concluded that the information with limited access to the police system is the information and/or data stored

[4] Про доступ до публічної інформації : Закон України від 13.01.2011 № 2939-VI. URL: http://zakon.rada.gov.ua/laws/show/2939-17.

on tangible media or displayed electronically, which are in the legal possession or disposal of the police, whose access is subject to a legal restriction exclusively in the interests of securing public safety and order, combating crime, protecting human rights and freedoms, the interests of society and the state, the disclosure of which may seriously harm those interests, and public disclosure of such information prevails in the public interest in obtaining it.

The classified information in the National Police System includes classified information and classified information. Confidential information is not in circulation by the police, since the decision to restrict access to it is taken solely by natural persons and legal entities of the acquired right, except for the subjects of authority, to which we refer the National Police as the central executive body.

Thus, the following can be attributed to the official information in the system of the National Police:

1. In the field of work with personnel, official information is information that reveals: information about the results of the implementation of psychological diagnosis, psychological support and testing on the polygraph of candidates for service in the police and police departments; candidates for study in higher education institutions with specific training conditions that train police officers; information on the level of suicidal activity among police officers; information on personal matters of the permanent and variable composition of the National Police of Ukraine, with the exception of information that is classified as state secrets.

2. In the area of mobilization work, territorial defense and civil defense, the official information is disclosed: information on the preparation and conduct of command-and-staff mobilization exercises and staff mobilization exercises, reports on the results of the exercises, the content and results of exercises on territorial defense, anti-terrorist subjects and civil protection of bodies and units of the police, institutions and institutions belonging to the police department.

3. In the field of communication, information and telecommunication and computer networks, the official information is available on: documents on the organization of radio and radio control over the use of dedicated radio frequency resources by the authorities and units of the police; the construction, operation and features of communication channels, including internal and external, between the police agencies and units.

6. In the area of counteracting terrorism and extremist manifestations, information is disclosed that reveals: the actions of police bodies and units in the event of a threat of terrorist acts, extremist manifestations, with the exception of information classified as state secrets; the state of readiness of the bodies and units of the police to counter terrorism and extremist manifestations, with the exception of information classified as state secrets.

7. In the area of the protection of state secrets, the information is considered to be official when it discloses: the organization and the actual state of ensuring the protection of state secrets, with the exception of information that is classified as state secrets; the system of protection, the internal object regime, the technical equipment of regime objects, zones, premises where work is carried out associated with state secrets, in peaceful time, if the information not classified as state secrets is not disclosed[5].

Another type of information with restricted access in the police departments and units is the secret information. According to the Law of Ukraine "On State Secret", the state secret (secret information) is a kind of secret information that includes information in the field of defense, economy, science and technology, foreign relations, state security and law and order, the disclosure of which may harm the national security of Ukraine and which are recognized in state secrets in accordance with the procedure established by this Law and are subject to state protection.

Taking into account that the National Police of Ukraine serves the society by ensuring protection of human rights and freedoms, combating crime, maintaining public security and order, the following information may be included in the state secret in the main sphere of its activities: the personnel of the police units carrying out operative- search activity; on means, content, plans, organization, financing and material and technical support, forms, methods and results of operational and investigative activities; on persons who collaborate or previously collaborated on a confidential basis with the National Police; the composition and specific persons who are secret staff of the National Police of Ukraine; on the organization and procedure for the implementation of the protection of administrative buildings and other objects of the National Police of Ukraine.

[5] Про затвердження Переліку відомостей, що становлять службову інформацію в системі Національної поліції України : Наказ Нац. поліції України від 10.05.2016 № 385. URL: https://www.npu.gov.ua/uk/publish/article/1912166.

Thus, according to the research conducted to the features of information with restricted access in the police system, the following can be attributed: information and/or data stored on tangible media or displayed electronically; the information is in the possession or possession of the police; access to this information has a well-defined circle of police officers; disclosure of such information may seriously harm the rights and freedoms of citizens, the interests of society and the state; the police are taking appropriate measures to prevent third parties from accessing the information specified.

2. The mechanism of administrative and legal provision of information with limited access in the police bodies of Ukraine

Legal support is a process of streamlining public relations with the help of legal norms, and its mechanism is already a certain set of tools or elements through which the influence on social relations is exercised. In our case, with regard to the administrative-legal mechanism, it is clear that the question should be about the norms of administrative law and administrative-legal relations in the field of the circulation of information with restricted access.

Many researchers to the elements of the mechanism of administrative-legal support include the norms of administrative law, acts of the implementation of administrative law, legal relations or consider it as a system of measures in three areas: regulation, protection 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 spheres of life, as well as ensuring the implementation and protection of the rights, freedoms and legitimate interests of individuals and legal entities. Second, the method of administrative law is based on the relations of subordination between the participants in social relations, and this is a sign of the so-called imperative method of regulation. 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 limited access in the police bodies is the activity of the police of Ukraine and other bodies regulated by the norms of law in relation to the circulation of information that is in the legal

possession or disposal of the police with regard to which access is subject to a legal restriction in the interests of securing public safety and order, combating crime, protecting human rights and freedoms, the interests of society and the state, the disclosure of which may cause and substantial damage to these interests, and disclosure is dominated by public interest in obtaining it.

The elements of the mechanism of administrative and legal support of information with limited access in the police can include:

1) administrative and legal rules, enshrined in relevant bodies' acts. These rules regulate social relations that arise in obtaining, storing, distributing and providing access to restricted information by police agencies and departments, as well as other bodies of the state that are in the proper relationship with the police agencies in relation to the circulation of information from restricted access;

2) bodies that enter into relations with citizens and among themselves regarding the circulation of information with restricted access (National Police and its territorial units, the Security Service of Ukraine, other bodies);

3) the forms and methods of activity of the police and other bodies in relation to the circulation of information with limited access in its system, as well as on ensuring the rights of citizens in the field of information in compliance with the established restrictions. Such forms are realized, for the most part, as power regulations, and methods of activity are, predominantly, imperative.

Administrative-legal norms regulating public relations in the field of information with restricted access are contained in the laws of Ukraine, by-laws, departmental orders and instructions of the National Police of Ukraine. The Laws of Ukraine "On Information" and "On Access to Public Information" establish the following classification of information with restricted access: 1) confidential information; 2) secret information; 3) service information. The Resolution of the Cabinet of Ministers of Ukraine of 27.11.1998 approved the procedure for the registration, storage and use of documents, cases, publications and other material media of information containing official information, etc.[6]

[6] 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 structure of the National Police, the direction of work related to the circulation of official information is supervised by the Department of Documentary Support of the National Police of Ukraine and the relevant departments of documentary support in the departments of the National Police of Ukraine. The provisions of this department were approved by the order of the National Police of Ukraine of November 18, 2015.

The Department of Documentary Support of the National Police is a structural subdivision of the central authority of the National Police. The Department carries out its powers directly, as well as through the established in the established order of management, departments, divisions (sectors) of the documentary departments (chancellery) of the structural subdivisions of the police apparatus, the main departments of the National Police in the Autonomous Republic of Crimea and the city of Sevastopol, the 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 police agencies and units[7].

The information that constitutes a state secret in the system of the National Police may include: information on the involvement of officers in operational-search activities, the disclosure of which may harm the activity or the life or health of these officers (staff), their close relatives in communication with the performance of these officers (personnel) of the tasks of this activity; information on the connection of the features of a person in respect of which measures are taken or carried out in accordance with the Law of Ukraine "On State Protection of Court and Law Enforcement Bodies Staff" (change of personal data or appearance or place of residence), with its previous individual characteristics; information about the affiliation of persons to secret staff members (employees) of the operational unit; information on individual indicators of involvement in cooperation, fact (regardless of time), plans to engage in cooperation on a confidential basis to perform the tasks of the operative and investigative activities of the person who makes it possible to identify it; information about the fact or plans of the use of the office premises (vehicle or other property) of institutions, organizations and enterprises that enable them to be identified on a confidential basis for the purpose of carrying out tasks

[7] Про затвердження Положення про Департамент документального забезпечення Національної поліції України : Наказ Нац. поліції України від 18.11.2015. Служб. док.

of operational-search activity; information on a set of all indicators on the content, organization, state of combat and special training of staff (personnel), the disclosure of which pose a threat to national interests and safety; information allowing identification of a specific object in respect of which an operational-search activity is being carried out or planned, the disclosure of which constitutes a threat to national interests and safety; information about the fact or methods of carrying out the undercover investigative (search) action[8].

The Security Service of Ukraine should be mentioned in the mechanism of administrative and legal provision of information in the system of the National Police among the leading actors. The specificity of the administrative-legal mechanism, as we have already noted, is that it regulates the legal relations of the subordinate type (power-subordination), and the Security Service of Ukraine has control over all the social relations associated with the circulation of information with restricted access, that is, acts as a subject of authority in relation to the National Police of Ukraine.

The Security Service of Ukraine is entrusted with the competence to ensure the protection of state secrets in accordance with the legislation. The Security Service of Ukraine has the right to control the state of the state secret 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 information free of charge from them on issues of securing state secrets. The conclusions of the Security Service of Ukraine, set forth in the acts of official inspections 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.

The Central Directorate of the Security Service of Ukraine makes proposals to the President of Ukraine on the issuance of acts on issues of state secrets, which are mandatory for implementation by public authorities, enterprises, institutions, organizations and citizens.

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

[8] 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.

carriers containing official information gathered in the course of operational search, counterintelligence activities in the area of defense of the country, to facilitate, in accordance with the procedure provided for by law, enterprises, institutions, organizations and entrepreneurs in preserving commercial secrets, disclosure which can harm the vital interests of Ukraine.

Another part of the mechanism of administrative and legal provision of information with limited access in the police is the methods of activity of the relevant actors. Administrative-legal methods are divided into two large groups: persuasion and coercion[9]. The method of persuasion is manifested in carrying out information and advocacy work on running information with limited 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 the prevailing method in the mechanism of administrative and legal provision of restricted access to the police system is the coercive method, or, as it is called, the imperative method.

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, the system of the National Police 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.

Summarizing the foregoing it may be noted that the peculiarity of the mechanism of administrative and legal provision of information with

[9] Котельникова Е. А., Семенцова И. А., Смоленский М. Б.. Административное право : учебник. Ростов н/Д : Феникс, 2002. 352 с. С. 147.

limited access in police agencies is that it is implemented in the administrative and political sphere 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 authorities of the state in ensuring the accumulation, storage and use of information with restricted access in the bodies of the National Police of Ukraine.

1) is contained in the documents of the subjects of authority, 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 authorities, the decision-making process and precede public discussion and/or decision making;

2) collected in the process of operational-search, counter-intelligence activities, in the field of defense of the country, which is not classified as state secrets.

It is important to understand that the correspondence of information to one of the clauses of Article 9 of the Law of Ukraine "On access to public information" does not create the obligation to automatically assign information to the official. The law provides that such information may be classified as service.

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 order in order to prevent disturbances or crimes, I am the population to protect 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, you must follow the specified sequence of steps before transferring certain information to service one[10].

Taking into account the foregoing and for the purpose of proper administrative and legal provision of the regime of information with

[10] Роз'яснення Уповноваженого Верховної Ради України з прав людини щодо віднесення публічної інформації до службової згідно із Законом «Про доступ до публічної інформації», розроблені спільно з Експертною радою при Представникові Уповноваженого з прав людини. URL: http://www1.ombudsman.gov.ua/index.php?option=com_content&view=article&id=4049:2014-10-01-07-37-36&catid=239:2014&Itemid=256.

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 Access to Public Information”, “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 information; a list of information that can not be attributed to official information; 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 authorities 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 bodies and units of the police. This is also relevant in the light of 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, while this normative act is mostly framed, therefore, in the system of the National Police of Ukraine, additional regulation requires: 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.

Therefore, it would be expedient to publish the Instruction "On securing the regime of secrecy for the protection of official information in the foreign citizens"[11].

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 authorities. They include representatives of the regime-secret and other structural subdivisions of the most skilled specialists.

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. In accordance with 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 the secrets of a person who is subordinate to his/her position is not allowed[12].

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[11] Негодченко В. О. Шляхи оптимізації адміністративного законодавства, яке регулює поводження з інформацією з обмеженим доступом в органах Національної поліції України. *Право, держава та громадянське суспільство в умовах системи реформ на шляху до євроінтеграції* : матеріали міжнар. наук.-практ. конф., м. Дніпропетровськ, 21–22 листоп. 2014 р.). Дніпропетровськ : Дніпропетр. гуманіт. ун-т, 2014. С. 164–167. С. 164–165.

[12] Про деякі питання передачі державної таємниці іноземній державі чи міжнародній організації : Указ Президента України від 14.12.2004 № 1483/2004. URL: http://zakon.rada.gov.ua/laws/show/1483/2004.

According to the Decree of the President of Ukraine of 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[13]. 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 in accordance with 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 the unit created for the purpose of carrying out the tasks of operational-search activities, the disclosure of which may hinder the performance of these tasks[14].

CONCLUSIONS

Information security is the direction of the state information policy that characterizes the state of security of the rights, society and the state, determined on the legislative level, which creates the proper conditions for the formation and development of the information space of Ukraine, provides information rights and freedoms of citizens, identifies, prevents and neutralizes threats to national interests in the information sphere. It is

[13] Про Перелік посадових осіб, на яких покладається виконання функцій державного експерта з питань таємниць : Указ Президента України від 01.12.2009 № 987/2009. URL: http://zakon.rada.gov.ua/laws/show/987/2009.

[14] 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.

concluded that the concept of “information security” in its content is a broader notion than “cyber security”.

Police are not the leading provider 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 (with the use of electronic documents and electronic digital signature) for collecting evidence in electronic form, optimizing forms and methods for identifying and fixing offenses, committed in cyberspace, conducting expert research. For classified information in the National Police system, classified information and classified information. The official information in the police system should include information and/or data stored on tangible media or displayed electronically, which are legally owned or disposed of by the National Police of Ukraine, related to the implementation of tasks entrusted to the National Police and the exercise of its powers, which are not classified as state secrets and whose access restrictions are established in compliance with the requirements of the current legislation of Ukraine. Under the covert information in the police system, information and/or data stored on tangible media or displayed electronically, which are legally owned or disposed of by the police, in connection with the execution of tasks entrusted to the police and the exercise of its powers, disclosure which may harm the national security of Ukraine and which are recognized in the established procedure by state secrets and are subject to state protection.

SUMMARY

The article deals with investigation of the essence and peculiarities of the administrative and legal provision of state information policy by the bodies of the National Police of Ukraine. The methodological principles of ensuring the state information policy by the police of Ukraine have been analyzed. The author has clarified the concept of state information policy, defined its purpose, objectives, principles and directions. 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 organs as subjects of state information policy provision have been investigated. The purpose and tasks of the police bodies’ activity in implementing the state information policy of Ukraine have been determined. The functions of the police bodies regarding the state information policy of Ukraine have been specified; outlined the specifics of their implementation. The tasks and

functions of the units of organizational and analytical support and operative reaction of the police bodies of Ukraine have been revealed. The article has described the features of the information circulation provision 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 providing state information policy in the police bodies of Ukraine have been proposed.

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з Експертною радою при Представникові Уповноваженого з прав людини. URL: http://www1.ombudsman.gov.ua/index.php?option=com_content&view=article&id=4049:2014-10-01-07-37-36&catid=239:2014&Itemid=256.

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ADMINISTRATION BODIES IN ENSURING OF NATIONAL ENVIRONMENTAL SAFETY

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INTRODUCTION

Environmental safety, as the state of the environment, which prevents the deterioration of the environmental situation and the emergence of danger to human health, is guaranteed to Ukrainian citizens by implementing a wide range of interrelated political, economic, technical, organizational, state-legal and other measures. It should be noted that certain aspects of the activities of state authorities in the field of environmental safety and environmental protection were devoted to the work of L.O. Dobryansky, D.V. Zerkalov, I.D. Kazanchuk, V.A. Lipkan, N.V. Maksimenko, R.V. Miroshnichenko, N.M. Nesterenko, P. Fesyanov, O.M. Shumilo, and others. Also, modern issues of environmental safety have also been reflected in the work of the National Institute for Strategic Studies. Together with the mentioned, it should be noted that in the scientific literature enough attention is paid to the activities of the highest bodies of state power in the environmental sphere, focusing primarily on the implementation of control powers by individual executive authorities. The above thesis determines the scientific analysis of the role and place of the supreme bodies of state power: the Verkhovna Rada of Ukraine, the President of Ukraine, the Cabinet of Ministers of Ukraine. The need for this is conditioned by changes in the national administrative legislation, updating of existing approaches to the organization of the functioning of the entire system of executive power bodies and local self-government in the field of environmental protection and ensuring environmental safety, the need to approximate national environmental legislation to the relevant directives of the European Union. Also indicated due to the fact that in the domestic legal literature these issues were not studied sufficiently, specifically with regard to the development of the administrative and legal principles of management in the field of environmental security in general, have not been investigated in practice.

1. Peculiarities of the activities of the supreme bodies of state power in the field of ensuring national ecological safety

The analysis of the norms of the Constitution of Ukraine proves that the powers of the Verkhovna Rada of Ukraine that affect environmental social relations include: adoption of laws in the field of ecology, environmental protection, rational nature use; approval of national programs of environmental protection; control over the activity of the Cabinet of Ministers of Ukraine in relation to the formation and implementation of state policy in the environmental sphere; approval of decrees on the announcement of individual areas by areas of emergency ecological situation; implementation of parliamentary control over the observance of citizens' environmental rights[1].

Adoption of laws on regulation of public relations in the field of environmental safety, environmental protection, and rational nature management is a priority task of the Verkhovna Rada of Ukraine. At the same time, it should be noted that, in accordance with the provisions of the Basic Law, only the laws of Ukraine are defined: rights and freedoms of a person and a citizen, guarantees of these rights and freedoms; main duties of a citizen, including in the environmental sphere; principles of the use of natural resources, the exclusive (marine) economic zone, the continental shelf; principles of regulation of ecological safety; legal regime of areas of emergency ecological situation.

1. According to the resolution of the Verkhovna Rada of Ukraine "On the List, Quantitative Composition and Issues of the Committees of the Verkhovna Rada of the Eighth Convocation", it shall include the Committee on Environmental Policy, Use of Natural Resources and Elimination of the Consequences of the Chernobyl Disaster (hereinafter – the Committee). Among the issues that fall within the scope of this Committee are the following: protection, conservation, use and restoration (reproduction) of natural resources, including subsurface, forest, water resources, atmosphere, fauna and flora, natural landscapes; preservation and balanced use of natural resources of the exclusive (marine) economic zone, continental shelf and development of outer space; ecological safety, prevention and liquidation of consequences of natural disaster, technogenic accidents and catastrophes, activity of state emergency rescue services;

[1] Конвенція про оцінку впливу на навколишнє середовище у транскордонному контексті : Міжнародний документ від 25.02.1991. URL: http://zakon3.rada.gov.ua/laws/show/995_272.

radiation and fire safety; legal regime of a zone of emergency ecological situation; state policy in the field of waste management, etc.[2]

During the last two sessions of the Verkhovna Rada of Ukraine of the eighth convocation for the analytical and organizational support of the Committee, the following were adopted: 1) Law of Ukraine "On Environmental Impact Assessment" (No. 2059-VIII dated May 23, 2017). The purpose of the law is to establish legal and organizational principles for the environmental impact assessment and to ensure Ukraine's compliance with international obligations under the Convention on Environmental Impact Assessment in a Transboundary Context (Espoo Convention) and the Convention on Access to Information, Public Participation in Decision-making and access to justice in environmental matters (the Aarhus Convention), to which Ukraine is a party, as well as the implementation in national legislation of the provisions of Directives 2003/4/EC and 2011/92/EC; 2) The Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on the Implementation of European Environmental Norms on the Protection of the Environment of Rare Species of Animals and Plants" (No. 1829-VIII of 07.02.2017), which is aimed at the implementation of European environmental norms on environmental protection rare species of animals and plants, as well as protection against the destruction of the habitat (growth) of the specified species of animal and plant world included in the Red Data Book of Ukraine; 3) The Law of Ukraine "On Amending Certain Legislative Acts of Ukraine on the Implementation of the Convention on the Conservation of Wildlife and Natural Living in Europe" (No. 1832-VIII of 07.02.2017), which introduces the strengthening of the protection of rare species of animals and plants listed in the Berne Convention.

In addition to the work of the committees of the Verkhovna Rada of Ukraine and the deputy corps, the activities of individual deputies regarding the exercise of their control powers in the field of state environmental policy formation and implementation, and the provision of environmental rights and freedoms of citizens should be noted. According to the provisions of the Law of Ukraine "On the Status of a People's Deputy of Ukraine", a people's deputy has the right to request a session of the Verkhovna Rada of Ukraine.

[2] Про перелік, кількісний склад і предмети відання комітетів Верховної Ради України восьмого скликання : Постанова Верховної Ради України від 04.12.2014 № 22-VIII. URL: http://zakon2.rada.gov.ua/laws/show/22-19.

It should also focus on exercising parliamentary control over the observance of environmental rights of citizens in the activities of state bodies, which form and implement state policy in various spheres of public life. The current legislation of Ukraine determines that parliamentary oversight of observance of constitutional rights and freedoms of man and citizen and the protection of the rights of everyone in the territory of Ukraine and within its jurisdiction on a permanent basis is carried out by the Commissioner of the Verkhovna Rada of Ukraine on human rights.

In the structure of the Commissioner's Secretariat there is the Department for the Compliance with the Socio-Economic and Humanitarian Law of the Secretariat of the Ombudsperson of the Verkhovna Rada of Ukraine for Human Rights, the main tasks of which are to ensure the implementation of the powers of the Commissioner in the sphere of exercising parliamentary control over the observance of social, economic and humanitarian and human and civil rights and freedoms, which include the citizens' right to a safe environment, environmental information, etc.[3]

It is also advisable to consider the role of the President of the country – the President of Ukraine in ensuring the ecological safety of Ukraine. In accordance with Article 106 of the Constitution of Ukraine, the President exercises the following powers: 1) ensures the national security of Ukraine, an integral part of which is ecological security; 2) suspends the acts of the Cabinet of Ministers of Ukraine on issues of environmental protection, ecological safety, provision of environmental rights of citizens on the grounds of non-compliance with the Basic Law with simultaneous appeal to the Constitutional Court of Ukraine regarding their constitutionality; 3) Head of the National Security and Defense Council of Ukraine; 4) if necessary, decide on the introduction of a state of emergency in Ukraine or in its separate areas, and also, if necessary, announce, if necessary, certain areas of Ukraine as zones of emergency ecological situation, with subsequent approval of these decisions by the Verkhovna Rada of Ukraine, etc.

In addition to the work of the committees of the Supreme Council and the deputy corps, the activities of individual deputies regarding the exercise of their control powers in the field of state environmental policy formation and implementation, and the provision of environmental rights

[3] Департамент з питань дотримання соціально-економічних та гуманітарних прав Секретаріату Уповноваженого Верховної Ради України з прав людини. *Офіційний сайт Уповноваженого Верховної ради з прав людини.* URL: http://www.ombudsman.gov.ua/ua/page/sehl/.

and freedoms of citizens should be noted. According to the provisions of the Law of Ukraine "On the Status of a People's Deputy of Ukraine", a people's deputy has the right to request a session of the Verkhovna Rada of Ukraine.

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Among the abovementioned normative acts of the President should first of all highlight the acts in the area of nature conservation, conservation of objects of the nature reserve fund, rational nature management, in particular, "On additional measures for the development of forestry, rational nature management and conservation of objects of the

nature reserve fund" Dated November 21, 2017 No. 381; "On Creation of the Chornobyl Radiation-Ecological Biosphere Reserve" dated April 26, 2016, No. 174; "On the creation of the national nature park "Northern Podillya"" dated 10.02.2010, No. 156; "On the creation of the national natural park "Maloe Polissya"" dated 02.08.2013 number 420; "About the declaration of the natural water area of the Black Sea botanical reserve of the national value "Small Phyllophora Field" from August 31, 2012 № 527.

In accordance with Articles 106 and 107 of the Constitution of Ukraine, the President of Ukraine exercises control over the security and defense sector both directly and through the National Security and Defense Council of Ukraine headed by him and advisory, consultative and other subsidiary bodies and services created by him. The Law of Ukraine "On National Security" defines it as "the protection of state sovereignty, territorial integrity, democratic constitutional order and other national interests of Ukraine from real and potential threats. State policy in the areas of national security and defense is aimed at ensuring the military, foreign policy, state, economic, informational, ecological safety of Ukraine, etc.[4]"

Decisions of the National Security and Defense Council of Ukraine are enacted by the Decrees of the President of Ukraine. As examples of these decisions, the following can be cited: "On the decision of the National Security and Defense Council of Ukraine dated November 4, 2014 "On urgent measures to stabilize the socio-economic situation in Donetsk and Luhansk regions"" of November 4, 2014, No. 875/2014; "On the composition of the Commission on Biosafety and Biological Protection at the National Security and Defense Council of Ukraine" dated November 20, 2017 No. 377; "On the decision of the National Security and Defense Council of Ukraine dated October 12, 2018" On urgent measures to protect national interests in the South and East of Ukraine, in the Black and Azov Seas and the Kerch Strait"" dated October 12, 2018, No. 320.

Consequently, the President of Ukraine, as the guarantor of the Constitution of Ukraine, ensures the observance, protection and realization of ecological rights and freedoms of citizens, directs the efforts of central and local executive authorities to ensure the country's environmental

[4] Про національну безпеку України: Закон України від 21 червня 2018 року № 2469-VIII. *Офіційний вісник України від 20.07.2018 2018 р.*, № 55, стор. 51, стаття 1903, код акта 90815/2018.

security, environmental protection, the organization of rational nature management, and the preservation of the natural reserve fund.

Next, let's turn to the field of executive branch of government. According to Article 113 of the Constitution of Ukraine, the Cabinet of Ministers of Ukraine is "the supreme body in the system of executive bodies. The Cabinet of Ministers of Ukraine takes measures to ensure the rights and freedoms of man and citizen; ensures policy in the areas of nature conservation, ecological safety and nature management". The main tasks of the Cabinet of Ministers of Ukraine in relation to environmental safety and the state of the environment are: protection of nature, ecological safety and nature management, implementation of measures to ensure the elimination of the consequences of emergencies, including environmental ones.

To ensure the effective implementation of the powers of the Cabinet of Ministers, coordination of the executive authorities, preliminary consideration of drafts of normative legal acts, main directions of implementation of state policy, incl. in the environmental sphere, Government Committees are formed. In accordance with the resolution of the Cabinet of Ministers of Ukraine "On the formation of government committees and the approval of their officers", the Government Committee on Economic, Financial and Legal Policy, the Development of the Fuel and Energy Complex, Infrastructure, Defense and Law Enforcement activities are currently in operation; Governmental Committee on Social Policy and Humanitarian Development; Governmental Committee on European, Euro-Atlantic Integration, International Cooperation and Regional Development[5].

The Governmental Committee on Economic, Financial and Legal Policy, Development of the Fuel and Energy Complex, Infrastructure, Defense and Law Enforcement activities preliminary examines draft laws, acts of the President of Ukraine and the Cabinet of Ministers on the national environmental security with unregulated differences in the positions of the interested bodies and / or reservations of the Secretariat of the Cabinet of Ministers; draft regulations of the Cabinet of Ministers on the approval of the concepts of implementation of state policy in the field of environmental security, concepts of state target programs and laws.

If we talk about the units of the Cabinet of Ministers of Ukraine responsible for its activities on the formation and implementation

[5] Про утворення урядових комітетів та затвердження їх посадового складу : Постанова Кабінету Міністрів України від 11.05.2016 № 330. URL: http://zakon2.rada.gov.ua/laws/show/330-2016-%D0%BF.

of state policy in the field of environmental security, then the following should be said. As part of the Secretariat of the Cabinet of Ministers of Ukraine, the Department for Safety of Life, Environmental Protection and Agro-Industrial Complex was created. It is comprised of the Office for the Safety of Life and Environmental Protection, the Office for Environmental Management and the Development of the Agro-Industrial Complex.

The study of the powers of the Government of Ukraine and its structural units allows also to propose appropriate organizational and normative measures that, in our opinion, will allow to increase the openness and transparency of the activities of this higher executive body in relation to ensuring environmental safety. According to the Regulation on the Secretariat of the Cabinet of Ministers of Ukraine, the Minister of the Cabinet of Ministers of Ukraine determines, within the limits of the approved structure and the limit of staff of the Secretariat, the number of employees of the structural subdivisions of the Secretariat, submits to the Cabinet of Ministers of Ukraine a submission regarding approval of the structure of the Secretariat and the limits of its employees; approves the regulations on structural units.

Thus, it should be noted that the Cabinet of Ministers of Ukraine is responsible for the formation of the national policy in the field of environmental safety, manages the system of executive bodies (central, local) responsible for the implementation of environmental protection policy and the use of nature as a basis for ensuring environmental safety. In pursuance of the established powers, the Cabinet of Ministers of Ukraine, in particular, develops projects of national environmental programs, issues normative and individual acts of management. The Cabinet of Ministers of Ukraine is authorized to approve the provisions on central executive authorities that implement state policy in the field of environmental security, to implement measures for their reorganization and improvement of organizational structure.

2. The system of central executive bodies in the field of ensuring national environmental safety

Ensuring national ecological safety is inextricably linked with the activities of the executive authorities responsible for the formation and implementation of state policy in the field of ecology. In this regard, it should be noted that the sphere of public relations covered by the concept of “environmental safety” and other social relations, the ordering of which directly affects the optimal state of the environment, which is a

guarantee of ecological safety of Ukraine, requires the scientific analysis of issues aimed at streamlining the system and activities of executive authorities that have the appropriate authority to ensure the country's environmental security.

By definition, reference and dictionary literature, the term "competence" comes from the Latin "competentia" (management, ability, affiliation with the law) and represents a set of subjects of jurisdiction, functions, powers, rights and responsibilities of the executive body, an official. Consequently, the term "competence" is generally associated with the scientific community with the notion of "authority".

Based on the foregoing, we must make such interim conclusions regarding the content of the concept of "competence". 1. The term "authority" is not a synonym of competence, it is an integral part of it. 2. The structure of the competence of the state body, in addition to the powers, which is understood as the set of normatively enshrined rights and responsibilities, include "subjects of jurisdiction", that is, the range of issues that the relevant body decides through the implementation of the respective rights and responsibilities, as well as "limits activity" – the spatial framework, in which rights and responsibilities are exercised over certain subjects of command. 3. Inclusion in the structure of the competence of the forms and methods of the body's activity is considered incorrect, as they are an external expression of the exercise of authority, as well as methods and methods of such implementation, respectively. The same applies to functions, goals, tasks, because they are, along with the competence, part of a more general notion – "the legal status of a public authority".

The system of central bodies of executive power, the activities of which are directed and coordinated by the Cabinet of Ministers of Ukraine directly and through appropriate members of the Cabinet of Ministers of Ukraine, is as follows: 1) the Cabinet of Ministers of Ukraine – the State Inspection of Nuclear Regulation of Ukraine; 2) through the Vice Prime Minister of Ukraine – Minister of Regional Development, Construction and Housing and Communal Services – State Architectural and Construction Inspection of Ukraine; 3) through the Minister of Agrarian Policy and Food: the State Service of Ukraine for Geodesy, Cartography and Cadastre; State Service of Ukraine for Food Safety and Consumer Protection; State Agency of Fisheries of Ukraine; State Forest Resources Agency of Ukraine; 4) through the Minister of Ecology and Natural Resources: the State Service of Geology and Subsoil of Ukraine; State Agency of Ukraine for the management of the exclusion zone; State

Agency of Water Resources of Ukraine; State Ecological Inspection of Ukraine; 5) through the Minister of Infrastructure: the State Aviation Service of Ukraine; State Service of Ukraine on Transport Safety; State service of sea and river transport of Ukraine; 6) through the Minister of Internal Affairs: the State Service of Ukraine for Emergencies[6].

The Ministry of Agrarian Policy and Food of Ukraine has the authority to formulate and implement state policy in the following areas: a) national agriculture and food security, livestock farming, plant growing, rural development, gardening of the food and processing industry; b) fish and fish industry; c) the protection, use and reproduction of aquatic biological resources, forestry and hunting, veterinary medicine, safety and quality of food products, in the areas of quarantine and plant protection; d) land relations, land management, state supervision (control) in the agro-industrial complex.

The Ministry of Infrastructure of Ukraine approves requirements for the use of buses by types of connections, modes of movement and length of routes, according to parameters of passenger capacity, comfort, technical and ecological indicators; carries out methodical management of economic entities belonging to the sphere of its management in relation to the fulfillment of the requirements of the technological and fire safety requirements, as well as control over the fulfillment of these requirements.

The Ministry of Regional Development, Construction and Housing and Communal Services: a) ensures the formation and implementation of policies for the improvement of settlements, the management of domestic waste; b) approves the procedure for monitoring the quality of drinking water and the technical state of objects of centralized drinking water supply, methodical recommendations for monitoring the processes of flooding of cities and towns of urban type; c) adopt regulatory and regulatory documents on architectural and construction control and supervision; d) provides, within the limits of the powers stipulated by law, normative, scientific, technical and expert support of construction works at the Shelter and other facilities of the Chernobyl Nuclear Power Plant, etc.[7]

[6] Про оптимізацію системи центральних органів виконавчої влади : Постанова Кабінету Міністрів України від 10.09.2014 № 442. URL: http://zakon0.rada.gov.ua/laws/show/442-2014-%D0%BF.

[7] Про затвердження Положення про Міністерство регіонального розвитку, будівництва та житлово-комунального господарства : Постанова Кабінету Міністрів

The ministries carry out the following groups of powers to ensure the country's environmental safety: rule-making powers; organizational credentials; information authority; permit-license privilege; control powers.

Activities of the State Inspectorate for Nuclear Regulation of Ukraine are directed and regulated directly through the Cabinet of Ministers of Ukraine. Ensuring the national nuclear safety is directly related to environmental safety. Violation of the normal functioning of nuclear facilities can have a significant impact on the ecology and health of the population of Ukraine.

The maintenance of the proper regime of water bioresources is provided by the State Fisheries Agency of Ukraine, which is also responsible for the implementation of state policy in the field of protection, use and reproduction of water bioresources, regulation of fishing, safety of navigation of vessels of the fleet of fisheries.

The State Aviation Service, which implements state policy in the field of civil aviation and airspace use of Ukraine, has one of the tasks to implement comprehensive measures to ensure environmental safety. For this purpose, in particular, it organizes and controls, within the limits of the powers provided by law, the subjects of aviation activity and airport operators in respect of compliance with the aviation rules of Ukraine in terms of ensuring the environmental safety of civil aviation[8].

In September 2017, the State Service for Marine and River Transport of Ukraine was created by a resolution of the Cabinet of Ministers of Ukraine. We emphasize that this resolution enters into force from the day of its publication, except for paragraphs 1, 2, 5-7 and amendments approved by this resolution, which come into force simultaneously with the act of the Cabinet of Ministers of Ukraine on the possibility of ensuring the implementation of the powers of the State Service of Marine and River Transport of Ukraine and performance of functions. Instead, such an act had not been issued before. In the event of its adoption, some of the powers of the State Service of Ukraine on Transport Security will be assigned to this service, but in terms of functioning of sea and river transport.

On the basis of the above, one can say that the central executive bodies of the lower level (services, agencies, inspections) have so-called nation-wide territorial competence, since their powers are exercised throughout the

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України від 30.04.2014 № 197. URL: http://zakon3.rada.gov.ua/laws/show/197-2014-%D0%BF.

[8] Про затвердження Положення про Державну авіаційну службу України : Постанова Кабінету Міністрів України від 08.10.2014 № 520. URL: http://zakon2.rada.gov.ua/laws/show/520-2014-%D0%BF.

territory of Ukraine, with the exception of the State Agency for the Management of the Exclusion Zone, since it has clearly defined the boundaries of territorial action, as regards subjects of jurisdiction, are the bodies of sectoral competence, since their rights and obligations must be implemented in certain areas of environmental protection and At the same time, the State Environmental Inspectorate can be considered as the body of inter-branch competence, since its powers are extended to several spheres of the public sphere (social, environmental, social, and environmental). relations that are part of the subject of environmental safety.

In May 2017, the Cabinet of Ministers of Ukraine adopted the Concept for reforming the system of state supervision (control) in the field of environmental protection. According to this document, Ukraine is proposing the creation of a single integrated state body for environmental monitoring and supervision (control) instead of the existing State Environmental Inspectorate[9].

On the basis of the foregoing, we shall conclude that in order to optimize the system of central executive authorities and their competence regarding the provision of environmental safety in Ukraine, a single state body for monitoring and control should be created – the State Service for Ecological Safety of Ukraine, since it is ecological safety that is more integrated with the term containing as components of the protection of the environment, as well as other social relations that may be violated as a result of violations of established environmental regimes and use of natural resources. In addition, such a move will be in line with the provisions of the Coalition Agreement, which stipulates the need for the creation of a single environmental supervisory authority and the transfer of all its control functions to the requirements of Directive 2010/75/EC on industrial emissions (Integrated Pollution Prevention and Control) and Directive 96/82/EC on the control of risks of accidents due to hazardous substances, as amended by the Directive 2003/105 / EC and Regulation (EC) No 1882/2003[10].

The future structure of this body may be taken as a basis for the provisions of the Concept for reforming the system of state supervision (control) in the field of environmental protection as of 31.05.2017

[9] Про схвалення Концепції реформування системи державного нагляду (контролю) у сфері охорони навколишнього природного середовища : Постанова Кабінету Міністрів України від 31.05.2017 № 616-р. URL: http://zakon2.rada.gov.ua/laws/show/616-2017-%D1%80.

[10] Угода про Коаліцію депутатських фракцій «Європейська Україна» від 27.11.2014. URL: http://zakon0.rada.gov.ua/laws/show/n0001001-15.

(10 interregional territorial bodies of the Service and 27 special regional inspection offices in their composition). Moreover, one should be careful about the issue of marine environmental inspections, because the protection of the marine environment has its own specificity, and marine ecosystems are particularly sensitive to man-made influences, human activities. For this purpose, separate departments for the protection of marine areas should be maintained within the State Environmental Service.

It is also necessary to transfer the authority to the newly created service to monitor the state of environmental safety and the environment. Currently, in the existing system of state bodies, the monitoring of such monitoring has been formally misunderstood among 11 bodies; instead, there is no body that would directly monitor the monitoring itself.

We believe that, in addition to the powers to monitor the state of environmental safety and the environment, the State Environmental Service should have rights and obligations to coordinate such monitoring at the local (regional) level. Formally, this direction of work belongs to the Ministry of Ecology and Natural Resources, but in the absence of relevant territorial bodies it does not. From this follows another component of the competence of the service – the organization and implementation of the interaction of the Ministry of Ecology and Natural Resources, services and profile departments of regional state administrations in the implementation of environmental protection measures and monitoring of the state of environmental safety and the environment at the regional level.

At the regional level, local authorities often adopt a variety of regional environmental programs, but often their effectiveness is questionable. Consequently, it may be proposed to include in the powers of the State Service for Environmental Safety the right to coordinate and evaluate the effectiveness of local environmental measures on the criterion of their impact on environmental safety in the region, and not on the fact of spending budget funds.

On our opinion, it would be expedient to add to the scope of the competence of the State Architectural and Construction Inspectorate in the implementation of the national standards of “green (ecological) construction” and, accordingly, control over their compliance. Such work can be carried out in conjunction with the relevant regional subdivision of the State Environmental Protection Service of Ukraine. On this occasion, it should be noted that for the last several years, green (environmental) construction has been massively implemented on the

world market, and in 2016 Ukraine has entered the World Council on "green construction"[11].

Specialists note that the advantages of this type of activity for the ecology of a country or separate region are: 1) significant reduction of greenhouse gas emissions, garbage and contaminated waters; 2) the expansion and protection of the natural habitat and biological diversity; 3) conservation of natural resources.

3. Administrative and legal principles of activity of local state administrations and bodies of local self-government on ensuring of ecological safety of Ukraine

Under the administrative and legal principles of the activities of local state administrations and bodies of local self-government, the provision of environmental safety of Ukraine should be understood as a set of administrative and legal norms that are enshrined in legislative and subordinate acts of Ukraine, which define the main tasks, principles, powers, forms and methods of activity of local authorities executive power and local self-government to ensure the ecological safety of Ukraine, and also serve as the basis for their legal status and body ted in the overall functioning entities ensuring environmental security.

The Law of Ukraine "On Local State Administrations" specifies and extends these powers. The norms of this law are the basis of the administrative and legal status of local administrations, which consists, first of all, in the fact that they are entrusted with the administration of organizational and regulatory powers in this area, ensuring the implementation of environmental legislation, the implementation of general control over the implementation of state policy in the field of environmental security in the territory the corresponding administrative-territorial unit (region, district).

In order to ensure the transfer of authority from the territorial bodies of the Ministry of Environmental Protection, the regional, Kyiv and Sevastopol city state administrations in the local state administrations created structural units of ecology and natural resources in accordance with the Resolution of the Cabinet of Ministers of Ukraine dated March 15, 2013, No. 338 "On increasing the limit number workers of regional, Kyiv and Sevastopol city state administrations" and the resolution of the Cabinet

[11] «Зелене» будівництво в Україні: однієї енергоефективності замало. URL: https://www.vectornews.net/exclusive/19131-zelene-budvnictvo-v-ukrayin-odnyeyi-energoefektivnost-zamalo.html.

of Ministers of Ukraine of April 18, 2012 № 606 “On approval of the advisory lists of structural subdivisions of the regional, Kyiv and Sevastopol city, district, district in cities of Kyiv and Sevastopol state administrations”.

It should also pay attention to the content of the provisions on the structural units of regional state administrations in various areas. Analyzing them, we can observe the ambiguity of some of the provisions.

The Resolution of the Cabinet of Ministers of Ukraine No. 887 of September 26, 2012, on approving the Model Regulations on the structural subdivision of the local state administration[12] notes that the structural subdivision is subordinated to the head of the local state administration, as well as accountable and controlled by the relevant ministries and other central executive bodies. At the same time, some provisions on structural subdivisions of local state administrations that exercise powers in the field of ecology and natural resources have not been updated. Thus, the Department of Ecology and Natural Resources of the Zhytomyr Regional State Administration is accountable and subordinate to the head of the regional state administration, accountable to the Ministry of Ecology and Natural Resources of Ukraine, the Department of Ecology and Natural Resources of the Chernihiv Regional State Administration is subordinate to the head of the regional state administration, and also accountable to the Ministry of Ecology and Natural Resources Ukraine, Department of Ecology and Natural Resources of Ivano-Frankivsk Regional State Administration subordinate to the head of regional administration and is accountable to the Ministry of Ecology and Natural Resources of Ukraine. On the basis of the examples given, we believe that the provisions on the structural subdivision of the local state administration responsible for implementing the state policy in the field of ecology and natural resources require unification in accordance with the Resolution of the Cabinet of Ministers of Ukraine No. 887 of September 26, 2012.

Consequently, the administrative and legal forms of activity of the mentioned divisions are the publication of normative acts (orders of departments, departments), issuance of permits, approval of draft regulations and other documents of administrative and permitting nature.

Local governments, representing the respective territorial communities, as well as the common interests of territorial communities of

[12] Про затвердження Типового положення про структурний підрозділ місцевої державної адміністрації : Постанова Кабінету Міністрів України від 26.09.2012 № 887. URL: http://zakon0.rada.gov.ua/laws/show/887-2012-%D0%BF.

villages, settlements, cities, and exercising on their behalf and in their interests the functions and powers of local self-government, are village, township, city, region and district councils. These councils have executive bodies that are supervised and accountable to relevant councils, and, with regard to the exercise of powers delegated to them by executive authorities, are also under the control of the relevant executive bodies[13].

The peculiarity of the organization of work of local self-government bodies is that it is carried out in the form of sessions consisting of plenary meetings of the council, as well as meetings of permanent commissions of the council. Consequently, with regard to the implementation of state and regional policy in the field of environmental security, they are addressed at relevant plenary meetings of the council, in particular, they include: 1) approval of targeted programs for the provision of environmental safety and protection of the environment; 2) making decisions on the organization of territories and objects of the nature reserve fund of local importance and other territories subject to special protection; 3) making suggestions to the relevant state bodies regarding the declaration of natural and other objects of ecological value, natural monuments protected by law, decisions on announcements in places of mass reproduction and growing offspring of wild animals with a "season of silence" with a restriction economic activity and extraction of objects of fauna; 4) the provision in accordance with the law of consent for placement in the territory of the village, settlement, city of new facilities, including places or objects for the placement of waste, the field of environmental impact of which, in accordance with the regulations in force, includes the territory concerned; 5) approval in accordance with the established procedure of local city-planning programs, general plans of development of the corresponding settlements, other city-planning documentation.

At first glance it may seem that the issues of urban planning are not related to the provision of environmental safety. Instead, according to the provisions of the Law of Ukraine "On Environmental Protection", planning, accommodation, development and development of settlements are carried out by the decision of local councils taking into account the environmental capacity of the territories, adherence to the requirements of environmental protection, rational use of natural resources and

[13] Про місцеве самоврядування в Україні : Закон України від 21.05.1997 № 280/97-ВР. URL: http://zakon2.rada.gov.ua/laws/show/280/97-%D0%B2%D1%80.

environmental safety[14]. In developing general plans for the development and placement of settlements, rural, city and city councils establish a regime for the use of natural resources, environmental protection and environmental safety in suburban and green zones, in agreement with local councils in whose territory they are located, in accordance with the legislation of Ukraine[15].

The specified powers of local self-government bodies in ensuring environmental safety and environmental protection are specified in the sectoral laws regulating the issue of a safe environment. The main result of the work of village, settlement and local councils is the approval of regional programs of ecological safety, protection and protection of the natural environment and control over their implementation.

Consequently, executive bodies of local councils carry out administrative and administrative functions, use such forms of administrative activity as publication of administrative acts, approval of draft permits, establishment of environmental restrictions, perform supervisory functions regarding the subjects responsible for the implementation of decisions of the local council in the field of environmental protection , state and local environmental programs.

To ensure the activity of executive committees of local self-government bodies, the so-called apparatus of the executive committee is formed consisting of departments and departments that organizationally ensure the preparation of documents on environmental issues, monitor the progress of the implementation of state and regional environmental programs on the territory of the relevant council, and carry out permitting and conciliation activities.

CONCLUSIONS

The supreme bodies of state power are responsible for the formation of normative and legal and organizational grounds for the implementation of state policy in the field of environmental safety. The main task of the Verkhovna Rada of Ukraine is the adoption of laws in the areas of ecology, environmental protection, nature management. An important direction of the activity of this body is the implementation of parliamentary control

[14] Ємець Л. О. Адміністративно-правові засади діяльності органів місцевого самоврядування щодо забезпечення екологічної безпеки держави. *Вісник Харківського національного університету внутрішніх справ.* 2017. № 2. С. 127–137. С. 130.

[15] Про охорону навколишнього природного середовища : Закон України від 25 червня 1991 року № 1264-XII. *Відомості Верховної Ради України (ВВР).* 1991. № 41. Ст. 546.

over the provision of environmental rights of citizens, which is carried out by the Commissioner of the Verkhovna Rada of Ukraine on Human Rights. The Verkhovna Rada's control powers are realized through the mechanism of deputy requests and appeals. The President of Ukraine ensures the protection and implementation of environmental rights and freedoms of citizens, directs the efforts of central and local executive authorities to ensure the country's environmental security, environmental protection, the organization of rational nature management, and the preservation of the nature reserve fund. The Cabinet of Ministers of Ukraine (governmental committees, separate units of the Government, special coordination bodies responsible for national environmental safety) as the subject of management in the field of ensuring the national environmental safety implements normative, organizational and control functions. The peculiarities of the implementation of these functions were characterized, which allowed to draw attention to the importance of observance of the principle of openness and transparency in the activities of the Cabinet of Ministers of Ukraine in relation to the activities of its structural divisions, whose subject matter is the implementation of state policy in the field of environmental safety. The system of central bodies of executive power, which has the competence to ensure the national ecological security, includes ministries and other central executive bodies (services, agencies, inspections). Ministries provide for the formation and implementation of state policy on certain aspects of environmental safety.

SUMMARY

The article deals with description of the administrative and legal status of the subjects of management in the field of ensuring ecological safety of Ukraine. The directions of improvement of the activities of the Verkhovna Rada of Ukraine and its institutions are outlined, in particular by supplementing the norms of the current Constitution of Ukraine in terms of clearly defining the powers of the Parliament and the content of the national legislation on the field of environmental safety. The authority of the President of Ukraine as the subject of management in the field of ensuring environmental safety is described, which he personally implements through his legal status or through the subsidiary body of the Administration of the President of Ukraine or the National Security and Defense Council, which he heads. The powers of the Cabinet of Ministers of Ukraine and its structural subdivisions are considered and appropriate organizational and normative measures are proposed that will increase the openness and transparency of the activities of this higher executive

authority in relation to ensuring environmental safety. The main task of local state administrations and bodies of local self-government in the field of environmental safety is disclosed within its competence and in the interests of the population of the respective administrative-territorial unit.

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CONSTITUENT POWER AND THE RIGHT TO RESIST OR WHAT HAPPENED TO THE UKRAINIAN CONSTITUTION IN 2014?

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INTRODUCTION. WHAT HAPPENED? SHORT HISTORY

Today, several years later, the events that took place in Ukraine in 2013–2014 still remain significant for the political, legal and, most importantly, constitutional development of Ukraine. At the same time, they are still at the centre of legal and philosophical discussions. These discussions centred on what happened to the Ukrainian Constitution in 2014 from the legal rather than the political point of view. Was it the way of exercising constituent power or perhaps a kind of the arbitrariness of the Parliament? Was it a political step or a juridical one as well? Was it the way of the right to resist exercising and, then, what is their interrelation?

Many unanswered questions make us return to the above events over and over again. Maybe one of the reasons why they have not yet been resolved is that the Constitutional Court of Ukraine abstained from this despite having at least several possibilities for doing this when adjudicating and enacting judgments in several cases. Some cases are still pending before the Constitutional Court, including the one on the constitutional submission of the former President of Ukraine[1], who directly challenged the 2014 Law on the deprivation of V. Yanukovych the title of President of Ukraine[2]. It is important to understand that the law was adopted in conjunction with other landmark acts of the Revolution of Dignity: Law on the Reinstatement of Certain Provisions of the Ukrainian Constitution of February 21, 2014[3], Verkhovna Rada resolution on the text of the

[1] Konstytutsiine podannia Prezydenta Ukrainy shchodo vidpovidnosti Konstytutsii Ukrainy (konstytutsiinosti) Zakonu Ukrainy „Pro pozbavlennia V. Ianukovycha zvannia Prezydenta Ukrainy“ vid 4 liutoho 2015 roku № 144–VIII. URL: http://www.ccu.gov.ua/novyna/konstytuciyni-podannya-za-stanom-na-29-chervnya-2016-roku (in Ukrainian).

[2] Zakon Ukrainy “Pro pozbavlennia V. Yanukovycha zvannia Prezydenta Ukrainy” vid 4 liutoho 2015 roku № 144-VIII. URL: https://zakon.rada.gov.ua/laws/show/144-19 (in Ukrainian).

[3] Zakon Ukrainy "Pro vidnovlennia dii okremykh polozhen Konstytutsii Ukrainy" vid 21.02.2014 №742-VII. URL: https://zakon.rada.gov.ua/laws/show/742-18 (in Ukrainian).

Constitution of Ukraine (in connection with the renewal of its provisions)[4] and Verkhovna Rada Resolution On Responding to the Facts of Violation of an Oath by the Judge of the Constitutional Court[5].

A full understanding of the problem under consideration requires a brief description of the modern constitutional history of Ukraine. The constitutional process after the proclamation of the state sovereignty of Ukraine was quite lengthy and complex. This was largely due to a certain struggle between the ideologies of socialist-Soviet and liberal-democratic. The difficulties were exacerbated by the composition of the Verkhovna Rada of that (second) convocation, which was mainly staffed by the representatives of the former Communist Party who were the bearers of the respective ideology[6].

After years of debate and various political events, the Constitution of Ukraine was adopted by the Parliament on June 28, 1996. Despite its shortcomings, it was consistently operating for eight years. The first amendments to the Constitution were made in December 8, 2004 as a result of the events that became known as the “Orange Revolution”, when the society did not recognize the officially announced results of the presidential elections. Therefore, the two laws amending the Constitution and holding the third round of the presidential elections between the two candidates who received the most electoral votes in the first round were simultaneously adopted by the so-called “package” voting. It should be noted that the adoption of the Law on Amendments to the Constitution was a gross violation of the procedures analysed in detail in the opinion of the Venice Commission[7]. This became the formal basis for the abolition of the constitutional reform in 2010.

Nevertheless, the submission to the Constitutional Court had been brought in before, but in 2008 the Court refused to hear the case, referring

[4] Postanova Verkhovnoi Rady Ukrainy "Pro tekst Konstytutsii Ukrainy v redaktsii 28 chervnia 1996 roku, iz zminamy i dopovnenniamy, vnesenymy zakonamy Ukrainy vid 8 hrudnia 2004 roku № 2222-IV..." vid 22.02.2014. URL: https://zakon.rada.gov.ua/laws/show/750-18 (in Ukrainian).

[5] Postanova Verkhovnoi Rady Ukrainy "Pro reahuvannia na fakty porushennia suddiamy Konstytutsiinoho Sudu Ukrainy prysiahy suddi" vid 24.02.2014. URL: https://zakon.rada.gov.ua/laws/show/775-18 (in Ukrainian).

[6] People’s Deputies of Ukraine of the 2nd convocation (1994-1998). Data from the official site of the Verkhovna Rada of Ukraine. URL: http://w1.c1.rada.gov.ua/pls/radan_gs09/d_index_arh?skl=2 (in Ukrainian).

[7] Venice Commission Opinion on the amendments to the Constitution of Ukraine adopted on 8.12.2004, adopted by the Commission at its 63rd plenary session, Venice, 10–11 June 2005. URL: https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2005)015-e.

to the fact that the Law on Amendments to the Constitution after its entry into force becomes the integral part of the Constitution, and the Court does not have the authority to revise the Constitution. After the presidential elections in 2010, the Constitutional Court changed its legal position and took into preceding the Law on Amendments to the Constitution in 2004. It found it unconstitutional due to the violations of the aforementioned procedures and reinstated the Constitution of 1996. This step of the Constitutional Court was criticized as political rather than clear juridical inland, as well as by the Venice Commission.

Due to the events of late 2013 – early 2014, the Verkhovna Rada of Ukraine again recognized the Constitution as amended in 2004 in force, referring to the fact that the Constitution is an act of constituent power, and amending the Constitution is within the competence of the parliament (Section XIII of the Constitution), so the Constitutional Court which carried its decision in 2010 went beyond its powers. This was not done by adopting a constitutional law, as required by the section XIII of the Constitution, but by means of an ordinary law by simple majority of deputies. This law that is the subject of much debate is the focus of this research.

1. Two approaches to interpreting the restoration of the 2014 Constitution

The problem of restoring the 2004 Constitution of Ukraine in 2014, its legality as well as legitimacy of the Basic Law at a whole is viewed from different angles, in particular from the standpoint of the right to resist, post-revolutionary legitimation, and political expediency, etc. In our opinion, from a constitutional point of view, the answer to this difficult question lies in the correlation between two principles that are important in the doctrine and practice of constitutionalism – the rule of law and the supremacy of the constitution. They, in turn, are treated differently, depending on the principles of legal thinking: positivistic or naturalistic. That is why these principles are the basis for two significant approaches to interpreting the events related to the restoration of the 2014 Constitution as well as their consequences.

Along with the existence of a number of theories of law – positivist, metaphysical, sociological, psychological and others – it is generally acknowledged that the main directions in the understanding of law are naturalism and jus-positivism, and they “set the tone” in understanding the nature and essence of constitutional and legal phenomena.

Naturalistic type of reasoning is based on the idea of the existence of higher, permanent, state-independent norms and principles that embody

reason, justice and which, regardless of their origin (God, human nature, nature, etc.), limit the state in its activities and the creation of positive law. As G. Ellinek points out, from the first moment when they began to think about the nature of law at all, there was a belief in the existence of natural law, the true power of which does not follow from any human establishment, but which, on the contrary, is the highest norm for the assessment of existing law[8]. It was the idea of state restriction that formed the basis for the formation of constitutionalism, which testifies to its affinity with naturalism. The emergence of constitutionalism as a doctrine and its implementation in the form of relevant political and legal practice occurred in the era of struggle against absolutism, when philosophers and political figures appealed to natural human rights as the natural boundaries of the monarch's power. Thus, the notion of state power restriction by natural law, primarily human rights, is fundamental in the content of constitutionalism.

Regardless of the various directions within the framework of the naturalistic approach, its essence in understanding constitutional phenomena is that the constitution is not valuable in itself, but as an effective means of restricting state power, guaranteeing individual freedom, freedom of civil society, limiting state arbitrariness, and preventing tyranny.

Naturalism draws attention not so much to the letter of law and constitution as to their spirit: nature, principles, and purpose. Another situation is related to positivism, which emphasizes formal aspects: written norms and procedures. That is why a change of emphasis on understanding the essence of constitutionalism from meaningful to formal occurred during the period of domination in the social sciences, including the jurisprudence of positivism (late 19th – early 20th centuries). Constitutionalism gradually evolved from the doctrine of the ways and forms of restricting state power in order to ensure individual freedom of the doctrine of the constitution and the order of exercising state power established by it.

Legal positivism is usually associated with great scepticism about the ability to find rational and valid criteria of fairness in a system of values and social rules. The most common assumption is that values and rules of conduct are quite controversial, while there are no objective principles that can be appealed in the event of such a contradiction.

[8] Ellynek H. (1905) Deklaratsiia pravъ cheloveka y hrazhdanyna per. s nem. pod red. Vormsa A.Э. Moskva.

2. Positivistic approach. rule of law as a rule of the law

In its classic form, positivism views law as a product of state will, the activity of the state, reflected in normative acts. It requires strict adherence to the law or prescription, especially to the letter rather than the spirit of Constitution. Based on Kelsen's theory of pure law, the positivist approach in constitutionalism does not focus on the content of ideas, but on the hierarchy of norms.

Kelsen considerers the constitution as a higher standard, which is established and amended by a special procedure, but does not distinguish its nature from ordinary law:

"A written constitution has the character of an objectively binding rule if laws and regulations adopted thereunder are regarded as binding legal rules"[9].

Under the influence of his opinions for a long period of time constitutional phenomena and processes were viewed from the perspective of formal approaches. Therefore, formal conformity with the Constitution was recognized as a greater achievement than compliance with the ideas of law and justice. But the experience of fascist-nazi systems in Germany and Italy in the early 20th century, which were based on the positivist interpretation of the law and functioned generally in accordance with the laws they produced, on the one hand, contributed to the revival of the idea of natural law and, on the other, stimulated researchers to seek more robust safeguards and new paradigms in law.

The interpretation of the events we consider from the perspective of a positivist approach aims at analyzing compliance with formal law when restoring the 2004 Constitution. At first glance, this approach is fully justified, since it emphasizes compliance with the procedure established by the Constitution for its amendment. However, it does not answer the whole set of questions that arise in a complex, structured society that is either liberal-democratic or merely trying to become one.

3. Jus-naturalistic approach

In its classical sense, proposed by the English constitutionalist Albert Dicey, the rule of law has three components. First, it denies the arbitrariness of the authorities, arbitrary or discretionary powers to enforce coercion by prohibiting punishment or prosecution of a person, unless he or she commits a violation of the law and solely on the basis of a court

[9] Kelzen Hans (2004) *Chyste pravoznavstvo*: z dod. Problemy Spravedlyvosti. Pereklad z nim. O. Mokrovolskoho. Kyiv,Yunivers.

judgment. Secondly, the rule of law provides for the equality of all, the absence of any privileges or immunities of public officials; for actions taken in the course of their official duties, they shall be held liable in the ordinary procedure in ordinary courts. Third, the rule of law is the result of the totality of "court decisions that determine the rights of individuals in individual cases that have been proceeded by courts" [10].

In the modern sense, the rule of law in the English version provides for the restriction of state power in favour of individual freedom and human rights, and is based on the powerful interpretative and law-making powers of the courts that establish such lawful restrictions. In the absence of a written constitution, however, the rule of law works here. To a large extent, as B. Tamanaha says, it works because of the "widespread and indisputable conviction of the rule of law, the inviolability of certain fundamental restrictions imposed to the state power, and not through the functioning of specific legal mechanisms"[11].

The idea of "rule of law, not a man" was transferred from England to America, where it was embodied in the doctrine of "formal legality". Therefore, the American model of constitutionalism can be briefly characterized by the concept of "the rule and stability of a written constitution to guarantee individual freedom". It was in the United States for the first time that the supremacy of the Constitution as a fundamental law was introduced. However, it became apparent later that the understanding of the rule of law in its purely formal sense – as the rule of written law – was quite dangerous. As Joseph Ratz noted,

"A non-democratic legal system, based on the denial of human rights, on extensive poverty, on racial segregation, sexual inequalities, and religious persecution may, in principle, conform to the requirements of the rule of law better than any of the legal systems of the more enlightened Western democracies. This does not mean that it will be better than those Western democracies. It will be an immeasurably worse legal system, but it will excel in one respect: in its conformity to the rule of law [12].

The modern doctrine of American constitutionalism is inherent in the principles of the supremacy of the constitution and the rule of law in its material sense. It means that:

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[10] Dicey A. V. *Introduction to the Study of the Law of the Constitution.* Indianapolis: Liberty Classics, 1982. P. 102-114.

[11] Braian Tamanaha. Verkhovenstvo prava. Istoriia. Polityka. Teoriia. Kyiv, Vydavnychyi dim "Kyievo-Mohylianska akademiia", 2007. S.68-69. (in Ukrainian).

[12] Josef Raz. *The Rule of Law and its Virtue.* Oxford, Clarendon Press; New York, Oxford University Press, 1979. P. 212–214.

"Rule of law, then, is not rule of the law, but a doctrine concerning what the law ought to be – a set of standards, in other words, to which the laws should conform. Merely because a tyrant refers to his commands and arbitrary rulings as ''laws'' does not make them so. The test is not what the rule is called, but whether the rule is general, known, and certain; and also whether it is prospective (applying to future conduct) and is applied equally. These are the essential attributes of good laws–laws that restrain but do not coerce, and give each individual sufficient room to be a thinking and valuing person, and to carry out his own plans and designs"[13].

The constitution itself is then interpreted on the basis of the ideas of law (not the law) and through their prism. The material sense of the rule of law is also common in Europe, especially after the Second World War.

The European model of constitutionalism is characterized by the existence of a written constitution endowed with such qualities as its supremacy and stability, as well as the rule of law represented by two traditions: the rule of law and the legal state (Rechtsstaat in Germany). Based on the legal traditions established here, the supremacy of the constitution is interpreted taking into account its nature, and especially when solving constitutional and legal problems that arise in practice. It is important here to clarify not only the formal features of the supremacy of the constitution, the procedure for its amendment, which, no doubt, are extremely important, but also the nature of the primacy of this act. After all, the constitution is superior not a priori, but as the result of its constituent nature.

The doctrine of the constituent power states that it is the constituent power of the people that is the supreme manifestation of sovereignty and primary authority over all other powers (legislative, executive and judicial). That is why public authorities are bound by the constitution which has supremacy over other laws and legislation by virtue of its constituent nature. This nature also explains such a feature of the constitution as its high stability: since it is an act of the constituent power, the procedure for amending it is much more complicated than the ordinary legislative process and sometimes requires the direct will of the people as the subject of primary power.

Thus, the purpose of adopting a constitution is to exercise the power of the people, as well as to establish constitutional limits over the activity of the state, its bodies and officials. Going beyond these boundaries will

[13] James McClellan. (2000) *Liberty, Order, and Justice: An Introduction to the Constitutional Principles of American Government.* (3rd ed.) Indianapolis: Liberty Fund. P. 350.

inevitably lead to an encroachment on the sphere of individual freedom, fundamental human rights and will be interpreted as state arbitrariness. Therefore, the supremacy of the constitution is intended to guarantee and ensure the principles of the relationships between human, people (society) and the state, which are established in the constitution.

With regard to the rule of law in its continental European sense, there are two traditions that are reflected in the formal (limited by the law) and material (limited by law) interpretations of this principle. An attempt to generalize and unify them was made by the Council of Europe Venice Commission. Its Rule of Law Report states that the rule of law is a fundamental value encompassing the totality of formal and substantive features that provide for the consensus on the rule of law, as well as those of the Rechtsstaat which are not only formal but also substantial or material (materieller Rechtsstaatsbegriff). These are:

1. "Legality, including a transparent, accountable and democratic process for enacting law;

2. Legal certainty;

3. Prohibition of arbitrariness;

4. Access to justice before independent and impartial courts, including judicial review of administrative acts;

5. Respect for human rights;

6. Non-discrimination and equality before the law"[14].

Thus, human rights and the prohibition of arbitrariness are important components of the rule of law, along with legality and other formal and substantive components. And when such arbitrariness becomes a reality under the current constitution, it shows not only the violation of the so-called social contract by the state, the principles of the relationship between human, society and the state, which were reflected in it, but also the rule of law. At the same time, the supremacy of the constitution, combined with its stability, seems to preserve this state.

Thus, the supremacy of the constitution is its feature, which aims to give the constitutional norms and principles a fundamental and stable character in comparison with other legal acts and norms. In the context of a constitutional state – a state that is truly restricted by human rights and freedoms by constitutional means – the rule of law contributes to

[14] Venice Commission Report on the Rule of Law Adopted by the Venice Commission at its 86th plenary session (Venice, 25-26 March 2011), CDL-AD(2011)003rev *(article 41)* // [Електронний ресурс] Режим доступу: http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2011)003rev-e.

the stability of such a constitutional system, and through the exercise of a restrictive function against the state, also to the rule of law. At the same time, in cases of significant deviation from the constitutional principles of government, usurpation of power or state arbitrariness, the constitution does not carry out this mission; the legislation and the order created on its basis are contrary to the law, and therefore people can exercise their natural right to resist.

4. The right to resist

The right to resist oppression (the right to rebellion) is an integral part of the doctrine of constitutionalism that accompanies it throughout the history of existence. Political theory explores the right to resist, starting with the first mention of its existence in ancient times. The peculiar interpretations of this right are inherent in different societies of the Middle Ages. In the Age of Enlightenment, when this right first appeared in political and legal documents, its importance grew. However, the universal recognition of the right of resistance by the international community came in the twentieth century, which was reflected in its inclusion into international legal acts. Thus, the preamble to the 1948 Universal Declaration of Human Rights mentions the possibility, «as a last resort, to rebellion against tyranny and oppression", when human rights are not protected by the rule of law[15].

In the modern interpretation, the people's right to resistance is seen as a natural law (a component of the rule of law), a constitutional right (enshrined in a number of constitutions of modern states), and the right of the people, reflected in international legal acts[16]. Its origin is related to the natural right of a person to protect himself from violence by any means. The most striking natural character of the right to resist (rebellion) is revealed in the US Declaration of Independence of 1776[17] (the right to rebellion derives from natural rights, and in the case of unlimited despotism, it is also the duty of the people), as well as in Article 33 of the 1789 French Declaration of the Rights of Man[18].

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[15] Universal Declaration of Human Rights, 1948. URL: https://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf.

[16] Pohrebniak S.P., Uvarova E.A. (2013) Soprotyvlenye uhnetenyiu. Vosstanye. Revoliutsyia (teoretyko-pravovoў analyz v svete doktrynы prav cheloveka). *Pravo i hromadianske suspilstvo.* №2. S. 4–61.

[17] The Declaration of Independence, 1776. URL: https://history.state.gov/milestones/1776-1783/declaration.

[18] Declaration of the Rights of Man. Approved by the National Assembly of France, August 26, 1789. URL: https://avalon.law.yale.edu/18th_century/rightsof.asp.

According to the doctrine of constitutionalism, public authorities must be bound by certain restrictions designed to guarantee their legitimate activity in accordance with constitutional principles and respect for human rights. But if the restrictions stipulated by the constitution do not work, the extreme measure remains – the people as the sovereign and the source of power can resort to resistance and rebellion, in order to restore the constitutional order. Such actions must be proportionate; in fact, according to the German law philosopher Arthur Kaufman, this resistance (rebellion) is different from the revolution, which always seeks to completely replace the constitutional order with a new one[19].

The right to resist is the last resort, and therefore it is considered legitimate only in exceptional cases. The reasons for its implementation are situations of so-called "significant legal alienation", with the law or practice of its application is radically and systematically different from the will of the majority of the society[20]. It is necessary to distinguish the right to resistance from various state coups, in which active actions (actually resistance) are committed by persons who themselves are part of the state mechanism[21].

The criteria of lawfulness and permissibility of the right to resist are derived from its features, which were distinguished by the professors of the University of Chicago in their study based on the analysis of empirical material. These characteristics were attributed to the following:

First, the purpose of exercising the right to resist is to restructure the existing regime or restore the constitutional order; secondly, a high (unacceptable) threshold of abuse of power, which makes it impossible to use of other legitimate means of struggle is a prerequisite for the exercise of the right to resist; thirdly, when exercising the right to resist, an alternative program of social development must be formulated (this is what makes it different from protests)[22].

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[19] Arthur Kaufmann. (1985–1986) Small Scale Right to Resist. *New English Law Reviw*. P. 571–574.

[20] Tom Ginsburg, Daniel Lansberg-Rodriguez, Mila Versteeg *(*2012) When to Overthrow Your Government: the Right to Resist in the World's Constitutions. *The Law School the University of Chicago, Public Law and Legal Theory Working Paper* no. 406, November 2012. P. 1191–1192.

[21] Pohrebniak S.P., Uvarova E.A. (2013) Soprotyvlenye uhnetenyiu. Vosstanye. Revoliutsyia (teoretyko-pravovoў analyz v svete doktrynы prav cheloveka). *Pravo i hromadianske suspilstvo*. №2. S. 4-61.

[22] Tom Ginsburg, Daniel Lansberg-Rodriguez, Mila Versteeg *(*2012) When to Overthrow Your Government: the Right to Resist in the World's Constitutions. *The Law School the University of Chicago, Public Law and Legal Theory Working Paper* no. 406, November 2012. P. 1191–1195.

So, let us now analyse the events that preceded the adoption on February 21, 2014 of the Law on the renewal of certain provisions of the Constitution of Ukraine on the basis of the aforementioned grounds and signs of the people's right to resist.

From 2010, former President V. Yanukovich pursued his policy that demonstrated the course towards concentration of power. One on the first and most important steps towards this was the formation of a parliamentary coalition around the Party of Regions (presidential party). According to the legislation (valid at that time) and its interpretation by the Constitutional Court, only the parliamentary fraction was the subject of coalition formation. But the Constitutional Court of Ukraine changed its previous opinion (as it was suspected, under pressure from the head of the state) and recognised the right of individual deputies to join the coalition. It was the way of creating the pro-presidential coalition in the parliament which opened up opportunities for the excessive concentration of powers by the President.

The continuation of this path was the formal renewal of the broad constitutional powers of the President. Legally this was done in 2010 by the decision of the Constitutional Court of Ukraine that declared the 2004 Law on Amendments to the Constitution of Ukraine unconstitutional (it was described at the beginning of this study). Although the Constitutional Court had formal grounds for enacting such a judgement, as the 2004 Law was adopted with gross violation of the procedure, it was obvious that the judgment was aimed at giving the excessively wide authority to the President. Presidential power became less restricted, and cases of abuse became apparent. Added to this was the increasing arbitrariness of investigators and law enforcement agencies, and society was clearly aware of the injustice and inability of the state to protect everyone from it.

The latest manifestation of the presidential arbitrariness was the refusal of the head of state to sign the Association Agreement with the EU with a legally fixed foreign policy on European integration[23]. This caused a peaceful protest of Ukrainian citizens, which, however, could not yet be regarded as resistance or rebellion. However, further events, including law enforcement actions against peaceful protesters (with a clear violation of not only the principles of law, human dignity, but also the rules of current legislation), as well as the adoption on January 16, 2014, of a package of anti-legal laws, which significantly restricted constitutional human and

[23] Zakon Ukrainy "Pro zasady vnutrishnoi i zovnishnoi polityky" vid 08.07.2018 r. URL: https://zakon.rada.gov.ua/laws/show/2411-17 (in Ukrainian).

citizen rights, were the signs of "significant legal alienation" that arose from the formation of a system of government with an excessive concentration of power in the hands of the President. All this testifies to the achievement of the "high threshold of abuse" of power, which is unacceptable, and therefore, is a prerequisite for people to exercise their right to resist.

The goal of the protesters was not only the resignation of the president and the government, but also the formation of a new system of public authority, which was supposed to be protected from usurpation and free from corruption. Such somewhat idealized goals, however, were formulated in the form of several claims to power, including the restoration of the constitutional order envisaged by the 2004 Constitution of Ukraine. Finally, the protesters proposed an "alternative program of social development", which consisted of building a democratic state with human and civil rights and freedoms, returning to a European integration course with the introduction of European standards of social and state development.

Thus, the abovementioned gives the reason to qualify the events of November 21, 2013 – February 2014 (Revolution of Dignity), taking into account their causes, prerequisites, content and orientation as the realization by the Ukrainian people of the right to resist arbitrary power.

CONCLUSIONS

In the science of constitutional law, the supremacy of the Constitution is usually regarded as an element of the rule of law. According to S. Golovatyi, the principle of the hierarchy of legal norms, the content of which is that the Constitution is endowed with the highest legal force, is an element of the integral principle of the rule of law[24]. Professor M. Kozyubra believes that it would be wrong to oppose the rule of law and the supremacy of the constitution. In his view, the supremacy of the constitution is one of the decisive components of the rule of law[25].

We agree that in the context of evolutionary constitutional development, with embodied in the constitutional text principles (or at least the majority of them) being put into practice, whereby the actual constitutional order corresponds to its main parameters declared in the

[24] Holovatyi S. (2011) Triada yevropeiskykh tsinnostei – verkhovenstva prava, demokratiia, prava liudyny – yak osnova ukrainskoho konstytutsiinoho ladu. Pravo Ukrainy. № 5. S. 159–174.

[25] Koziubra M.I. (2012) Verkhovenstvo prava i Ukraina // Pravo Ukrainy. № 1–2. C. 30–63.

Constitution, the supremacy of the Basic Law rule facilitates the implementation of the rule of law and is its element. At the same time, practice shows that sometimes in the implementation of the Constitution the ideas embodied in it are deformed, leading to the opposite effect: authoritarian regime comes to power instead of democracy, while state arbitrariness occurs instead of a constitutional state with protected human rights and freedoms, etc. We believe that in such situations, the supremacy of the Constitution protects neither the primary ideas of law, nor incorporated in it the principles of the relationship between man, society and the state, but the regime that actually emerged as a result of mutations in its implementation. In such cases, we seem to choose between the supremacy of the Constitution and the rule of law.

This is the situation, in our view, that occurred as a result of the Revolution of Dignity 2013–2014. The neglect of the constitutional prescriptions by certain state-government institutions, which became systemic and comprehensive, the concentration of excessive powers by the President testified to a gross violation of the principles of constitutionalism; at the same time the supremacy of the constitution, combined with its stability, "preserved" such a regime, preventing evolutionary development of Ukraine as a constitutional state. This raises the question of priority between the supremacy of the Constitution and its norms regarding the procedure for amending the Constitution or the rule of law and implementing the results of the right of the people to resist arbitrary power. This example demonstrates that in such extraordinary cases, in situations of non-evolutionary constitutional development, the principles of supremacy of the Constitution and the rule of law may not coexist peacefully.

In our view, the constitution and its procedures are only one element of the constitutional system of the government, the purpose of which is to guarantee human rights and freedoms, including the right to a just and democratic government. However, if the state government ignores the constitutional restrictions that lead to a justified exercise of the people's right to resist arbitrary power, then the rule of law should have priority in such cases. Thus, the 2014 renewal of the 2004 Constitution of Ukraine may be regarded as an effect of the rule of law (contrary to the supremacy of the constitution), which, based on the doctrine of constitutionalism, is possible as a result of the struggle against usurpation, resistance of a political nation to arbitrary power, and can be applied to the restoration of the constitutional system of government based on the will of the people.

SUMMARY

Today, several years later, the events of the Revolution of Dignity that took place in Ukraine in 2013–2014, still remain significant for the political, legal and constitutional development of Ukraine, and are at the centre of discussions. They centred on the issues of what happened to the Ukrainian Constitution in 2014 from the legal rather than the political point of view. Was it the way of exercising constituent power or perhaps a kind of the arbitrariness of the Parliament? Was it a political step or a juridical one as well? Was it the way of the right to resist exercising and, then, what is their interrelation?

This study is an attempt to review them through the interrelation and correlation between the principles of rule of law and supremacy of the constitution, as well as the constituent power and the right to resist. It is concluded that the constitution (with the constituent power as its nature and supremacy of the constitution as the result) is only one element of the constitutional system of the government, the purpose of which is to guarantee human rights and freedoms, including the right to a just and democratic government. However, if the state government ignores the constitutional restrictions that lead to a justified exercise of the people's right to resist arbitrary power, then the rule of law should have priority in such cases.

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MEDIATION AS A MEANS OF DISPUTE RESOLUTION IN THE FIELD OF HEALTH CARE

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INTRODUCTION

The increasing number of conflicts in the field of health care catalyzes the process of finding effective ways to resolve them in order to respect human rights. The field of health care provision is particularly sensitive because of the underlying values, primarily life and health. Expanding legal instruments, including the implementation of alternative ways of conflicts resolution, will serve to resolve disputes within a reasonable timeframe, ensure procedural competition, a balance of extrajudicial and judicial forms of rights protection.

Nowadays, the legal framework of Ukraine has been particularly conducive to the alternative means of dispute resolution and has been encouraging by a range of provisions to use not only judicial protection, which may not always justify the aspirations of the relations on legal aid provision actors in the field of health care, due to the complexity of balancing interest and achieving justice, on the one hand, and, on the other, due to the length and complexity of the process, reputational losses for healthcare providers, and “pausing time” for patients. Part 3 of Art. 124 of the Constitution of Ukraine stipulates that a mandatory pre-trial procedure for the settlement of a dispute may be determined by law. The Parties shall take measures for a pre-trial settlement of the dispute by agreement between themselves or in cases where such measures are binding by law (Article 16 of the Code of Civil Procedure of Ukraine (hereinafter – the CPC of Ukraine). The national legal basis for restorative justice is Art. 46 of the Criminal Code of Ukraine (hereinafter – CrC of Ukraine), which provides for the release from criminal liability in connection with the reconciliation of the guilty with the victim, and Art. 468 of the Criminal Procedure Code of Ukraine (hereinafter – the CrPC of Ukraine), which provides for an agreement on reconciliation between the victim and the suspect or accused. Lawyers and judges play an important role in the pre-trial settlement. The lawyer facilitates pre-trial and extrajudicial settlement of disputes between the client and other persons (Part 3, Article 8 of the Rules of Attorney's Ethics, approved on 09.06.2017, as amended). Also, in

Chapter 4 “Settlement of a court dispute” of the CPC of Ukraine the algorithm of peaceful settlement of a dispute with participation of the judge is fixed.

Doctrinal issues of alternative dispute resolution, including mediation, have been the subject of study by numerous researchers (in particular, H. Haro, T. Vodopian, M. Inshyn, N. Krestovska, Y. Mykytyn, K. Narovska, M. Sayenko), the works of whom form the basis of this method of rights protection analysis with the projection on the scope of medical care.

1. Mediation in the field of healthcare: notion and types

There has been a norm-design process in Ukraine on the development of mediation laws, which still did not result in the adoption of the specific law. The attention shall be drawn to a new draft, namely the draft Law on Mediation No. 2706 of 28.12.2019[1], in which mediation means a voluntary, extrajudicial, confidential, structured procedure during which the parties, through a mediator (mediators), seek to resolve a conflict (dispute) through negotiation. Art. 2 of this draft stipulates that mediation may be conducted either before a court proceedings, arbitration court, international commercial arbitration, or during court proceedings, arbitration proceedings or during the execution of a court judgment, arbitration tribunal or international commercial arbitration.

In view of the above, it should be noted that mediation can have both non-jurisdictional and jurisdictional character, depending on its types, as follows:

1) mediation as an extra-judicial form of rights protection, which is exercised by the parties by applying to the mediator and entering into an agreement on the results of mediation;

2) mediation within the judicial form of rights protection, which is carried out in the process of entering into a settlement agreement (Article 207 of the CPC of Ukraine);

3) restorative justice: a) release from criminal liability under Art. 46 of the CrC of Ukraine at reconciliation of the guilty with the victim; b) when concluding a reconciliation agreement between the victim and the suspect or accused person (Chapter 35 of the CrPC of Ukraine);

4) mediation as a component of arbitration proceedings (Article 33 of the Law of Ukraine “On Arbitration Courts”).

[1] Проєкт закону про медіацію № 2706 від 28.12.2019 р. URL: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=67831.

The benefits of resolving disputes arising from the health care provision through mediation are the following:

a) flexibility of procedure;

b) voluntary involvement of the parties in mediation and possibility to refuse it at any time;

c) confidentiality of information regarding the application of the mediation procedure;

d) voluntary choice of mediator;

e) adjusting the timing of mediation, as both the party may refuse and the mediator may declare it inappropriate to continue consultations;

f) maintaining good relations between the parties;

g) the obligation for the parties to execute the mediation agreement;

h) possibility to bring the case to the court in case of failure to comply with the mediation agreement.

The principles of mediation under the draft Law No. 2706 include:

a) voluntariness;

b) confidentiality;

c) independence and neutrality of the mediator;

d) impartiality of the mediator;

e) self-determination and equality of rights of the parties to mediation.

While conducting research[2] on mediation topics, the scientists distinguish the following principles of mediation, dividing them into two components:

1. Organizational principles which include: a) voluntariness; b) awareness; c) neutrality; d) independence and impartiality.

2. Procedural principles, which include: a) confidentiality; b) equality of rights; c) activity and self-determination; d) structureness.

It is important to draw attention to the agreement that is entered into as the result of mediation. Under Art. 1 of the draft it is an agreement on the settlement of a conflict (dispute) based on the results of mediation, which means an agreement that captures the result of the agreement of the parties to the mediation in an agreed form, taking into account the requirements of the legislation in which the parties may go beyond the subject matter of the conflict (dispute) that such an agreement does not violate the rights or interests of third parties protected by law.

[2] Медіація у професійній діяльності юриста: підручник за ред. Наталі Крестовської, Луїзи Романадзе. Екологія. Одеса, 2019.

The author's vision of the terms of the agreement, which can be entered into between the participants of legal relations in the field of health care provision in reconciliation is the following:

1) one of the most difficult issues is to plead guilty to a doctor who believes that he or she has fulfilled his/her duties in full. In order for the issue of guilt not to be a critical point that would be a barrier to entering into the agreement, it would be appropriate not to insist and prescribe it in the absence of compromise. The wording of the agreement can be as such: "The Parties acknowledge that a dispute has arisen between them as to the quality of the health care that has caused harm to the Party-1. Party-2 (physician), based on the principles of humanism and charity, charity and compassion enshrined in the Code of Ethics of the Doctor of Ukraine, adopted and signed on 27.09.2009, remembering that the main purpose of the doctor's professional activity is to preserve and protect the life and human health, recognizing the moral responsibility of the physician to society for his or her professional activity, agrees to voluntarily compensate for the damage caused to Party-1";

2) taking into account the convention principle of just satisfaction, guaranteed in Art. 41 of the Convention for the Protection of Human Rights and Fundamental Freedoms (1950, ratified by Ukraine in 1997), compensation should be prescribed for compensation for damage caused by a conflict situation over the quality of care provided;

3) in order to preserve business reputation and data that constitute medical secrecy, it is appropriate to prescribe the "secrecy" of the terms of the agreement. The terms of the Agreement may be revised as follows: "The terms of this Agreement constitute confidential information and cannot be disclosed by any of its Parties. Party-1 undertakes to stop any dissemination of information about the circumstances of the dispute, including not to contact the mass media, social networks, any state bodies, local self-governments, enterprises, institutions, organizations.";

4) Art. 525 of the Civil Code of Ukraine (hereinafter – the CC of Ukraine) enshrines the prohibition of unilateral waiver of the obligation, unless otherwise stipulated by the contract or law. Therefore, we consider it expedient to prescribe the possibility of unilateral termination of the agreement for failure to fulfill obligations with a possible statement of provisions: "This Agreement may be terminated by one of the Parties by unilateral termination of the Agreement in full due to a substantial breach of its terms by the Party. In the event of termination of the Agreement, the Parties have the right to demand the return of the obligation fulfilled."

Draft Law No. 2706 enshrines the conditions that should be contained in the agreement based on the results of the written mediation, namely Art. 19 defines the following:

1) date and place of entering into the agreement;

2) parties to mediation and their representatives;

3) mediator (s), mediation agreement or mediation rules;

4) the obligations agreed by the parties to the mediation, the methods and terms of their fulfillment, as well as the consequences of their non-fulfillment or improper fulfillment;

5) other conditions determined by the parties to mediation.

2. Experience of mediation in the field of health care provision in foreign countries

According to European Hospital and Healthcare Federation, in the EU, mediation is becoming widespread because of its effectiveness, efficiency and ability to decrease stress[3].

The research of foreign practice of introducing different ways of resolving conflicts is necessary both to improve national legislation, first of all, given that the mediation law has been on the agenda for a long time, as well as to find best practices for the protection of human rights in the field of health care. The peculiarities of the functioning of the mediation institute in different countries in order to form a national legal model shall be analyzed.

Slovenia

The Patients' Rights Act[4] introduces mediation as a means of resolving disputes between a patient and a provider of medical services. The Commission for the Protection of Patients Rights offer mediation to parties of disputes. In addition, Rules on mediation, regulating its procedure, in the area of healthcare have been issued. They also determine, for example, the conditions under which one may become mediator in the area of healthcare and the control mechanisms concerning the provision of mediation services in this area[5]. The Ministry of Health keeps a database of mediators who work in the field of healthcare on the basis of The Patients' Rights Act.

[3] Mediation in Health Care – European Hospital And Healthcare Federation. URL: https://www.mediate.com/pdf/91_HOPE_Publication-Mediation_December_2012.pdf.

[4] Patients' rights act. URL: http://www.varuh-rs.si/legal-framework/constitution-laws/patients-rights-act/?L=6.

[5] The Slovenian legislation implementing the EU Mediation Directive. URL: http://www.europarl.europa.eu/document/activities/cont/201105/20110518ATT19582/20110518ATT19582EN.pdf.

If the healthcare provider decides to offer mediation irrespective of the Patient Rights Act, the costs of mediator and its payment is a matter of agreement between mediator and mediation participants (mediants).

First hearing for the patient, whose rights were infringed, will be held at healthcare provider's. If at this stage the method of dispute resolution is not chosen, the patient may file a request for treating the infringement of his/her rights before the Commission of the Republic of Slovenia for protection of patients' rights. Mediation can be one of the potential methods of dispute resolution between the patient and the healthcare provider on this stage.

The quality of mediation shall be ensured via foreseeing the requirements to the mediator in the field of healthcare and control mechanisms. For example, the Association of Health Institutions of Slovenia, that trains healthcare mediators, complies with standards formed by MEDIOS: the Association of mediation organizations of Slovenia in order to ensure the good quality of mediation services. Namely, to join the training, candidate shall have (cumulatively)[6]:

- successfully completed the basic mediation training (100 teaching hours);

- successfully completed at least one advanced mediation training in the duration of at least 50 teaching hours (regardless of whether the training enables obtaining a title or not) and

- at least 2 years of active mediating experience, 10 mediation cases and at least 50 teaching hours of carrying out mediation.

Poland

According to Art. 113 of an Act on Medical Councils of 02.12. 2009, both Screener of Professional Liability during an actual proceeding, and medical Court during a proceeding before a medical court have a possibility to direct a case to mediation with the consent of both parties or from an initiative of a victim and an accused. A mediation proceeding cannot last longer than two months, while this time is not included to the time of an actual proceeding.

A mediator is a doctor chosen by Regional Medical Chamber, for one-year cadence. The exception occurs, when the person performs duties of Screener for Professional Liability, deputy Screener and a member of a medical court[7]. (A doctor chosen as a mediator is a reliable person,

[6] Mediation in Health Care – European Hospital And Healthcare Federation. URL: https://www.mediate.com/pdf/91_HOPE_Publication-Mediation_December_2012.pdf.

[7] Agata Krawczyk-Kalitowska Mediation in Healthcare. URL: http://www.woiz.polsl.pl/znwoiz/z75/9.%20Krawczyk-Kalitowska.pdf.

however, when it comes to his impartiality because of the fact that he is both a doctor and a mediator.)

The order of mediation proceeding, defined in the Criminal Procedure Code, is as follows[8]:

1) receiving the information about the case by the mediator;

2) as soon, as information is received, the mediator contacts victim and accused to establish a place of a meeting with each of them;

3) individual meetings with victim and accused to inform about an essence and rules of a mediation proceeding and their rights;

4) a mediation proceeding in the presence of both parties;

5) entering into an agreement;

6) report from the course of a mediation proceeding and its results.

Belgium

In Belgium, mediation between patient (or relatives) and healthcare providers concerning patient rights is foreseen by Law on patient rights of 22 August 2002 (art. 11) and Royal decree of 19 March 2007 on the requirements for the mediator in hospitals. Law of 31 March 2010 on the compensation for damage caused by healthcare (art. 8, 5) foresees mediation between patient, healthcare providers and insurance companies in case of damage caused by healthcare[9].

In Belgium, there is an "internal" mediator for hospital care and mental healthcare who is on the payroll of healthcare providers but is independent (cannot take a position)[10]. As to the other types of healthcare, the mediation concerning patient rights is conducted by a governmental authority, the Federal Ombudsdepartment, installed within the Federal Patient Rights Commission. There is also a list of "official, authorized" mediators in general affairs. However, the parties are not limited to the official mediators, they can choose any of non-official ones.

In Belgium, mediation agreements and enforceable mediation agreements are used in the case of general mediation. In contrast, mediation proceeding or labor disputes do not require any documents, because it is mainly an oral procedure.

Costs are covered by hospital or state budget (for non-hospital care).

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[8] Criminal Procedure Code of Poland. URL: https://www.legislationline.org/download/id/4172/file/Polish%20CPC%201997_am%202003_en.pdf.

[9] Mediation in Health Care – European Hospital And Healthcare Federation. URL: https://www.mediate.com/pdf/91_HOPE_Publication-Mediation_December_2012.pdf.

[10] Health Mediation models in the EU: Examples of good practices. URL: https://eea.iom.int/sites/default/files/publication/document/Health_mediation_Models_EU_IOM.pdf.

In Belgium, specific requirements for mediators who work with healthcare issues:

- higher education (however no university degree needed);
- cannot be related to the facts and persons of the complaint;
- incompatibilities: member of hospital management committee, hospital healthcare provider, active in a patient rights' association.

The mediators shall work under the principles of professional secret, independency and neutrality. However, their reliability and independence of mediators tend to be questioned, due to the fact that the mediators are directly employed from hospitals.

The main problematic issues concerning mediation in Belgium are the following:

- the internal mediators cannot be unbiased because they are on the payroll of the hospitals;
- lack of patients' knowledge of existence of the mediation system;
- lack of a true mediation system for non-hospital care, except mental healthcare.

Denmark

Healthcare providers shall offer mediation, a dialogue with patients who have sent a complaint to the national patient complaint system. It is up to the patient or the patient's legal guardians to decide if they want to undergo the mediation procedure. If the patient wants to participate in the mediation, the healthcare provider has to organize the procedure within 4 weeks. Costs are fully borne by the healthcare provider.

In Denmark, the five regions (healthcare providers) have developed different kinds of guidance for and e-learning material about how to obtain a successful mediation/dialogue. At the end of the mediation session, the representative of the healthcare provider has to fill out a form about the outcome of the mediation. This form is sent to the national patient complaint unit (Patientombuddet).

Estonia

In Estonia, there is no central system of dispute resolution: hospitals have their own systems for resolving disputes between different parties, and there is no legislation for healthcare matters. In case of any dispute between different parties, the first step is to try to resolve the problems internally in healthcare establishments[11]. Then, independent mediators can be involved. Mediation costs are fully borne by parties.

[11] Mediation in Health Care – European Hospital And Healthcare Federation. URL: https://www.mediate.com/pdf/91_HOPE_Publication-Mediation_December_2012.pdf.

During mediation proceedings in hospitals or in the pre-court mediation proceedings it is not possible for patients and patients' relatives to choose mediators, because the latter are assigned to them or there may only be one mediator (in hospitals), for example the head of health services quality management department.

The ways of dispute resolution may vary from one healthcare provider to another. In general, given that between the parties shall be concluded an agreement. In case of disputes concerning quality of services provided, the negotiations of the first level are conducted between the victim and healthcare provider. If they cannot reach an agreement, the patients have the right to ask for expert opinion from Expert committee on quality of health services. Nevertheless, the decision of the Committee is rather a recommendation and cannot be enforced.

Bulgaria

As of 2007, the mediation programme in health was included into the state policy. The state began to allocate to participating municipalities an annual health mediation budget. The profession of mediator in the field of healthcare is in the National Classification of Professions and the government adopted an official job description for the position[12].

In the majority of occasions, the mediator is a member of local community, in order to perform his/her duties properly. The mediators have a social function as well: they provide access to the social services vulnerable/isolated ethnic minorities. The mediator in healthcare field is not an administrator, but the ordinary employee, who works actively to identify the most vulnerable and marginalized community members. He or she initiates communication with local health and social institutions and specialists, and offers them assistance[13].

3. Restorative justice

The use of mediation in criminal proceedings is certainly justified because of the peculiarities of bringing medical professionals to criminal responsibility, which, for example, are caused by: 1) the limitation period of liability, which expire, as a rule, before the judgment entry into force. It is worth noting that one of the most common articles in practice is Art. 140 of the CrC of Ukraine "Inadequate performance of professional duties by a

[12] Mediation in Health Care – European Hospital And Healthcare Federation. URL: https://www.mediate.com/pdf/91_HOPE_Publication-Mediation_December_2012.pdf.

[13] Health mediation concept. URL: http://eurohealthmediators.eu/index.php?pagetype=text&page_id=226&lid=2&organization_id=1.

medical or pharmaceutical professional", which according to Art. 12 of the CrC of Ukraine includes: Part 1: the crimes of small gravity, and Part 2: medium gravity; 2) the length of the pre-trial investigation, in particular due to the numerous assessments of the quality of care and judicial review; 3) involvement of mass media, social networks in coverage of events.

First of all, the role of mediation in the application of Art. 46 of the CrC of Ukraine "Release from criminal liability in connection with reconciliation of the guilty by the victim" shall be revealed. In this aspect, it is important to remember the following:

1. In the event of such grave consequences as death as a result of improper health care, it is not possible to apply Art. 46 of the CrC of Ukraine. Case No. 439/397/17[14] of the Grand Chamber of the Supreme Court of 16 January 2019 states:

«60. The term "victim" in Art. 46 of the CrC of Ukraine should be understood in its criminal law meaning as a person who directly suffers from physical, moral and / or proprietary damage as a result of criminal offense or was threatened to suffer it.

61. If, as a result of a criminal offense, the victim is killed, then no one else can express his or her will when dealing with issues related to compensation for death in the form of grounds for dismissal of criminal liability under Art. 46 of the CrC of Ukraine.

62. Damage in the sense of Art. 46 of the CrC of Ukraine should be recoverable (by its nature). Death is an irreversible consequence. Thus, damages in the form of death cannot be recovered or restored under the Art. 46 of the CrC of Ukraine.

63. In the case of causing by a criminal offense harm in the form of death of the victim, release from criminal liability in connection with the reconciliation of the guilty with the victim (Article 46 of the CrC of Ukraine) is not possible ".

2. If any grave consequences other than death occur, mediation may be used to reconcile the parties and to apply Art. 46 of the CrC of Ukraine. It should be noted that the definition of grave consequences in the composition of crimes against a person in the medical field in practice raises many questions. In Section 6.4. «Compositions of crimes against the life of a person in the medical field» Summaries of the High Specialized Court of Ukraine for Civil and Criminal Cases "On the judicial practice of criminal proceedings for crimes against the life and health of a person for 2014" of

[14] Постанова Великої Палати Верховного Суду від 16 січня 2019 р. (справа № 439/397/17). URL: http://reyestr.court.gov.ua/Review/79298600.

03.06.2016, determined that grave consequences in the context of crimes against the life and health of a person include death of a victim, injury, infection with an infectious, serious or other illness, which significantly affects the normal course of life of the victim and requires a long treatment, get the victim grievous bodily harm, the occurrence of mental disorder or disease, a significant deterioration of the health of individuals.

3. It is uswful to emphasize that when there are legal grounds for the application of Art. 46 of the CrC of Ukraine, it is not necessary to agree to the application of Art. 469 CrPC of Ukraine and conclude a reconciliation agreement between the victim and the suspect or accused. In Item 4 of the Letter of the High Specialized Court of Ukraine on Civil and Criminal Cases "On Supplement to the Information Letter of the High Specialized Court of Ukraine on Civil and Criminal Cases of 15.11.2012 No. 223-1679/0/4-12 "On Some Issues of Implementation of criminal proceedings on the basis of agreements"" of 05.04.2013, № 223-558/0/ 4-13[15] stated that in cases where criminal proceedings simultaneously have grounds for the release of a person from criminal liability in connection with reconciliation of the guilty with the victim provided for in Art. 46 of the CrC of Ukraine, and for the purpose of imposing a sentence on the defendant on the basis of an agreement between the victim and the suspect / accused (agreement on conciliation was entered into between the parties), the court, considering that the article of the criminal law providing for such exemption from criminal liability is compulsory, and taking into account established circumstances, should:

a) if there are grounds for dismissal from criminal liability in connection with the reconciliation of the accused with the victim (committing the first offense of a small gravity or negligence: a crime of moderate gravity for the first time, compensation of the caused damage by the accused to the victim or elimination of the damage caused and, as evidenced, inter alia, by the victim's consent to the release of the accused from criminal liability on this ground, and the consent of the accused to such release and closure of the proceedings on such grounds – to refuse in accordance with paragraph 3 of Part 7 of Art. 474 of the CrPC of Ukraine in approving the agreement on reconciliation and acquitting the accused of criminal responsibility on the basis of Art. 46 of the CrC of Ukraine;

[15] Лист Вищого спеціалізованого суду України з розгляду цивільних і кримінальних справ «Про доповнення до інформаційного листа Вищого спеціалізованого суду України з розгляду цивільних і кримінальних справ від 15.11.2012 № 223-1679/0/4-12 «Про деякі питання здійснення кримінального провадження на підставі угод» від 05.04.2013 р. № 223-558/0/4-13. URL: https://zakon.rada.gov.ua/laws/show/v0223740-13.

b) if there are grounds for dismissal from criminal liability in connection with the reconciliation of the accused with the victim, if the victim objects to such release, since the result of their reconciliation with the accused is an agreement concluded between them, which stipulates a specific punishment or states release from its completion with a test, having checked the agreement for compliance with the requirements of the CrPC of Ukraine, in the absence of grounds for refusal to approve it: to adopt a sentence to approve the agreement and to appoint punishment under an agreement entered into by the parties.

4. It should also be taken into account that if it is impossible to apply Art. 46 of the CrC of Ukraine, but in the presence of the expiration of the limitation period and the possibility of applying Art. 49 of the Criminal Code of Ukraine, it is appropriate to use the mediation procedure for reconciliation and redress. This conciliation process is aimed at preventing civil litigation. Here is an example of case law, where there was a combination of conciliation and the application of Art. 49 of the CrC of Ukraine. On January 20, 2020, the Sykhiv District Court of Lviv ruled in Case 464/2185/17[16] to release PERSON_1 and PERSON_2 from the criminal liability under Part 1 of Art. 140 of the CrC of Ukraine, based on Part 1 of Art. 49 of the CrC of Ukraine in connection with the expiration of the limitation period of criminal prosecution.

The body of pre-trial investigation found that in the period from 29.08.2016 to 05.09.2016, PERSON_1, being the head of the thoracic department of the Oncocenter, bearing personal responsibility as the head of the thoracic department, and PERSON_2, being in the position of the doctor-resident centrist, improperly fulfilled their professional duties as a result of their negligent attitude, namely: PERSON_4 made a decision in conjunction with the PERSON_2, who performed surgery on PERSON_5 and the treatment to provide further treatment without chemotherapeutist and radiologist; did not provide blood substitutes in a volume that could compensate for possible blood loss after surgery, resulting in intra-pleural bleeding of PERSON_5 was not compensated, which, on the background of severe disease, led to the development of hemorrhagic shock with impaired rheological properties of heart disease, which caused necrosis of the intestinal walls, multiple organ failure and death; allowed premature transfer of the patient PERSON_5 from the intensive care unit to the thoracic ward. Due to the above violations committed by PERSON_1 and

[16] Ухвала Сихівського районного суду м. Львова від 20.01.2020 р. (справа 464/2185/17). URL: http://reyestr.court.gov.ua/Review/87014360.

PERSON_2 during the treatment of the patient PERSON_5, 05.09.2016 at 11.20 after the resuscitation, at the premises of the Lviv State Oncology Regional Medical Diagnostic Center, the clinical death of the latter was ascertained.

It should be emphasized that the victim and PERSON_1 and PERSON_2 have reconciled themselves, have concluded a contract for reconciliation and compensation of harm, therefore, the claim for compensation of harm in the course of civil proceedings was no longer filed.

Attention is also drawn to the possibility of using mediation in concluding a reconciliation agreement between the victim and the suspect or accused, which is provided for in Art. 468 of the CrPC of Ukraine.

The attention shall be drawn to the key considerations when using such a contractual instrument, reflecting the role of mediation, which can of course be a prerequisite for reconciliation and agreement. The following axiomatic positions are important:

1. An agreement on reconciliation can be concluded in the proceedings of minor and moderate crimes, i.e., Part 1 and Part 2 of Art. 140 of the CrC of Ukraine is subject to the possible conciliation agreements.

2. The following persons have the right to initiate a conciliation agreement: a) the victim; b) the suspect / accused. An attorney, a victim's representative, a legal representative, or another person agreed by the parties may also agree to enter into a conciliation agreement. The involvement of an investigator, prosecutor or judge is forbidden in this conciliatory initiative.

3. The conciliation agreement shall specify: a) the parties; b) the formulation of the suspicion or charge and its legal qualification, indicating the article (part of the article) of the CrC of Ukraine; c) material circumstances of the relevant criminal proceedings; d) the amount of the damage caused by the criminal offense, the period of its compensation or the list of actions not connected with the compensation of the harm which the suspect or accused is obliged to do in favor of the victim; e) the period of action for the benefit of the victim; e) the agreed punishment; g) the consent of the parties to the imposition of punishment or to the imposition of punishment and exemption from serving his sentence; g) the consequences of the conclusion and approval of the agreement; h) consequences of non-performance of the agreement.

4. Often, there is more than one victim in a criminal case in the field of healthcare. Therefore, an agreement can only be entered into with all the victims at once. However, the requirements of the victim to the suspect /

accused regarding the amount of damage inflicted by the criminal offense, the period of its compensation or the list of actions not related to the compensation of the damage that the suspect / accused is obliged to do for each victim may differ. However, the punishment, their consent to the imposition of such punishment or the imposition of punishment and release from probation shall be agreed between the parties (all victims and the suspect / accused). It should also be borne in mind that if several victims of various criminal offenses are involved in the criminal proceedings and agreement has not been reached with all victims, then an agreement can be entered into with one or more victims. In such a case, a conciliation agreement is being entered into with each victim individually, and the criminal proceedings agreed upon by the parties are subject to separate proceedings.

5. It also shall be noted that the court, before approving the agreement, in particular: a) inquires the defendant about the possibility of fulfill the obligations under the agreement, for example, to compensate the damage caused as a result of a criminal offense in view of the amount and term of the indemnity set out in the conciliation agreement; b) whether the agreement is voluntary and whether the parties have actually reconciled. If the above facts are not confirmed, the court refuses to approve the agreement.

CONCLUSIONS

Mediation is not a panacea, but it does have the qualities necessary to save the time of both the health care provider and the patient (legal representative, family member). “What do you want? – I want to waste time. – doesn’t like being wasted. If you didn't quarrel with it, you could have asked it whatever you want.” These words from the book “Alice in Wonderland” by Louis Carol are aptly projected on parties who often "kill" time in courts, support the flames of hatred, although the right strategy and tactics can save both time and optimal communication between the parties in future. Why is mediation so timidly implemented within the legislative boundaries, why is it so difficult to put its various types into practice? There can be many explanations: from lack of political will, imperfection of draft laws to special factors, that occur certain fields. In the field of medical care, it seems, first of all, it can be explained by the inability to admit the mistake.

Outstanding surgeon M.I. Pyrohov believed that a young practitioner “needed”, firstly, the ability to admit his/her own mistakes, to analyze specific cases and “to consider as the cause of the mistake his/her

ignorance or inexperience" – only such an ethical position can to some extent redeem the "defect" that happened in medical work. Secondly, recognizing medical errors as an absolute evil, M.I. Pyrohov opposed the recognition of them as inevitable evil, considering it unworthy of the high rank of doctor. Third, the demand to be honest with yourself by M. I. Pyrohov is not heroism and exclusivity, but a professional ethical standard of the doctor. Only the ruthless self-criticism of one's mistakes can be adequate to pay for their high price. It should be emphasized that it is the legal conflict in this field that starts with the ethical.

Therefore, in the process of mediation, one will have to deal with very complex interests and needs, which will revolve around fundamental values: life and health, honor and dignity, being at the epicenter of acknowledgment and acceptance of professional error, awareness of guilt. The task of the mediator is to train in this steam tank, adjusting their movements, balancing. In this pair, the role of the lead will change, but the parties are in the pair. The skill of balancing will be to alternate: a step forward, perhaps two backwards and further movements, to reach a conclusion.

Among the problems that create obstacles in the way of the spectral embodiment of mediation in Ukraine are the following:

1. Absence of a special law on mediation.

2. The lack of a register of mediators, requirements for them, criteria for the quality of services, which create distrust, complicates the process of finding mediators. The draft law for the specialization of mediators seems to be accurate. Specialization would affect the quality of the mediation process, especially when mediation is applied in a jurisdictional form of protection.

3. The unwillingness of the parties to an alternative way of resolving conflicts, due to a number of factors: from ignorance of the essence of the institute to the opinion of a lawyer who does not always comply with Art. 8 of the Code of Ethics for Lawyers (2017, as amended in 2019).

4. Absence of regulatory fixing of the stage in resolving the conflict in the field of rendering health care as a mandatory pre-trial settlement. It would catalyze alternative ways of resolving conflicts, would serve procedural savings and appeal to the court only in certain difficult cases, and would ensure timely fair satisfaction.

5. Absence of compulsory professional liability insurance in medical practice, which would also provide a basis for alternatives, including mediation.

SUMMARY

The definition of mediation, its role in resolving conflicts in the field of health care, and the types of mediation in this field have been revealed. Foreign experience of mediation in health care has been explored, its different models have been found out. The principles of mediation, which are laid down in both the draft law and the doctrine and create an understanding of the basic system of mediation coordinates, have been created. The author's proposals for the provisions of the agreements based on the results of mediation have been formed and the normative project terms of the agreement have been analyzed.

The problem issues of the use of mediation in criminal proceedings within the jurisdictional form of defense has been revealed. Cases where reconciliation and exemption algorithms can be used based on Art. 46 of the CrC of Ukraine have been outlined. The possibility of combining other non-rehabilitative articles of the CrC of Ukraine, especially Art. 49 of the CrC of Ukraine, with mechanisms of mediation to prevent new civil proceedings. The features of concluding agreements on the reconciliation of the victim with the suspect / accused and the role of mediation in the activation of this process have been highlighted.

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INTERACTION OF AUTHORITIES AND MEDIA IN THE FIELD OF COUNTERING DISINFORMATION IN UKRAINE

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INTRODUCTION

The relevance of the article is due to the fact that in a modern democratic state, the government needs the support of citizens as potential voters, delegating the power of authority of a party to their choice. The collective nature of most of the goals realized in politics involves the use of special means by transmitting the desired information that can provide a single direction for the actions of a large number of people, i.e. mobilize them for mass action. It is mass media that turn out to be the only such means, given their function of forming an information analogue of society, and the consequence of this situation is the special role of the media in the modern political process and their huge impact on political life. Much of what is happening in the world today is happening with an eye on the mass media that record and broadcast it. In this new situation, the media act as agents of authority, seizing from the public sphere the possibility of rational and critical discussions.

In general, the role of the media is determined by their ability to shape the media agenda in political discourse and influence decision-making mechanisms. However, as practice shows, the media do not always seek to reflect the interests of society and give people objective information. Mass media actively disseminate political information, stories and comments on them. And it is quite difficult for an average person who has little knowledge of political issues to navigate and understand which comments are professional and which are manipulative.

For example, S. Bennett identifies four varieties of distortion of news: personalization, dramatization, fragmentation and normalization. Personalization of news involves focusing on specific personalities during a story about processes, events or phenomena. Dramatization occurs when news material is selected based on its high dramatic or entertaining significance, and not because of its importance to society. Fragmentation involves the transmission of news in separate concise bulletins (news

releases, special programs or headings), their fragmentation. Normalization presupposes the presentation of news as a problem that can be solved in accordance with the norms existing in society[1].

The facts of manipulation by the media, their use for special information operations, bias and prejudice in reporting on social and political events lead to a drop in public confidence in the media, in this connection we can recall the famous remark by N. Luhmann, with which he begins his the book "The reality of the media": "Everything that we know about our society and even the world in which we live, we know through the media ... And, on the contrary, we know we have so much about the media that we are unable to trust them as a source of information"[2].

This determines the need of the state and society to influence their information activities, to set their own priorities through the media in the nomination and interpretation of political problems. In this regard, the study of contemporary trends and prospects for the development of media policy in a democratic society becomes relevant for political science.

The purpose of this article is to consider the process of interaction between the government and the media in the field of countering disinformation in Ukraine.

The term "misinformation" was introduced by the high command of the German army during the First World War to refer to that part of the field tactics of working with the enemy, the purpose of which was to mislead him. This tactic implied a direct deception of the enemy, the use of lies, slander, half-truths, sometimes hiding not only the true content of phenomena and facts, but also their very existence.

According to E. Samoshkin, "Disinformation ... is a deliberate act of human activity, an attempt to create a false impression and, accordingly, push an object to desired actions or inaction. A characteristic feature of the "desa" is that it is actively used in wartime, it does not matter if this war is "hot" or "cold"[3].

[1] Брайант, Дж. (2004). Основы медиа-воздействия. М., 2004, 432 с. С. 157.

[2] Luhmann, N. (1996). Die Realitat der Massenmedien. Opladen: Westdeutscher Verlag, 223 p. P. 9.

[3] Самошкин, Е.А. (2017) Институты борьбы с дезинформацией и мисинформацией в СМИ. Вестн. Моск. ун-та. Сер.10. Журналистика. № 6. С. 178.

The Oxford Living Dictionary defines disinformation as “misleading information that is propaganda created by government organizations against opponents or the media”[4].

The problems of information communication are revealed in the scientific works of M. Weber, K. Manheim, T. Parsons, P. Sorokin, D. Bell, N. Wiener, M. Castells, E. Toffler and many others. The works of Ukrainian researchers G. Pocheptsov, V. Volyansky, V. Nedbay, A. Dubas and others are devoted to various aspects of political communication.

1. Ukraine in international ratings of freedom of speech and the media

In Ukraine, media-democratic processes developed in a slightly different scenario, unlike the West. And although the development of power relations in Ukraine now also largely depends on communication, and the positioning of actors in the political space and their power capabilities – on the density of communications and the use of marketing technologies for organizing political discourse, the sources, social content and consequences of these transformations in Ukraine have a distinct specifics.

The most important prerequisite for strengthening the political role of the media in Ukrainian conditions was a poorly structured mechanism for representing civil interests, which after the destruction of the party-state apparatus of the Communists was able to transmit the social needs of only the ruling class. The emerging political market began to take on a media profile, since in the second third of the 1990s, large capital, which was gradually turning into the main political player, began to consistently buy up the media in order to strengthen its power position. The concentration of ownership in this area led to the political dominance of media empires.

The desire for European integration confirms the inviolability of Ukraine’s choice of democracy, which is inextricably linked to human rights. Human rights as the most important value of democracy are enshrined in the Universal Declaration of Human Rights, Art. 19 of which states that “Everyone has the right to freedom of opinion and expression; this right includes freedom to hold one’s convictions freely and freedom to seek, receive and disseminate information and ideas by any means and regardless of state borders”, and Art. 19 and 20 of the International Covenant on Civil and Political Rights of December 16, 1966.

[4] Oxford living dictionaries. Definition of disinformation in English. Available at: https://en.oxforddictionaries.com/definition/disinformation.

Under the conditions of totalitarianism and authoritarianism, the mass media are not a leading force in the information space; their activity is aimed at serving the information needs of the authorities. As you know, a totalitarian political regime seeks to maximize its influence and minimize the autonomy of the individual. Therefore, technological progress in the field of telecommunications is used so that everyone receives messages and the ruling regime, but so that no one can become an independent sender of information. Traditional broadcast media (radio, television) have always served the totalitarian regime as a powerful political weapon aimed at cultivating authoritarian and uniform forms of thinking. As the famous American political scientist B. Cohen said, "the media may not be very successful in explaining to people what to think, but they are incredibly successful in explaining to them what to think about." And you can add what not to think about[5].

In conditions of democracy, the state is perceived as an institution whose function is to protect the rights and freedoms of the individual, national interests. The democratic political regime is characterized by free competition of ideas on the socio-political market, the participants of which are many generators and many recipients of information. Technological progress in this direction should correlate with the expansion of the population's access to interactive communications. A democratic state is forced to take public opinion into account, which is made public by the free media.

According to a study by the Kiev International Institute of Sociology, of all the media, Ukrainians most of all trust Ukrainian television – 40% of respondents, Ukrainian Internet media – 14%, social networks – 12%[6].

According to the Reporters Without Borders International Human Rights Organization, which measures the annual index of media freedom in the world, Ukraine ranked 102nd in the ranking published on April 18, as of 2019, which is one notch lower than in 2018 [7].

Also, the fact that the International Federation of Journalists included Ukraine among the 5 countries with a high level of danger for the work of

[5] Золотникова М.С. Роль средств массовой информации в формировании идеологиии культурных ценностей общества Available at: http://elar.rsvpu.ru/bitstream/123456789/6882/1/it_mho_2008_3_006.pdf.

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journalists does not add credibility to us (the International Federation of Journalists included Ukraine amoAs they say, everything is known by comparison, therefore, we will analyze the degree of freedom of the information space of Ukraine under three presidents – V. Yanukovych, P. Poroshenko, V. Zelensky.

2. Freedom of speech and information under the Presidents of Ukraine Viktor Yanukovych and Petro Poroshenko

With the coming to power of V. Yanukovych, the information sphere was almost completely under the control of the authorities. Attacks on journalists were not investigated, the activities of government officials and deputies rarely became the subject of criticism, the opposition was increasingly less likely to be seen and heard in the media.

The idea of censorship of social networks appeared in Ukraine under V. Yanukovych in 2010, when the Ministry of Internal Affairs of Ukraine announced the start of the fight against illegal materials on the Internet. It was planned to check all VKontakte pages for pornography. The subject of the search was photographs and videos of child pornography, scenes of murder and violence.

However, experts expressed the view that the intentions of the Ministry of Internal Affairs of Ukraine were initially aimed at establishing full control over the network. "The fight against porn is an excuse for full control of network users. If they get control over their accounts, they will also receive general access to the network, which they can use as they wish, even for political purposes," suggested the head of Prolject as part of Advanter Group Anton Beletsky. At that time, about 80% of Internet users were members of social networks. Of these, 70% were VKontakte users. Therefore, having gained control over one site, the Ministry of Internal Affairs would automatically have gained control of almost all Ukrainian Internet users[8].

In 2011, Freedom House, a human rights organization, noted that the state of press freedom in Ukraine has worsened and is rated as "partially free." This is a negative trend in Ukraine since the country had long been among the best press freedom in the region for a long time. But after President Viktor Yanukovych came to power last year, this freedom decreased.

[8] Милиция перечитает страницы пользователей "ВКонтакте" Available at: http://podrobnosti.ua/internet/2010/07/07/698868.html.

Human rights activists, among other things, recalled that radio stations and television companies that criticized the authorities had lost their frequencies. Also in Ukraine, illegal harassment and intimidation of journalists has increased, leading to a deepening of self-censorship[9].

However, in 2011 media experts, including Valery Ivanov (Academy of Ukrainian Press), Victoria Syumar (Institute of Mass Media), Natalya Likhacheva (GO Telekritika), Natalya Kostenko (Institute of Sociology of the National Academy of Sciences of Ukraine), noted that the situation in 2011 was The media space can hardly be called analogous to the strict regulation of the information environment by the authorities during the time of Kuchma. They evaluated the media climate under Yanukovych as milder than during the Kuchmism era. Their explanation is that “Firstly, the government does not have a sufficiently large professional propaganda machine capable of developing content and imposing its own discourse exclusively. Secondly, the print media remains a zone of relative freedom. Thirdly, the Internet is gaining enough weight. -channels through which information is received by decision-makers "," However, it is obvious that, instead of informing and explaining their own actions, public discussion about current problems, the authorities chose a strategy dissociation from criticism and suppression of socially important information, turning the media into a typically entertaining product." At the same time, experts believed that such an approach by the authorities can have only a short-term effect. In the future, such a government policy may cause a decrease in public confidence in traditional media, a decrease in their ratings, the outflow of a significant part of the audience to the Internet, the transformation of online publications and social networks into the main source of information and the gradual withering away of journalism as a profession"[10].

January 16, 2014 The Verkhovna Rada adopted, and on January 17, V. Yanukovych signed a series of laws that the democratic public immediately called dictatorial. And the opposition even called it a "coup d'etat." The adopted laws have substantially fueled the "Maidan mood". The claims of the public and the opposition were justified, since the purpose of the laws, among other things, was to significantly limit civil rights to freedom of speech and information. So, Law 721-Y11

[9] Freedom House: украинская пресса стала менее свободной Available at: http://www.pravda.com.ua/rus/news/2011/05/2/6157339/).

[10] Представители власти заполонили телевизор Available at: http://www.pravda.com.ua/rus/news/2011/10/8/6648423/.

“On Amending the Law“ On the Judicial System and the Status of Judges ” provided for criminal liability for defamation, extrajudicial blocking of sites that, according to experts, violated the law, control of mobile communications, in particular, purchase and service mobile phone cards only by passport on the basis of an agreement signed with the operator.

Naturally, the international community reacted to what was happening here, which doubted the usefulness of the adopted laws for Ukrainian democracy. Thus, the US Administration considered that this could weaken democracy, and the Council of Europe said that these laws violate the European Convention on Human Rights. The OSCE criticized the criminal defamation rule, believing that freedom of speech is thus at risk.

Under pressure from the Ukrainian and international public, on January 28, 2014, the Verkhovna Rada repealed most of the adopted laws.

However, during the cadet period of President Petro Poroshenko, many of the so-called "dictatorial laws" found a new, sometimes tougher sound. So already in August 2014, the law of Ukraine was adopted, which allowed the president and the National Security and Defense Council to block objectionable sites and TV channels. In 2017, according to the decree of the President of Ukraine P. Poroshenko, social networks VKontakte, Odnoklassniki and others were blocked. Representatives of the ruling parties “Petro Poroshenko Bloc” and “People’s Front” several times initiated laws that criminalize libel and facilitate the closure of Internet resources.

Such a policy of the Ukrainian government has led Ukraine to take a place in the list of countries with "partial freedom" in the Freedom House rating of Freedom House – 2019 human rights organization. The organization reports that Ukraine scored 56 points out of 100. In 2018, Ukraine received 55 points. The rating evaluated such criteria: an obstacle to access by the authorities, censorship and violation of user rights. It includes 65 countries, which account for 87% of network users worldwide. The report analyzed the events from June 2018 to May 2019. When assessing the situation in Ukraine, the drafters of the rating negatively noted the blocking of Russian sites in February 2019, attempts by the authorities to adopt a law on the responsibility of the media for the "hostile language"; large-scale disinformation campaign that accompanied the presidential election, as well as the situation with the journalists of the Scheme and the Prosecutor General, who wanted to access their phones. Freedom House experts do not consider Russia's subversive propaganda against Ukraine as a compelling reason to infringe on the rights of language communities. So the decision of the Lviv Regional Council,

which prohibits the public use of Russian-language "cultural products", including films and books, was criticized[11].

At the same time, Freedom House experts express hope that the situation with media freedom in Ukraine will improve. They rightly point out that the media have the ability to criticize the authorities, and slander is not a criminal offense. However, everything can change with the adoption of the Disinformation Law, which will be discussed in the next paragraph.

3. Freedom of speech and information under the President of Ukraine Vladimir Zelensky

With the coming to power of President V. Zelensky, society expected liberalization of relations between state authorities and the media. However, today it is already obvious that the new government in many ways not only repeats the mistakes of the old government, but also in some way already admits them even more. So, for example, the Office of the President hastened to declare that it does not need the media at all to communicate with society. Also, the President's Office was spotted trolling the media by giving him fake information.

The Cabinet of Ministers of Ukraine closed its meetings for journalists and limited itself to a briefing. While at the time of A. Yatsenyuk and V. Groisman, the Cabinet meeting was broadcast live.

In parliament, proposals began to be heard on the selective accreditation of journalists, and a Temporary Investigation Commission was being created to investigate the activities of some media. On November 6, 2019, parliamentary hearings were held on the topic "Safety of the activities of journalists in Ukraine: state, problems and solutions", at which the Minister of Culture proposed to formulate a legal definition of "information manipulation" and introduce its criminal liability for journalists. All this, in our opinion, casts doubt on the possibility of Ukrainian exercising its right to freedom of speech and information.

Numerous scandals undermine public confidence in both the government and the media. Thus, the openness and transparency of the activities of the authorities are replaced by the non-publicity of its relations with society, a hostile environment is created in relation to the media that criticize the authorities. Our European partners also declare pressure on the

[11] Украина в рейтинге оказалась на одном уровне с Индией, Марокко, Малайзией и Угандой. Available at: https://tsn.ua/ru/ukrayina/freedom-house-ocenila-uroven-internet-svobody-v-ukraine-1437942.html.

media in Ukraine. And this will undoubtedly affect the ranking of both the President and parliament.

It can be assumed that the authorities behave this way because of the bias of most of the media, which have never been and are today not the standard of democratic journalism, but rather a propaganda machine that works in the interests of its owners and specific political forces. However, this does not mean that the government should not engage in communication with the media and form an information agenda. After all, as you know, absolutely free and independent media do not exist. Some of them depend on the state, others on a business that pursues certain political and commercial goals, "which will lead to censorship and restriction in topics"[12]

On January 20, 2020, the Ministry of Culture, Youth and Sports of Ukraine presented to the public a bill on countering disinformation, according to which journalists and mass media distributing fake news and information using fake accounts and bots will be subject to administrative and criminal liability. The law defines false information as false information about individuals, events or events. According to the authors of the law, misinformation is unreliable data of public importance on national security, the territorial integrity of the country and the health of citizens. The law defines “mass media distributors”, which recognize “individuals or legal entities that create, collect, or disseminate mass information.” The bill provides for the introduction of a new post – the Commissioner for Information, whose duties will include monitoring the media in order to identify information that violates the law. Contact law enforcement and the court. Develop criteria for the so-called confidence index, which will be assigned to the media as they wish. The so-called “tools of influence” on the media are introduced – “The right to answer” and “The right to refute”[13].

It is natural that this bill was sharply criticized by European journalists who saw in it the risks to freedom of speech and information in Ukraine[14].

[12] Международная федерация журналистов включила Украину в число 5 стран с высоким уровнем опасности для работы журналистов. Українські новини. Available at: https://ukranews.com/news/663967-dlya-zhurnalistov-kiev-samyj-opasny

[13] Штрафы за фейки. У Бородянского представили законопроект о дезинформации Available at: https://nv.ua/biz/markets/v-minkulte-predstavili-zakonoproekt-o-dezinformacii-novosti-ukrainy-50065133.html.

[14] Европейские журналисты раскритиковали закон Бородянского о фейках. Available at: https://www.depo.ua/rus/politics/evropeyski-zhurnalisti-rozkritikuvali-ukrainskiy-zakon-pro-feyki-202001221100010.

The arguments of the initiators of the bill that it was created to combat Russian propaganda during the period of Russian aggression did not convince Europeans. Moreover, they believe that unwanted Ukrainian journalists and the media will be prosecuted with the help of the law. EFJ General Secretary Ricardo Gutierrez spoke clearly about this: “The government must strictly adhere to journalistic self-regulation and independence. The state must create the conditions for this process, avoiding any government interference and not deprive journalists of their rights. EFJ categorically rejects any proposal that the state will to regulate journalistic activities and impose any restrictions on journalists, "said EFJ Secretary General Ricardo Gutierrez.

Many countries of the world are now actively developing and applying a set of measures to protect their society from "information intervention", carried out, as is known, by the "monopolists" in this area – the USA, China, Japan, and European countries. Modern states consider superiority in the information sphere as one of the important factors for achieving the goals of their national strategy. This is evidenced by the attention given to the creation of specialized units in the structures of the armed forces and special services, the development of conceptual documents governing the preparation and conduct of information operations.

In Germany, a law was passed in 2017, according to which social networks with more than 2 million users are required to remove inaccurate information aimed at inciting hatred. This is given one day or the right to file a complaint within a week. For failure to comply with the law, owners of Internet resources will be fined.

French President Emmanuel Macron called untruthful information a threat to liberal democracies, which must be fought. To this end, he will initiate changes in French law. “If we want to protect liberal democracies, we must have strong legislation,” Macron said in a New Year’s address to reporters. According to the French president, changes in legislation should also affect social networks, especially their use in election campaigns [15]. So in 2018, two laws were passed in France that prohibit the dissemination of “inaccurate or false allegations and allegations that aim to change the true results of voting” three months before the election. A politician or party may go to court during this period and demand that they stop publishing such information.

[15] Макрон инициирует закон по борьбе с «фейковыми новостями». Available at: https://www.rbc.ua/rus/news/makron-initsiiruet-zakon-borbe-feykovymi-1515020950.html.

Social networks in France can publish commercial political advertising, but they must disclose the customer and indicate the amount earned. The French High Council on Audiovisual Media will have the right to block broadcasting of a “foreign television channel or channel under the influence of a foreign state” in the country if it deliberately misinforms.

In Italy, they found their own approach to the fight against news misinformation. Using a special service, Italian citizens can report to the police about "fake", in their opinion, news. After such a statement, news on "fake" will be checked by special police experts. The results of the verification will be published in official appeals to citizens. If the news turns out to be untrue, the media will have to refute them. So far, this applies to electronic media and Internet resources. According to the police, this service does not interfere with freedom of speech in Italy. "We are not trying to create a Big Brother," assured Italian police chief Franco Gabrielli[16].

Also in 2018, a law against fake news was adopted in Malaysia. Here it is forbidden not only to spread a lie, but also to repost it. Criminal liability is also provided.

After the victory of the opposition in the elections in May 2018, the new leadership of the country is trying to revise the law, but it is resisting in parliament.

The experience of Singapore is also interesting, where in 2018 a special commission was created that studied the effect of fake news on the state. According to experts, the country is "the goal of hostile information companies that can undermine the country's social unity." Singapore has yet to develop a law against fake news.

Criminal liability for disseminating fake news is legally provided for in Kenya. A law passed in 2018 considers spreading fake news a crime. They face a fine or a prison term of up to 2 years.

There is also criminal liability for misinformation in Qatar. The 2014 law provides for a fine or a three-year prison term.

In Egypt, in 2018, two laws were adopted to combat fake news. Here, the government gained the right to restrict access to sites that threaten national security. Blogs with 5 thousand subscribers are equated with the media. They are allowed to block out of court.

[16] «Не хотим Большого Брата»: в Италии о фейках в новостях теперь извещают полицию. Available at: https://vesti-ukr.com/mir/274057-ne-khotim-bolshoho-brata-v-italii-o-fejkakh-v-novostjakh-teper-izveshchajut-politsiju.

As we see in European democracies, there is no criminal liability for misinformation. In our opinion, Ukraine should do the same, having made a European choice.

The Minister of Culture, Youth and Sports, Vladimir Borodyansky, the initiator of the law on combating disinformation, noted that in preparing the law, the experience of Great Britain, France and other countries of the European Union was studied. “But we have to understand one thing that Ukraine, which today faces such challenges, is obliged to create its own legislation in this area. And not just create our own, I think that this legislation will become part of European legislation when we do all this here ... I believe that information attacks continue, threats persist, and our responsibility is to ensure that Ukrainians reduce the consumption of misinformation, "said V. Borodyansky[17].

CONCLUSIONS

So, the objectively growing globalization of the information sphere leads to the fact that the created information and communication infrastructure of the country and national information resources turn out to be objects very vulnerable to influence from geopolitical competitors, terrorist organizations, criminal groups and individual attackers. Given these factors, the information development of Ukraine, which is noticeably behind the leading industrialized countries, should be carried out as part of a systematic and balanced state information policy aimed at actively combating information aggression.

However, if the new government is genuinely committed to the development of a democratic state and society, it must establish effective and full-fledged interaction with the media in accordance with democratic values.

State officials should understand that in the information society (in particular, the intensive development of social networks that they themselves are actively using today), the unilateral manipulative influence of the state on public consciousness in order to control the main Ukrainian information resources is no longer possible.

Ukrainian society urgently needs to establish at the legislative level clear relations between the media and their owners in order to reduce the

[17] Бородянский: только 8% украинцев могут отличить фейк от не фейка. Available at: https://www.unian.net/society/10767131-borodyanskiy-tolko-8-ukraincev-mogut-otlichit-feyk-ot-ne-feyka.html.

dependence of the former on the latter. Only in this way can the media be reflected not in the interests of the owners, but in society.

Changing the political consciousness, value orientations, political culture of the population and achieving mass support for the declared political, social and economic reforms is possible only through the media. The sooner the new Ukrainian government realizes this, the better.

SUMMARY

The article discusses the problems of communication between the authorities and the media in modern Ukraine. A comparative analysis of the degree of freedom of the information space under V. Yanukovych, P. Poroshenko and V. Zelensky. The essence of media processes in Ukraine is considered. It is shown that the role of the media is due to their ability to shape the media agenda in political discourse and influence decision-making mechanisms. Foreign experience in combating false information is considered.

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