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PECULIARITIES OF ANALYTICAL WORK IN THE CRIME COUNTERACTION CONTEXT

Crime counteraction is a specific social system. This system integral view and comprehension as of the corresponding organizational impact object are possible only when the actions of state bodies and agencies, civil units and separate citizens are properly ensured, as it is typical for social systems and for scientific management of social processes' rules.

In the opinion of criminology scientists, crime counteraction should be considered the priority in the course of protected values guarding against the criminal infringement as the main function of the state in the sphere of rights, freedoms, and citizens interests protection, because crimes, being the most socially dangerous acts, cause damage to vital public welfare and prevent social relations from their essential development [1, 78].

The stated issue was extensively elucidated in current legal literature, for example, in the works of Avanesova H., Bandurko O., Holina V., Davydenko L., Zhalynskyi A., Zakaliuk A., Kalman O., Kovalenko V., Lytvynov O., Sakharov O., and others. But the question on analytic organization and management of crime counteraction monitoring was ignored.

At the same time, the functional characteristic of this system is of the great applied significance, because it ensures the possibility of detecting the common features of diverse activity types taking into account the instrumental, methodic, methodological and psychological unity of main organi-

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zational and functional basis. So the aim of the article is to study the analytical work from the standpoint and through the perspective of the stated functional approach and to identify its peculiarities in the crime counteraction framework.

Recently, crime counteraction has undergone numeral organizational and functional changes causing both this same activity and its managerial component efficacy decrease. So, working out of new approaches to crime counteraction organization and execution is of the extreme urgency. First of all, mentioned work should be based on the system analysis of diverse information of crime counteraction monitoring objectives' fulfillment that will give an opportunity to identify trends towards extension of main processes, contributing to the growth of crime rate, that occur in the society.

For fulfillment of these objectives, the analytical work in the sphere of crime counteraction is of the great importance, being one of the main elements of the cognitive process and that is characterized by the complex of special features that mark it out among other analysis types in the state bodies' activity. Due to the application of diverse information, the analytical work gives the opportunity to determine individual or group belonging of various objects of criminological influence, to study their properties and states, results and different factors correlation, to forecast the further course of crime event, to detect hidden interconnections between objects etc.

The positive results of crime counteraction monitoring can be achieved due to the special departments of the analytical work effective activity. The prerequisite for their successful achievement is the prior experience, obtained in the Ukrainian theory and practice of crime counteraction. The issues of the analytical work improvement on different levels of law enforcement bodies' system development were placed for consideration many times [2, 106–130]. But, in spite of all that, these issues have not been solved yet. The absence of clear legal, organizational, and methodical basis, as it was before, hinders the positive improvement in the activity of the special departments of the analytical work.

Till now, none of the crime counteraction entities has succeed in establishing of the effective informational and analytical system of departments by creating the unified informational space of its office, to say nothing of all law enforcement bodies efforts integration in that way. Moreover, unanimous approach has not been worked out towards:

– creation of crime counteraction monitoring database with the purpose of criminally active persons and criminal events registration, establishment of registration list and integrated data base;

– processes of the analytical work automation taking into account the application of information, linguistic and computer technologies.

As it was before, clear criteria and indicators of information and analytic departments' activity estimation are absent. Effective professional training in the mentioned sphere is not organized. All that slows down the solution to the crime counteraction monitoring objectives related to the improvement of the criminogenic situation in society.

The analytical work is performed on all stages of the criminological monitoring. That is why its content should be considered in the much more wider aspect – not only as the work of special entities in the sphere of informational and analytical support for law enforcement activity, but also as the main function of crime counteraction monitoring, in the realization of which all entities are involved. Conditionally, in the functional context, the sign of equality can be placed between the crime counteraction monitoring and the analytical work.

Such definition of the analytical work essence provides the solution to the range of theoretical general questions. From this point of view, the analytical work is considered to be the methodological framework for the theory of crime counteraction monitoring, being one of the main means of control, influence, and management in this sphere.

Regarding the stated, three main levels of the analytical work can be differentiated:

– application of its basis by all workers of this or that crime counteraction department

in the course of initial criminological data detection;

– analytical support for criminal procedure and support for other forms of reaction to wrongful conduct;

– analysis that ensures rational management decisions making in the sphere of crime counteraction, and the control over their execution, that is conducted by the organizational and analytical structures of crime counteraction entities.

Trends connected with the execution of the analytical work on these levels can be classified according to the following three groups:

1) trends related to the formation of criminological information, its detection, receiving, verification and fixation. These trends characterize the cognitive essence of the analytical work in the system of criminological monitoring and are the main components of its theory subject matter;

2) trends related to the crime counteraction departments activity on the application of the criminological information. Their cognition gives an opportunity to implement the results of the analysis into the criminological process. They characterize the essence of criminological monitoring active side;

3) trends related to the crime counteraction monitoring organization. Among them, the most important are those that determine:

– peculiarities of personnel structure of informational and analytical departments;

– functions of their workers as criminological monitoring entities;

– basis of entities interactions in the unified informational space in the realization of coordination and subordination connections framework in the course of solution to the laying upon them objectives.

Study of stated trends assists selection and arrangement of professionals in the sphere of criminological analysis, specialization and improvement of their professional skills, control and providing help in the organization of their work.

The analytical work, irrespective of application sphere, – is the creative activity, related to the estimation of information and preparation of optimal solutions on its basis [3, 77]. The stated affirmation concerns the place of the analytical work in the crime counteraction system, the main content of which is in the arrangement of isolated criminological and other information in logically built and grounded system of dependency (space, time, cause, consequences and others), that give an opportunity to correctly estimate both unity of facts and each of them separately.

Characteristic properties of this work that distinguish it from other analysis types in the law enforcement activity sphere conducted, for example, by criminal expertise or investigation departments, are non-procedural character, specific entities of execution, data base, aims, objectives, objects, subject-matter of research, and forms, types, means, methods, and manner of its execution.

In any type of analysis, general scientific methods (observation, experiment, modeling, scientific abstraction, measuring, description, comparison etc.) and logic thinking methods (analysis, synthesis, induction, deduction), being combined in spite of the analysis specific, are performed in the course of complicated complex of cognitive actions – ascertainment of objects belonging, determination of their properties, correlations and interdependencies, and determination of their probable states in the future.

The analytical work, being the means of search for the truth in the criminological monitoring, consolidates all elements of cognition. The analytical work integrates all general forms of cognition that are freely applied in the crime counteraction monitoring.

In spite of the fact that the analytical work is of non-procedural character, it should not be separated from criminological monitoring procedures. Moreover, all its forms and types are oriented to the prospective of the crime counteraction information space establishment.

In the course of the analytical work of non-procedural character, statistic research methods are mainly applied. They are widely used in the analytical work, for example, in the criminological condition special analysis.

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If taking into the consideration the stated, it will be to the purpose to note that the Prosecutor General's Office of Ukraine worked out the Provision on the United Register of Pre-Trial Investigations Application, ratified by Prosecutor General of Ukraine on the 17th of August, 2012. The procedure of formation and maintenance of the United Register of Pre-Trial Investigations, and data rendering from it, are set in the Provision. The Register was developed according to the requirements of the Criminal Procedure Code of Ukraine with the aim to provide: the united register of criminal offences and affirmed, in the course of the pre-trial investigation, decisions, persons, who conducted the criminal offences, and the results of trial procedure; control over law observance in the course of pre-trial investigation; analysis of condition and structure of criminal offences.

Results, obtained in the course of the analytical work forms and type's application, could be differentiated not only according to their practical value. The differentiation can be done according to the principle of their application in the specified time period. For example, some experts divide methods of the analytical work into the retrospective analysis (the analysis of the past), current analysis, and prognostic analysis (the analysis of the future) [4, 16–18]. But, in spite of the fact that such classification is rational, it does not give the opportunity to be beyond abstract thinking.

Cognitive significance of the analytical work for the crime counteraction system, especially in the practical aspect, is not restricted to the function of filling the information vacuum. It is applied in other important spheres. First of all, it is related to its function as of an element of crime counteraction management, aimed at tactical and strategical objectives solution, especially those related to the coordination of both national and international bodies and agencies activity on crime counteraction.

The management process in any sphere of human activity, including the law enforcement activity, creates the closed cycle, all links of which are interdependent, and relations, appeared between them, are of the informational character and are divided into two types:

a) vertical relations – relations of subordination;

b) horizontal relations – relations of coordination [5, 39].

The henotic element in the system of these relations is the analytical work (analysis) that is understood in the theory of law enforcement activity management as the research of administration of different work situations – conditions of executor activity that are manifested in the course of vertical and horizontal cooperation performance, with the support of logical thinking methods [6, 12].

It should be stressed that the general theory of management and the theory of management of the law enforcement activity are interconnected. The integrant link is the theory of the analytical work aimed at maintenance of the most important mechanism of crime counteraction monitoring performance – process of cognition.

The analytical work is completely integrated into the information sphere that is the inevitable element of social life; influences the political, economical, defense and other elements of state security of Ukraine condition. At the same time, one of the state security elements is the information security. And the analytical work, as the inevitable element of information security, is aimed at personal, social, and state interests' defense.

Efficacy of the analytical work management function is ensured by implementation of information and information infrastructure, entities that realize specific informational technologies, and also systems of social relations regulations.

Finally, the analytical work is that henotic element with the help of which the application of organizational forms, methodic, tactic and technical means of crime counteraction monitoring is performed.

The stated conclusions about the analytical work essence in the system of crime counteraction monitoring meet the idea of that the subject matter of any theory is the henotic basis of its essence that reflects the structure,

relations between separate elements, forms of objective trends manifestation in that subject-matter sphere that is this theory object of cognition [7, 88–89].

The theory of criminological monitoring, being the separate sphere of knowledge, penetrates into all spheres of science and cooperates with them all through the analytical substructures. Forming the specific system of knowledge, it gives birth to new processes and phenomena in the structure of crime counteraction theory, and is related not only to the separate scientific, but also to the general scientific provisions (optimization of knowledge structure; new ideas formation; list and essence of main organizational and management functions defining; new vision of structure, of informational and analytical nature of criminological measures etc).

From this point of view, the analytical work can be regarded as the method of crime counteraction theory trends and the method of analyzed theory development cognition. Accumulating forms and means of objectives solution from other spheres of cognition, the theory develops and applies its own methods, forms and means of cognition organization that are integrated in the framework of crime counteraction monitoring directions.

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PECULIARITIES OF ANALYTICAL WORK IN THE CRIME CONTERACTION CONTEXT

The article is devoted to the content and peculiarities of analytical work in the monitoring activity of law enforcement bodies. It states the trend of formation of the relevant scientific theses system.

Keywords: analytical work; monitoring; crime counteraction.

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PROSECUTOR'S ACTIVITIES

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REACTION OF PUBLIC PROSECUTOR TO REVEALING VIOLATION OF ORDER OF PROVIDING ADMINISTRATIVE SERVICES AS ELEMENT OF HUMAN RIGHTS AND STATE INTERESTS DEFENSIVE MECHANISM

General democratization and forming of civil society helped Ukrainian society to realize that the purpose of «service» state is not managing a society, but rather granting services to it.

This created an impact to establishment process of modernization of state administration with the aim of transformation Ukraine in such state where one of the basic functions of «service» are maintaining citizens to satisfy their needs and protect their rights. Where people in relationship with government are the consumers of services.

As for today all-round providing of human rights and freedoms during the process of granting administrative services by executive bodies of Ukraine is very urgent question, that always rises within the frame of work of the different fields of law.

Office of public prosecutor by plenary powers is in relation to the protection of human rights and freedoms in Ukraine at implementation of functions of supervision after inhibition of rights and freedoms of man and inhibition of laws on these questions by executive bodies organs of local government, their public and official servants [1, 121, 52].

Have to agree with A. Golovin that new modern prosecutor should not look like a punisher or even accuser, but first of all as a defender of human rights and freedoms and state interests. His real task should be should be real renewal of those rights and interests, compensation of the inflicted damages and application of measures of influence unconnected with bringing it to criminal responsibility [2].

Reaction of public prosecutor to revealing violation of law is already a defensive mechanism and restoration of rights.

Reacting of public prosecutor has expression in form of acts. Acts of the prosecutor's reacting – are granted by law of Ukraine «On prosecutors office» forms of realization of plenary powers of public prosecutor in relation to a removal and warning of offences.

Prosecutors office activity as a problem were investigated by many native scientists, in particular: Y.M. Blazhivskyi, L.R. Grycenko, V.V. Dolezhan, Y.M. Diomin, I.M. Kozyakov, M.V. Kosuta, O.M. Lytvak, O.R. Mykhaylenko, O. Medvedko, M. Mychko, M.V. Rudenko, G.P. Sereda, O.M. Tolochko, P.V. Shumskyi,

V.V. Chechersky, M.K. Yakymchuk and others. But prosecutors reaction to revealing violation of order of providing administrative services as a part of defensive mechanism and restoration of rights were not investigated that much.

It should be noted that law about providing administrative services has responsibility for violation of law requirements in the field of grant of administrative services.

Public servants authorized under the law to maintain administrative services, administrators bear the disciplinary, civil, administrative or criminal responsibility statutory for violation of requirements of legislation in the field of granting administrative services.

In order of grant of administrative services it possible to identify such main violations made by organs of public administration:

– groundless large terms of grant of separate administrative services;

– general complication of procedure of maintaining many administrative services;

– personal contact of a private person – consumer of administrative services with a servant who maintains administrative service;

– limited access to administrative organ, that renders administrative services;

– limited possibilities of a private person in relation of the choice of method to appeal to the administrative organ, that renders administrative services;

– shortage of information about procedure of granting administrative services;

– unsettled state of payment for administrative services, establishments of additional «payment services»

– territorial monopolism.

Public prosecutor's verifications witnessed breach of law by corresponding organs, that in compliance with the legislation of Ukraine must provide grant of quality administrative services on the grounds of legality and law and order.

It is possible to establish, that 8 of 10 legislative principles of public policy in indicated field are violated by public and local government authorities.

In every fourth region of the state there are cases of imposing requiring payment for administrative services, and in every fifth the payment for those services has a difference from the one that is stated in law.

Complication of the system of providing administrative services creates favourable terms for abuses and allows to use them against state interests.

Some officials in regions still did not understand the importance of reformation in the indicated field. They intentionally delegate the functions to subjects of management, creating opportunities to get personal gain in illegal way. For example the office of public prosecutor in Dnipropetrovsk area began criminal realization in relation to official persons management of housing economy that for money of citizens organized processing of documents on the right of ownership on appartments and got more than 100 thousand hryvnias because of that.

Quite often funds that are received public authorities for maintaining administrative services are used not ineffectively or even for a different purpose.

After verification public prosecutor accepts the corresponding of the public prosecutor's reaching according to articles 21–24 Law of Ukraine «On prosecutors office» [3] in relation to the real removal of breaches of law, reasons and terms that they were assisted of normatively legal acts, bringing guilty persons to responsibility. In every case where exposure of facts of violation of requirements of law is revealed and that caused financial looses as well as danger to lives and health of people.

Articles 23, 24, 36-1 Law of Ukraine «On prosecutors office» regulate legal facilities of reacting of public prosecutor on revealed violations of law. This way prosecutors reaction on revealed violations on order of granting administrative services for private persons comes true by bringing the resolution of public prosecutor.

Also according to p. 12 of order of General prosecutor of Ukraine from November 7 2012 № 3 «About organizing prosecutors supervision on inhibition and application of laws» public prosecutors are under obligation on results the conducted verifications in case of exposure of breaches of law: to bring in

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presentations, initiate bringing in person to disciplinary, administrative responsibility, fold protocol about administrative violations, to begin pre-trial investigation and to apply a lawsuit to court.

Thus, at the choice of forms of reacting on violation of legislation public prosecutor is regulated by article 20 Law of Ukraine «On prosecutors office» and order of General prosecutor of Ukraine from 7 of November 2012 № 12 «About organizing prosecutors supervision on inhibition and application of laws». And before the start of investigation chief of prosecutors office accepts motivated statement. According to p. 4.1 of order № 111 [4, 5], all grounds that witness about possible violations are noted to statement with detail describing of actions according to points 3, 4, 5 part 1 p. 20 Law of Ukraine «On prosecutors office».

Also, public prosecutor in accordance with Statute about the order of realization by office of public prosecutor supervision about inhibition and application of laws on results of audit folds a report, where he specifies:

– grounds about performing an audit;

– actual data that was collected during audit;

– law violations and suggestions in relation to the acceptance of measures of public prosecutor's reaction to their removal, bringing in to responsibility of guilty official persons and compensation for inflicted damages;

– suggestions in relation to the returnability of documents in case of their obtaining demand during an audit.

Resolution is brought in after summarizing materials that a public prosecutor got during test of implementation of laws. Also a volume and plenary powers of public servant to who this resolution is directed should be considered as well. Reasons of the educed breaches of law (factors that generate offence directly) ad conditions, that promote those violations should be always mentioned in it.

It's worth to mention that resolution is an act of reacting of public prosecutor on the educed breaches of law with requirements in relation to: removal breaches of law, reasons and terms, that they were assisted; bringing in of persons is to statutory responsibility; compensation of harm; abolition of legal act; stopping of illegal actions or inactivity of public and official servants.

It is important that a collective organ to which resolution is directed to is under an obligation to report about the day of it's consideration to the public prosecutor that has a right to participate in it.

As in case of rejection of resolution partly or in general or when public prosecutor is not warned about results of consideration of resolution and also if presentation wasn't brought in at all prosecutor can appeal to the court in relation to:

1) acknowledging legal act of corresponding organ partly or fully illegal;

2) acknowledging decision partly or fully illegal and about canceling this decision or its separate positions;

3) acknowledging illegal actions or inactivity, obligation to accomplish certain actions or restrain from them;

This right is given to public prosecutor by article 19 of Law of Ukraine «About administrative services» [6] actions or inactivity of the public servants authorized under the law to render administrative services can be appealed to court in the order set by a law. Any harm that is caused to the physical or legal by the public servants authorized under the law to render administrative services, by administrators as a result of their illegal actions.

Public prosecutor has 15 days to make a court appeal. It's calculated from the day of receiving a message about the rejection of presentation or in case of non-disclosure the results of consideration of resolution to public prosecutor from the day of completion of certain term for his consideration term in court.

It is worth to mention that responsibility for violation of legislation in industry of providing administrative services is provided by in article 19 Law of Ukraine «About administrative services». The indicated violations pull criminal, disciplinary, administrative, civil and financial responsibility in compliance with the legislation [6].

Criminal responsibility comes for the feasance of crime by a subject of publicly dangerous acts and is regulated by articles 236–238, 241, 253, 364–367 of Criminal code of Ukraine.

Pre-trial investigation begins in accordance with the requirements of article 214 of Criminal Procedure cod of Ukraine on results of an independent exposure during realization of supervision after inhibition and application of laws of circumstances that can testify to the feasance of criminal offence.

For example in 2013 in the indicated field over 60 criminal cases were started, over 2400 of resolutions are brought in, over 1500 public servants of public and local government authorities are brought to responsibility and over 2,7 million hryvnias recovered.

Taking into account actuality of development of the system of administrative services, question of observance of legality in this field is on permanent control of organs of office of public prosecutor.

In every fourth region of the state there are cases of imposing requiring payment for administrative services, and in every fifth the payment for those services has a difference from the one that is stated in law. Majority of local and executive government authorities don't provide openness, transparency and availability of information about administrative services. No actions are taken to rationally minimize amount of documents and procedure acts for getting administrative services. In separate regions official delegate their functions to the entities, creating opportunities to get illegal personal gain from it.

Founding for criminal responsibility is a feasance of publicly dangerous act that contains sign of crime according to Criminal code of Ukraine.

Disciplinary proceedings are set by public prosecutor in relation to public servants of supervisory organs for improper implementation by them their duties, position requirements, misconduct that discredits a civil servant, except disciplinary penalties (article 147 Labor code of Ukraine), such measures of disciplinary influence can be used as warning for incomplete official accordance, delay for 1 year of appropriation of duty grade or assigning for higher position (article 14 Law of Ukraine «On civil service»). According to Law of Ukraine «On the principles of preventing and combating corruption» in relation to public servant record can be drawn about the feasence of corruption acts.

Public servants that don't execute or execute not properly their duties in relation to providing administrative services, that discredit a person as a civil servant or public organ in that he works are brought to disciplinary responsibility. Civil servants can be brought to disciplinary influence except disciplinary penalties according to article 14 law of Ukraine «On civil service».

Administrative responsibility comes for the feasance of the offences envisaged by the articles 42, 78–81, 188-5, 188-11 of code of Ukraine about administrative violations. Public servants are brought to administrative responsibility without consideration or protest, binding over, presentation of public prosecutor or not granting the answer for them. Also public servants at the feasence of corruption acts and other offences related to the corruption are brought to administrative responsibility on the basis of Law of Ukraine «On the principles of preventing and combating corruption». Also public servants are brought to administrative responsibility for refuse in providing information, providing it not in time or not fully.

At exposure in the act of public servant or citizen signs of administrative crime, public prosecutor's first deputy makes a resolution in relation to bringing person to administrative responsibility.

Resolution about initiating of bringing person to administrative responsibility supposed to be reviewed in period of 10 days. Prosecutors resolution always must contain explanation in relation to the violation of law and describing how it violates it. Also explanation of a guilty person should be included as well [3].

Administrative responsibility for offences envisaged in article 9 code of administrative

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offences of Ukraine began if violations by the nature do not pull under the law criminal responsibility. In case non-fulfillment of legal requirements of public prosecutor or avoiding their consideration it is needed to affect a question out responsibility of public servants according to the requirements of article 185-8 of code of administrative offences of Ukraine.

In case when such violations are done by public servants of supervisor's organs civil servants accomplishing actions envisaged in the articles 1, 4 Law of Ukraine «On the principles of preventing and combating corruption» they can be brought to responsibility by a court even if when their offence related to the corruption, but does not contain crime elements.

For offence in the field of economic field offenders bear economic and legal responsibility by application to them of economic approvals on grounds and in the order, envisaged by Commercial code of Ukraine, other laws and contract.

For violation of tax law tax payers getting a fine the amount of which is regulated in articles 16-17 Law of Ukraine «On the order of redemption of obligations of tax payers to budgets and state funds».

Prosecutor shall take appropriate measures of the prosecutors reaction in relation to eliminate violations of law, conditions that promoted that violation and abolition of all illegal acts. Therefore, we can distinguish the following types of the prosecutors reacting: making a submission, initiating of disciplinary and administrative responsibility, starting pre-trial investigation and making a court appeal.

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REACTION OF PUBLIC PROSECUTOR TO REVEALING VIOLATION OF ORDER OF PROVIDING ADMINISTRATIVE SERVICES AS ELEMENT OF HUMAN RIGHTS AND STATE INTERESTS DEFENSIVE MECHANISM

The article is devoted to the analysis of legal providing and prosecutors reaction to revealed law violations during inspection of order of providing administrative services as a part of defensive mechanism and restoration of rights.

Also in this article legal framework of prosecutors work regulation about protecting human rights and state interests about order of providing administrative services is analyzed, as well as direction of prosecutors activity in this sphere.

Keywords: administrative services; inspection of law violations; prosecutors reaction; prosecutors resolution; prosecutors ruling; memorandum report; statement of claim.

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THEORY OF A STATE AND A LAW

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FROM EVALUATION OF LEGAL NORMS TO TECHNIQUE OF LEGAL MONITORING

To examine the effectiveness of legislation, law, Soviet scientists have turned 60 years of XX century. One of the main challenges that stand before legal science, was to prepare evidence-based recommendations for improving Soviet legislation. This activity is required prior understanding of approaches to the evaluation of the effectiveness of social law, which was supposed to improve.

At this stage of the legal doctrine assess the effectiveness of the law is seen as an essential element of legal monitoring. Technology is a complex legal monitoring of successive operations of the authorities, the scientific community, civil society in monitoring, analysis, synthesis, evaluation of legal acts and practices, legislative prediction directions of the legal regulation of social relations. The problems involved in evaluating the effectiveness of law Alekseyev S., Vengerov, V. Glazyrin, D. Kerimov, V. Kudryavtsev, A. Pigolkina, I. Samoshchenko, Y. Tikhomirov, L. Yavich and others.

Problems in the theory and practice of legal monitoring explore more foreign scientists, including Akmalova A., J. Arzamasov, T. Galiev, A. Dertyev, I. Zhuzhhov, Y. Tikhomirov, N. Chernogor, D. Schneider and others.

By cohort modern Ukrainian legal scholars and researchers monitoring include Y. Gradova, O. Zaichuk, V. Kosovych, A. Kopylenko and others.

In Ukrainian theory of law does not exist the concept of legal monitoring, no doctrine, no legal methodology of monitoring. This is one of the negative factors towards improving the mechanism of regulation.

The purpose of the article is the comparative analysis between the assessment of the effectiveness of the law that prevailed in the Soviet period and legal monitoring, review existing scientific literature looks at the key theoretical and practical issues in the area of legal monitoring.

One of the first issues that caused extensive scientific debate in connection with the development of methodology for studying the effectiveness of the legislation was the concept of «effectiveness of law» («performance rights»). In the legal literature of the Soviet period expressed different positions. The above concept is sometimes wholly or partly identified with the optimality, correctness, validity, feasibility same law [1, 9].

The effectiveness of law as well treated as the impact of his actions as best meet the objectives underlying the relevant rules. In addition, the concept of efficiency as the right of achieving the objectives associated with the maximum savings with

the material means of human energy and time. As the phenomena associated with the process of management effectiveness under the law to understand the relation between the actual results of their actions and those social goals to achieve which these rules were adopted. Some authors have included these concepts all the results of the right, the other – the only ones that are useful to society. In addition, the effectiveness of law was seen as a proportion of the onset of the planned results of the rules in relation to the occurrence of negative and secondary outcomes.

Thus, among the research that had the subject making the definition of «effectiveness of the law», can be singled out several areas. The most developed theoretically belongs concept I. Samoshchenko and V. Nikitinskij. The authors, considering the effectiveness of law as a phenomenon associated with the process of governance, defined this concept as the ratio between the actually achieved, the actual result and the purpose for which achievement adoption of appropriate law. Management process is cyclical, he begins with setting goals, objectives and ends with the execution of these tasks to achieve certain results. On the basis of information or failure to achieve the goal put new tasks, put forward a new target and the cycle begins again.

Based on this information the results (in the position to achieve this goal) is regarded as an essential element of public administration society. At the same time, scientists were not included in the concept of «efficiency» mandatory presence of a positive result and its maximum (optimal) degree, arguing that efficiency may be negative (minus sign) and expressed in varying degrees (low, medium, high) [1, 10].

Close to the specified position has been a point of M. Sharhorodskij that considered effective as an abstract concept that refers to the ability of the means to help reach the desired goal. The scientist noted that in determining the effectiveness of the law should take into account not only the results achieved by the legislator on the set goal, but circumstantial directly associated with them, which can be both positive and negative [2, 54].

In consideration of effectiveness in specific areas of law and specific legal institutions by many authors as understood by the efficiency of the respective legal regulations the extent to which the objectives. It was proposed that a broader interpretation of the concept of «performance rights», which included a reference to the usefulness, efficiency, optimality of the rules of law. Thus, A. Pashkov and L. Yavich noted that the social effectiveness of the law envisages objectively necessary and socially useful results for the building of communism [3, 42].

The problem of efficiency of law analyzed by scientists in close connection with problems of legal regulation in general, and the concept of efficacy included a reference to the rule of law objectively achieve the desired, positive outcome for the development of society. A similar position was expressed D. Chechot, considering the effectiveness of regulation as efficiency, effectiveness, ability to influence social relations in particular, it is useful to society direction [4, 3].

M. Lebedev suggested that the effectiveness of legal influence on social relations should be understood as the best results in achieving the goals of the legal requirements and common purpose. The content of the concept of efficiency is also proposed law include not only achieve these goals, but their performance with minimal cost of material resources, human energy and time. In this case, the basis of performance rights was given optimality of its action in terms of achieving maximum pursued his goals with the least expenditure of energy and resources [1, 12].

In modern legal doctrine is emerging concept of legal monitoring – a systematic, comprehensive activities to observation, analysis, evaluation of current legislation and practice, to improve the effectiveness of legislation and its subsequent prediction.

The object of legal monitoring is any legal act and its application. Subjects legal monitoring according to the chosen classification can be differentiated into two main groups – and the constitutional

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initiative, where subjects are constitutional public authorities (Parliament, the President, the Government and central bodies of executive power, the Accounting Chamber, the judicial authorities, prosecutors, Ukraine Parliamentary Commissioner for Human Rights), and are among the initiative of civil society (the Expert Committee of state authorities, scientific organizations and associations, corporate associations, human rights and environmental organizations, political parties) [5].Legal monitoring – dynamic organizational and legal institutions of information and the evolving nature of acting at all stages of operation management, economic and turns at every stage of the emergence and operation of law [6, 13].

Legal monitoring – a broad, multifaceted concept that encompasses several activities to ensure the high quality of all processes of legal society, while in some countries, while it used different models [7, 216].

The term «legal monitoring» also includes a sequence of related functions, from setting priorities and planning areas to gather information, cross-check information, reporting, analyzing information and following [8, 8].

Legal monitoring covers the stages of legal practice as the law-making process, evaluating the quality of existing legal acts and enforcement process. Legal monitoring are classified according to various criteria. Thus, depending on the stage of the legal regulation monitoring system consists of front design and monitoring of enforcement. Latitude range of objects of legal monitoring determines the allocation of its kind, both general and sectoral point. For the duration of the legal monitoring can be permanent, temporary, operational [9, 334–335].

All researchers, regardless of differences in definitions agree that the legal monitoring are: first, an effective way of controlling the quality of legal acts; secondly, to assess the effectiveness of a form of regulation; thirdly, the channel feedback regulatory acts and results of their actions; fourthly, tool making reasonable proposals to improve legislation and law enforcement practices, improving quality and efficiency of the legal system as a whole. Foreign researchers (Y. Arzamasov, T. Galiev, D. Gorokhov, T. Moskalkova, A. Nekrasov, L. Tikhomirov, Y. Tikhomirova and others). The concept of legal monitoring is defined as:

1) control method, as well as a «new legal technology»;

2) a system of supervision, monitoring, assessment, forecasting the state and dynamics of legal processes;

3) activities for the implementation of data collection, analysis and synthesis of information on the status of legislation, its application to identify their compliance with legal regulations planned results and expectations of the legislative process;

4) The information system of observations, which makes it possible to analyze and evaluate the results of the legislative process, the quality of legal acts and the effectiveness of their actions;

5) information and evaluation institution [6, 13];

6) scientifically and methodically based system of integrated assessment form, content and implementation of legal acts carried out by observation, obtaining various types of data, different training, monitoring analysis and projections [10, 32];

7) special work of government, which is the analysis of the normative material governing a particular area of public life, a generalized study of the application of legal acts and the development of the basis of proposals on ways of improving and regulation of social reality [11, 160];

8) systematic activities of public authorities with the analysis and forecast of development of Russian legislation and its application at different levels of legal regulation [12, 5];

9) carried out on a regular basis the activities of generalization and systematization of information necessary to assess, analyze and forecast the state and dynamics of law and practice (activity) to identify its compliance with the planned output regulation and expectations of the legislative process, officials executive, judicial and other bodies at all levels of

government, civil society and citizens [13];

10) is a special kind of applied scientific and legal cognitive activity that is a system for obtaining and analyzing information on the legal status of legal phenomena and its degree of adequacy of ongoing public policy;

11) a deliberate and systematic monitoring of the activities of tracking, analysis and assessment of legal acts, as well as the results of their application to monitor, forecast, improving the quality and efficiency [12, 56].

Instrumental value monitoring is that it can serve as a solution of the problem of creating an effective mechanism for law-making and the implementation of its results, reflecting the social needs. Increases the effectiveness of measures taken by the state to overcome legal nihilism citizens [14, 135–136].

A. Akmalova legal monitoring is defined as a method of control. With the development of information technology control and its types vary; may develop a dominant species, such as monitoring significantly in expanding its scope. This suggests the latter as relatively independent type control. However, it abolished the possibility of using monitoring as a method of legal control (supervision), as well as its technologies [15, 15].

It appears that the process of improving the legal system of Ukraine should include not only the evaluation of the effectiveness of the law, but also monitoring, analysis, synthesis, evaluation of the quality of legal acts and practices, forecasting areas of legal regulation of social relations. That is why the question of doctrinal development techniques as the legal monitoring of ongoing monitoring, analysis and prediction of the impact of the legal scope of particular relevance. In many countries, legal monitoring results are used to identify compliance with the legal system of the expected social outcomes. However, it is important for the whole system of Ukrainian legislation and its individual areas, and the development of subordinate law enforcement activities: obtaining and using expert assessments on the basis of the analysis in the process of prediction of legislation, improved enforcement outcomes in the management and jurisdictional system of the state.

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FROM EVALUATION OF LEGAL NORMS TO TECHNIQUE OF LEGAL MONITORING

The comparative analysis between the assessment of the effectiveness of the law that prevailed in the soviet period and legal monitoring committed. The existing scientific literature looks at the key theoretical and practical issues in the area of legal monitoring.

Keywords: legal technology; legal monitoring; regulation; legal expertise; legal prediction; the rule of law.

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STATE DISCIPLINE AS PRECONDITION FOR DEVELOPMENT OF A LEGAL STATE

Implementation of the state policy of Ukraine aimed at coherent and purposeful integration into the European Union, the deepening and expansion of cooperation within the Council of Europe and the Organization for Security and Cooperation in Europe requires that all legal subjects rigorously comply with strict state discipline, thereby contributing to the development of a democratic legal state and therefore consolidating the Ukrainian society.

Political, socio-economic, legal and institutional reforms, efforts to improve state bodies and to strengthen their effectiveness are require tightening state discipline and its modernization in accordance with present-day requirements in order to address a wide range of social issues and to successfully fulfill complex and responsible tasks facing the modern-day state.

State discipline is one of the factors of successful public administration, economic growth and social stability. In addition, like the rule of law, law and order, accountability, legal awareness, morality, culture, to name a few, it is an important socio-legal pillar underpinning the development of the State. Rigorous compliance with the requirements of state discipline, improved organization and accountability of all actors of social relations will help strengthen the credibility of the state in the international arena.

In the Soviet period the issue of state discipline was thoroughly studied by such legal scholars as S.S Alekseyev, O.T Barabash, Yu.P. Bytyak, D.O. Gavrylenko, A.A. Hornytskyi, V.M. Korelskyi, D.A. Kerimov, V.M. Kudryavtsev, P.N. Serheyko, B.M. Lazarev, O.Ye. Lunev, V.M. Manohin, P.F. Perevoznyk, M.P. Shestakov, V.V. Tsvetkov et al. At the turn of the XXI century certain issues of state discipline were researched by V.B. Averyanov, M.I. Anufriyev, V.S. Venedyktov, V.M. Garashchuk, A.F. Skakun, A.A. Starodubcev, M.S. Kelman, A.M. Kolody, V.K. Kolpakov, V.V. Kopyeychykov, O.V. Malko, D.V. Mamchur, O.H. Murashyn, O.S. Shmorgun, I.V. Lazor, S.L. Lisenkov, O.V. Panasiuk, G.P. Sereda, S.G. Stecenko, OM. Muzychuk, T.M. Radko, G.O. Fedorenko, N.M. Khoma, Y.S. Shemshuchenko, L.M. Shestopalova, among others. Analysis of works by these scholars suggests that state discipline in the legal literature is addressed in a variety of ways: as an operational procedure; as maintenance of a certain order; as a set of requirements to ensure coordinated and productive work; as a special type of lawful behavior, to mane a few.

However, the realm of state discipline, which is one of the preconditions for establishing the rule of law at the present stage of nation-building and law-making needs to be revised to take account of qualitative changes affecting in the legal awareness of the entire society and its individual members. The effectiveness of changes affecting the legal field and the level of legal awareness are closely intertwined, since it is the latter that predetermines the level of awareness and thus the level of involvement of individuals, all social groups and ultimately society as a whole in this process. In view of the above, the purpose of this article is to disclose the nature and meaning of state discipline as

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a prerequisite for building a legal state and to identify basic legal means of maintaining state discipline.

To describe theoretical and legal aspects of state discipline first and foremost it is necessary to determine the nature of this phenomenon. The issue at hand was interpreted by many scholars, according to whom state discipline is practical and real compliance with such standards and ensuing specific directives as are issued by the state represented by its bodies and officials [1, 5]. For example, A.A. Hornytskyi says that the essence of state discipline lies in the strict observance and fulfillment of the requirements of the state. In addition, laws and regulations issued by competent state bodies apply to all those being targeted by them [2, 12].

Revealing the content of discipline in the legal field V.M. Korelskyi links it to the concept of lawful behavior. Thus, the scholar points out: «Discipline is primarily a behavioral concept. It epitomizes a social assessment of human behavior in terms of its compliance with the objectives and interests of society, its legality or illegality, internal culture, sense of responsibility and ability to take initiative, etc.»[3, 78]. M.G. Molyev states that in essence discipline is a set of requirements for human behavior in any sphere of social life, which are associated with compliance with legal and other social obligations. Since the functional purpose of legal obligations is to do one's share of work in the mechanism of legal regulation and to encourage individuals to act in the right direction, it is possible to view the legal manifestation of discipline as compliance with one's legal obligations [4, 35]. In this respect it is worth noting that legal obligations do indeed play an important role in the regulation of social relations. After all, being part of the rules of conduct which themselves are part and parcel of state discipline, they are compulsory options of lawful conduct by entities which presuppose mandatory performance of active actions (active duties) specified in legal rules or avoidance of actions which are prohibited by legal rules (passive duties) [5, 295]. M.I. Matuzov and B.M. Semeneko each in due course emphasized that legal duty is a statutory measure of socially necessary, the most reasonable and advisable behavior aimed at satisfying the interests of society and the individual. In so doing, the scholars stressed that the case in point is an officially proclaimed and legally enshrined mandatory course of action pursued by citizens, organizations or public officials, the deviation from which is condemned and stopped by law [6, 59–60].

It should be noted that rights and freedoms represent the possibility to choose the type and extent of behavior, which is established by legal rules, whereas obligations represent the need provided by legal rules to undertake a certain type and extent of behavior and to meet statutory requirements of the state and society for a person's behavior. Obligations must be performed in due manner and with due regard for all requirements set for entities' behavior and related to the time, month, quantity, quality and the extent to which they are performed [5, 295].

Summing up the above-mentioned views of scholars on the nature of state discipline, we can conclude that its main components are its regulatory and legal nature; compliance with and execution of rules of conduct established and guaranteed by the state; the state or a state body as a compulsory party to relationships resulting from the implementation of the rules of conduct; a focus on streamlining and harmonization of social relations in a particular area of life.

A comprehensive analysis of discipline requires examining approaches to defining this concept. Thus, S.G. Stetsenko interprets discipline as deliberate adherence to such rules of conduct in state and social life as are established by legal and other social rules [7, 193]. In support of this definition, K.K. Afanasyev notes that it emphasizes the importance of respect for and compliance with requirements of different social norms by legal subjects, indicating their adequate legal awareness [8, 186].

According to O.F. Skakun, state discipline is the procedure which governs relationships, behavior, and activities and is established by the state for state bodies, institutions, enterprises, organizations, officials and citizens and it prescribes the manner in which they are to perform their tasks, roles and responsibilities [9, 508]. In his turn O.F. Andriyko defines state discipline as rigorous and strict compliance by all central government bodies and local governments, enterprises,

institutions and organizations, civil servants, officials and citizens with state-imposed rules of conduct, activities, and relationships, as well as a timely fulfillment of national objectives and commitments [10, 186]. Ts.A. Yampolsky and Ye.V. Shorina define state discipline as an established procedure which governs activities of state and civil society organizations, ensures their concerted and productive work, is based on consciousness and friendly cooperation and includes honest and diligent performance by each employee of their job duties as defined by laws and other legal acts and dictated by interests of the state and their civic duties [11, 48–57; 12, 157].

While defining the administrative and legal nature of the concept of «state discipline» V.A. Damayev identifies state discipline as a set of rules governing the accomplishment of national objectives and execution of legal rules enshrining rights and obligations of state bodies, enterprises, institutions, the mode of their execution and the actual execution of and compliance with these rules by all state and civil society organizations and their employees [13, 294].

Consequently, modern jurisprudence connects state discipline with the implementation of a certain procedure and compliance with and implementation of mandatory rules of conduct, requirements, etc., in order to regulate activities of state bodies, institutions, enterprises, organizations, public officials and citizens in a particular area of public relations in order to enable them to perform their tasks and duties.

It should be noted that one of the principles of a legal state is a legal form of activities of state bodies, their officers and employees, which, among others, are subject to state discipline. The legal form in itself is inherently linked to the rule of law since it is not only an extremely important and positive means of organizing and regulating social relations of power structures, a tool for organizing and regulating activities of state bodies and of the entire state mechanism on the basis of law, but also serves as a means of exercising control over government bodies and limiting their discretion [14, 102–105].

Being the objective basis of state discipline, legal rules create characteristic employment and professional conditions. The impact of the legal rules governing relations in the field of state discipline should be expressed through an appropriate stimulating effect on behavior of people, groups and society as a whole, that is, in socio-psychological, moral, political and economic aspects of social relations. The potential disciplinary impact of law is translated into real discipline only when legal rules are strictly and universally implemented and their provisions result in lawful behavior thus contributing to the smooth functioning of organizations and enhancing the effectiveness of manufacturing and other types of activities. It is through lawful conduct of legal subjects that controllable consistency of actions can be attained and state discipline and law and order in society can be enforced [15, 61–62].

Based on the rule of law a democratic society uses all means at its disposal and, above all, the power of persuasion, to enforce the required conduct. If this proves to be insufficient, the state resorts to coercion when dealing with individuals who avoid taking the widely recognized course of action.

It should be noted that legitimate coercion by the state is a legal means of enforcing law and depending on the purpose, grounds and the procedure of using coercion can be divided into types of responsibility for improper performance of duties and remedies for rights violations [16, 10]. One of the main forms of state coercion is negative (retrospective) legal responsibility arising from the offense and entailing negative consequences for the offender. This type of liability is exercised within protective legal relations between the state represented by its bodies and the offender who is to suffer the negative consequences of the offense prescribed by the relevant sanction stipulated by the respective legal rule [17, 609].

However, law is not just about prohibitive trends. Formation and development of a legal state bring into sharp focus positive legal responsibility that encourages positive legal activity of persons. For example, the Ukrainian society has been gradually strengthening positive legal liability as a means of strengthening state discipline due to a growing sense of national identity.

In terms of its content responsibility is a broad concept. As pointed out in the philosophical literature, it is an ethical and legal notion, reflecting an individual's

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specific social, moral and legal attitude to a society, which is characterized by the performance by the individual of his/her moral duty and compliance with legal rules [18, 267]. Responsibility is a manifestation of connection and interdependence of society and individuals [19, 250].

The concept of responsibility is revealed in two forms, namely, as public reaction to an individual's behavior (social responsibility); and as a system of individual's responses to society's demands of (personal responsibility) [20, 46]. Hence, society and the individual are locked in a relationship. On the one hand, society imposes on the individual a duty to engage in socially useful behavior, and on the other, it must assist the subject to exercise their rights and obligations and assumes responsibility for this [21, 498].

According to Yu.M. Oborotov, responsibility is a legal value and represents a mechanism of ensuring freedom which includes subjective rights and legal obligations [22, 39]. Emphasizing the need for a more in-depth description of legal obligations seen as a legal regulation tool and a means of strengthening constitutionality, rule of law and legal order M.V. Vitruk says that there is a growing realization that legal obligations along with personal rights and freedoms constitute a universal principle of democratization of public life, functioning of a legal state and implementation of the principle of justice and equality before law [23, 247].

It should be noted that a legal obligation and legal responsibility are interlinked legal concepts with the latter being part of a legal obligation and therefore including both negative (retrospective) and positive legal liability. However, according to V.M. Kudryavtsev, positive legal obligation and positive legal responsibility are not absolutely identical, but rather closely intertwined, with positive legal responsibility being broader than legal obligation in terms of its content [24, 26]. We will not go into a detailed discussion of this issue but will point out instead that like rights and freedoms, etc., legal obligations and legal responsibility are structural elements of the legal status of a person according to which the individual as a legal subject coordinates his/her activities and behavior in society.

The role of positive legal responsibility in strengthening state discipline can be seen in its content. Thus, one of the first notions of legal theory was an understanding of positive legal responsibility as awareness of one's legal obligation [25], realization of legal ramifications of one's actions and the link between such actions and applicable legal rules and willingness to answer for them before the state and society [26, 281]. O.S. Bondaryev thinks that such treatment of positive legal responsibility has encouraged scholars to study its subjective aspect and mental components such as the legal subject's knowledge and awareness of its legal obligations, formation of its attitude to such obligations and of readiness to fulfill such legal obligations, etc. [27, 134]. Other scholars suggest that positive legal responsibility should be viewed as a duty to adhere to requirements of legal rules and a duty to act lawfully [28].

A.P. Chirkov treats positive legal responsibility from the standpoint of actual lawful behavior. In his opinion, positive legal responsibility has nothing to do with the duty of legal subjects to obey law, or their rights and obligations. Instead, positive legal responsibility lies in their responsible behavior. At the same time, positive legal responsibility can not exist without obligations stipulated by law. The obligation provided by legal rules is the static of legal responsibility and the positive legal liability dynamics is fulfillment of these obligations. The scholar argues that throughout its development positive legal responsibility goes through such stages as enshrining of the rules of conduct in law, availability of appropriate obligations, registration of an entity legal status; development of awareness of these obligations, development of a certain mental attitude to these obligations and of behavior motives and lawful behavior. The basic idea is that positive legal responsibility is about lawful behavior, which reflects the dynamics of its development and implementation in legally significant positive actions [29, 11, 15].

Thus, legal obligations and positive legal liability are interrelated categories which, if taken together, represent an effective legal tool for ensuring state discipline, which is an essential precondition for building a legal state.

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Artyom SHTANKO

STATE DISCIPLINE AS PRECONDITION FOR DEVELOPMENT OF THE LEGAL STATE

The Article researches the concept and the notion of state discipline. The meaning of this state legal phenomenon as precondition for development of the legal state is explained. Key legal measures to enforce state discipline are determined.

Keywords: state discipline; legal state; affirmative legal liability; legal obligations; legal measure.

CONSTITUTIONAL LAW AND CONSTITUTION PROCEDURE

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UDC 342.71

THE PROBLEM OF STATELESSNESS OF CHILDREN IN UKRAINE AND LEGISLATIVE MEASURES TO ADDRESS IT

Since the moment of declaration of Ukraine's independence the problem of prevention and reduction of the cases of children statelessness remains pressing. Thus, it has to be mentioned that according to the results of All-Ukrainian census of 2001, there were 17 517 children among those stateless persons. In the case of other 40 364 persons, the existence or absence of nationality were not even stated [1].

To resolve the problem of legislative providing of prevention and reduction of the cases of statelessness of children, the appropriate scientific base is needed.

In the Ukrainian legal science some separate aspects of statelessness were researched by R.D. Bedriy [2], O.V. Zhuravka [3], M.I. Surzhynskyy [4], T.I. Mendergal [5] and others. In their scientific works they demonstrate the reasons of emergence of statelessness, including those of separate categories of population, its negative consequences for the person and the state, as well as concept and features of this phenomenon.

At the same time our national scientific literature does not pay enough attention to the problem of statelessness of children.

The main objective of this article is to analyze the legislative measures that were taken in Ukraine to prevent and reduce the cases of statelessness of children.

The right to citizenship is a fundamental human right. It is enshrined in Article 15 of the Universal Declaration of Human Rights of 1948 and the European Convention on Nationality of 1997.

It should be noted that the abovementioned international acts claim the right to citizenship, not the right to acquisition of citizenship. This question has its different resolution on children in international legal instruments.

Thus, provision 3.24 of the International Covenant on Civil and Political Rights of 1966 provides the right of every child to acquire a citizenship. In accordance with Chapter 1, Article 7 of the Convention on the Rights of the Child of 1989, from the moment of birth a child has the right to acquire a citizenship.

Although, the abovementioned international instruments do not specify which state has an obligation to provide this citizenship; international experts believe

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that the obligations regarding children are more clearly defined than those with other persons. According to them, children are guaranteed the citizenship to some extent, since it is provided in Chapter 2 of Article 7 of the Convention on the Rights of the Child that the member states shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, particularly in case when a child would otherwise be stateless. Thus, experts say in case a child was born in any territory and cannot acquire the citizenship of their parents, he has to acquire the citizenship of the territory he was born in; otherwise he will be stateless [6, 20].

It has to be mentioned that the right to citizenship of a child is also enshrined in Article 7 of the Law of Ukraine as of April 26, 2001 № 2402-III «On Protection of Childhood». However, this article provides that the Law of Ukraine «On the Citizenship of Ukraine» and other legal acts define the grounds and procedures for acquisition and change of citizenship.

There are several major reasons for statelessness of children. A child may become stateless as a result of territorial changes or collapse of the state. This was particularly a topical issue in Ukraine during the process of its legal succession in the field of citizenship after the collapse of the USSR. A child may become stateless as a consequence of the adoption. In particular, the child adopted by foreigners, can lose his citizenship and do not acquire the one of his foster parents if their state law does not provide such an opportunity immediately. A child may become stateless at his birth. The cases of stateless children in a particular state may occur as a result of migration as well.

During the course of legal succession in the field of citizenship, Ukraine chose a so-called zero option by defining the initial collectivity of its citizens. According to Article 9 of the Law of Ukraine as of September 12, 1991 № 1543-XII «On Legal Succession of Ukraine» all the citizens of the former USSR who at the moment of Ukraine's Independence proclamation (i.e. 24 August, 1991) resided permanently in its territory were recognized as the citizens of Ukraine. The lack of this law was that those stateless persons residing in the territory of Ukraine at the moment of Independence proclamation were not recognized as the citizens of Ukraine.

Thus, by the Law of Ukraine «On Legal Succession of Ukraine» the necessary conditions to define children's citizenship as Ukrainian were their citizenship of the former Soviet Union and residence in the territory of Ukraine as of 24 August, 1991. If any of these facts was unproven and in case a child did not get the citizenship of any other newly independent state after the collapse of the Soviet Union, this child became a stateless person.

Specificity of legal succession of Ukraine in the sphere of citizenship is that it has been carried out not only in accordance with the Law of Ukraine «On Legal Succession of Ukraine», but also with the Law of Ukraine as of 8 October, 1991 № 1636-XII «On the Citizenship of Ukraine», provisions of which were somewhat different regarding this issue.

Thus, in accordance with paragraph 1 of Article 2 of the Law of Ukraine «On the Citizenship of Ukraine», persons who at the time of its entry into force (13 November, 1991) were residing in Ukraine, regardless of race, color of skin, political, religious or any other beliefs, sex, ethnic or social origin, property, residence, linguistic or other characteristics and who were not the citizens of other states, were declared to be the citizens of Ukraine.

So, not only the citizens of the USSR were recognized to be the citizens of Ukraine, but stateless persons as well. In addition, the condition to acquire the Ukrainian citizenship by the abovementioned Article was to reside, but not permanently reside in Ukraine.

These innovations played an essential role in prevention and reduction of statelessness cases in our country overall, including children's cases.

The Law of Ukraine «On the Citizenship of Ukraine», regulating the citizenship of Ukraine at birth, predetermines the

provisions aimed at preventing and reducing the cases of statelessness of children (Article 13–16). In this case, the right of a child to acquire the citizenship of Ukraine at birth depended on the status of his parents and their residing in Ukraine. According to the Law, as the basis of child's acquisition of the citizenship of Ukraine at birth was the principle of the right of blood (born from the citizens of Ukraine) and jus soli principle (born in the territory of Ukraine).

In particular, in the context of this subject, the child, whose one of the parents had the citizenship of Ukraine at the moment of his birth and the other was a stateless person or unknown, was recognized as the citizen of Ukraine, regardless of place of his birth. In case of paternity of the child under the age of 14, whose mother was a stateless person and whose father was recognized as the citizen of Ukraine, the child became the citizen of Ukraine, regardless of place of birth. The child born in the territory of Ukraine from stateless persons permanently residing in Ukraine, was recognized the citizen of Ukraine.

An important for the prevention of statelessness was the provision of the Law under which the child who resided in Ukraine and whose both parents were stateless was recognized as the citizen of Ukraine.

However, the Law of Ukraine «On the Citizenship of Ukraine» doesn't resolve all the problems of reduction and prevention of statelessness of children. In particular, it doesn't contain all the possible grounds for children's acquisition of citizenship in Ukraine. What is meant is the acquisition of citizenship stipulated by the Ukrainian citizenship of one or both parents, and as a consequence of recognition of paternity or maternity or establishing the fact of paternity or maternity.

Those provisions by the Law on termination of the citizenship of Ukraine were inadequate in terms of necessity to prevent the cases of statelessness. In particular, the right to secession from the citizenship of Ukraine was neither stipulated by the acquisition of another citizenship nor by guarantees of its acquisition.

These shortcomings were partially eliminated in the Law of Ukraine as of 16 April 1997, № 210/97-VR «On Amendments to the Law of Ukraine «On the Citizenship of Ukraine» and were listed in the new edition. In particular, the regulation on definition of belonging to the citizenship of Ukraine was amended. Provision 3 of Article 2 of the Law of Ukraine «On the Citizenship of Ukraine» gives the opportunity to all the Ukrainian natives with no exception to determine their citizenship of Ukraine, regardless of the reasons for their leaving Ukraine, provided they don't have the citizenship of other states. Moreover, this right was extended to their descendants (children and grandchildren).

A significant role was played by the provision of Article 19 of the given Law under which the claim for secession from the citizenship of Ukraine could be refused if it could lead to the status of stateless person.

At the same time, the Law does not provide all the possible grounds for children's acquisition of citizenship in Ukraine that have the status of stateless person.

The new edition of the Law of Ukraine as of January 18, 2001 № 2235-III «On the Citizenship of Ukraine» duplicates the key correct regulations of the previous one, aimed at prevention and reduction of the cases of children's statelessness, as well as it has all the previous shortcoming concerning this issue eliminated. The main innovations of this Law in this aspect are as follows.

The regulations on acquisition of the citizenship of Ukraine by the person who was born from the stateless persons were amended. If in accordance with the previous version it could be only gained by the child born in Ukraine from the stateless persons permanently residing in Ukraine, then the new version says it can also be acquired by the person born outside Ukraine from the stateless persons residing in Ukraine permanently and on a legal basis, and who did not acquire at birth the citizenship of another country.

If a child was born from the stateless persons in Ukraine, according to the current version of the Law it is not necessary for them to permanently reside in Ukraine, but it is enough if they reside legally.

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The law provides additional grounds for children's acquisition of the citizenship of Ukraine. This means its acquisition in connection with the citizenship of Ukraine of one or both parents, and as a consequence of the establishment of paternity.

However, the grounds for acquisition of the citizenship of Ukraine by a child due to maternity or paternity establishment or the fact of maternity are not legislatively enshrined, as well as due to child's placement in a children's institution, health care facility, family-type orphanage or foster care, or due to child's bringing-up in a foster family.

The Law of Ukraine «On Amendments to the Law of Ukraine «On the Citizenship of Ukraine» played an important role in prevention of statelessness of children. Among its innovations, aimed at preventing the statelessness of children, the following should be mentioned: fixing new grounds for a child to acquire the citizenship of Ukraine as a consequence of the establishment of maternity or due to the fact of establishment of paternity or maternity, due to child's placement in a children's institution or health care facility, in an orphanage, family-type foster care institution, foster family; or due to passing a child under the foster carer's responsibility.

The new edition of part 3.8 of the Law of Ukraine «On the Citizenship of Ukraine» is also aimed at reduction of cases of statelessness of children under which the child born in Ukraine after August 24, 1991 who has not acquired the citizenship of Ukraine at birth and is a stateless person or a foreigner regarding whom there is an obligation to terminate his foreign citizenship, is registered as the citizen of Ukraine upon the request of one of his legal representatives.

The abovementioned innovations of the Law are fully harmonized with the relevant provisions of the European Convention on Nationality.

Legislative support for prevention and reduction of statelessness of children in Ukraine was carried out not only through the adoption and improvement of the Law of Ukraine «On the Citizenship of Ukraine», but also through the adoption of the laws on joining the international agreements in the sphere of citizenship, which became part of the national legislation of Ukraine under Part 1 of Article 9 of the Constitution of Ukraine.

It is necessary to emphasize the importance of Ukraine's joining the European Convention on Nationality of 1997 that, in contrast to the mentioned international instruments where the issues of citizenship are just listed among those available provisions, is a special international agreement on citizenship.

The European Convention has a considerable legislative array, aimed at preventing the statelessness of children as regards their acquisition, keeping and termination of citizenship.

It has to be noted that provisions of the Law of Ukraine «On the Citizenship of Ukraine» in the current version, aimed at reducing and preventing the statelessness of children, are mostly harmonized with the relevant regulations of the European Convention on Nationality.

Another key international legal instrument to prevent and reduce the statelessness of children is the Convention on the Reduction of Statelessness of 1961, ratified by the Verkhovna Rada of Ukraine on January 11, 2013.

Many provisions of the Convention on the Reduction of Statelessness in relation to the acquisition of citizenship by children are relevant with the provisions of the European Convention on Nationality. This is due to a number of provisions that have been introduced to the European Convention on Nationality from the Convention on the Reduction of Statelessness, as it is stated in the explanatory memorandum.

However, some provisions of the Convention are not fully consistent with the provisions of the Law of Ukraine «On the Citizenship of Ukraine».

In particular, Article 1 of the Convention on the Reduction of Statelessness provides that the contracting state shall grant its nationality to those born in its territory, who

otherwise would be stateless. A child born in wedlock in the territory of contracting state and whose mother had the citizenship of that state shall take this citizenship at birth if under other circumstances he would be stateless. The abovementioned regulation does not have the fact of legal residence of his parents in this country as a condition of acquiring the citizenship at birth by a child, as provided in Article 7 of the Law above.

In order to create appropriate conditions for the enforcement of these provisions it is advisable to remove their existing conflicts of law by making appropriate amendments to the Law of Ukraine «On the Citizenship of Ukraine».

Provisions aimed at prevention of statelessness of children include bilateral agreements on simplified procedure of change of the citizenship, signed between Ukraine and the Republic of Belarus (12 March, 1999), the Republic of Kazakhstan (19 May, 2000), the Republic of Tajikistan (6 July, 2001), the Kyrgyz Republic (28 January, 2003) and Georgia (March 1, 2007).

The most significant moment in these international agreements is that the termination of the previous citizenship and acquisition of the new one is implemented simultaneously. Thus, the emergence of the cases of statelessness is impossible. Each of these agreements contains separate articles that regulate the citizenship of children in case of changing it by one or both parents. The main idea of the provisions of the given agreements is that the child by no means has to become stateless due to their implementation.

As a conclusion, the legislative measures were consistently implemented in Ukraine according to international standards to reduce and prevent the cases of statelessness of children.

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THE PROBLEM OF STATELESSNESS OF CHILDREN IN UKRAINE AND LEGISLATIVE MEASURES TO ADDRESS IT

The article gives the analysis of the legislation of Ukraine, directed on preventing and reduction of the cases of statelessness and gives suggestions as for its improvement.

Keywords: child; stateless person; citizenship; the legislation of Ukraine on citizenship.

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UDC 343.16

LEGAL GROUNDS OF JUDICIAL DISCRETION FOR CONSTITUTIONAL JUSTICE

According to the Constitution of Ukraine, defining the acting principle of supremacy of law, its meaning and observance during the legal proceedings draws out broad scientific discussion. The rule of law is one of the most valuable achievements in the world. It is stated by the documents of the United Nations Organization, the Council of Europe, the European Union and it is shown in legal doctrine and constitutional acts of most states [1, 83–84]. Of particular importance will be the rule of law in the work of constitutional jurisdiction, the main purpose – to guarantee the compliance with the constitutional order, thereby creating conditions for the operation of law.

Problems applying to judicial discretion have been considered in the works by I.L. Petrukhin, I.E. Marochkin, V. Horodovenko, A.O. Selivanov, A. Barak, P. Rabinovich, S. Prilutsky, W.F. Pohorilko, V.P. Tykhyi and other researchers. However, despite a number of scientific papers on selected topics relevant issue is the definition of normative grounds implementation of the rule of law in constitutional justice in the context of judicial discretion. The above determines the relevance of this article.

Aim of research is to make analysis and synthesis of problems arising in implementation of judicial discretion, to research this phenomenon in the context of principle of rule of law and to define regulatory and legal basis for the application of constitutional justice.

The decisive role of the rule of law in the work of constitutional jurisdiction is due to an inseparable nature concerning the conceptual principles of structure and operation of legal state having its own constitutional jurisdiction as one of its features [2, 172]. Therefore, among other legal principles, the rule of law is defined as a fundamental one and it affects a number of public institutions to ensure a person's rights and freedoms.

First of all it is necessary to highlight the position of scientists on the concept of «rule of law». There is a position stating that the rule of law means the following: the positive law, created by people, should be based on natural law which restricts the government's power and serves as the original positive law filter. The rule of law gets its independent definition when they distinguish law and right. Thus the important conclusion is that this principle cannot exist beyond the doctrine of natural law.

In addition, special attention is focused on the fact that the rule of law is characterized as a rule of reason and it is associated with the following moral and legal values: justice, freedom, goodness, humanity. It is an important idea that this principle is universal and common, although it was historically considered only as a way of

limiting a state power and creating a legal state.

A right position was expressed by A.S. Dovgert whereby the real power securing the rule of law could only be a civil society [1, 83–84]. Note that the most common scholarly views on the rule of law are pointed at the essence of natural law original character.

The literature indicates that in continental law the rule of law is largely an expression of the rule of law because of the dominance of legal positivism. Therefore, there predominates a principle of legality based on an understanding of just law [3, 178]. Article 8 of the Constitution of Ukraine declared that in Ukraine they recognized the effective rule of law under action, acknowledged the supremacy of the Constitution and the principle of direct result of their provisions. However, they do not exhaust the rule of law and are not self-sufficient for its understanding.

The above can fully confirm the opinion of A.O. Selivanov, who relates the herein before to constitutional justice, because, according to the author, the protection of the Constitution of Ukraine by the court of special jurisdiction really helps people to achieve the real priorities of democracy, human values, justice of authority over which there is judicial control [4, 102].

As notes Professor V.F. Pohorilko, the Constitution of Ukraine is the only law having the highest legal force of a legal act through which the Ukrainian people and the Ukrainian state express their sovereign will, assert basic principles of social order and state the basis of legal status of a person and citizen, express the system and functions of state power and local self-government mechanisms for implementing public authority and territorial structure of the state. In all countries the constitution is one of the most respected contemporary social values [5, 53, 56].

It is essential that the decision of the Constitutional Court of Ukraine is based on the rule of law within the meaning of having to assert human rights, not to violate the freedom and strengthen the credibility not only of the Constitutional Court of Ukraine, but also, in its authority, to all public institutions. In particular, by the decision of the Constitutional Court of Ukraine, laws or other legal acts must be considered as unconstitutional ones, in whole or in part, if they do not comply with the Constitution of Ukraine, or if there was a violation of established constitutional provisions for their review, approval, or enactment. They must cease to be applied to from the day the Constitutional Court of Ukraine accepts a decision on their unconstitutionality [6, 64].

Crucial in this regard is the decision of the Constitutional Court of Ukraine in the case of giving the constitutional petition by the Supreme Court of Ukraine on the conformity of the Constitution of Ukraine (constitutionality) of the provisions of Article 69 of the Criminal Code of Ukraine (the case of appointment by a court more lenient sentence) № 15-rp of November 2, 2004. The decision stated that in accordance with the first paragraph of Article 8 of the Constitution of Ukraine the rule of law is recognized to be effective. The rule of law is a supremacy of a rule of law in society. The rule of law requires the state to do its implementation in law-making and advocacy, including the fact that the laws content should be first soaked with ideas of social justice, freedom, equality and so on.

One manifestation of the rule of law is that the right is not limited by law as one of its forms, and includes other social regulators, including moral norms, traditions, customs, etc., are legitimated by society and reached historic, cultural level of society. All these elements are combined right quality that meets the ideology of justice, the idea of law, which largely got reflected in the Constitution of Ukraine.

On this occasion, as it is noted by Professor P.M. Rabinovich, this understanding of the law provides no basis for its identification with the real law, which can sometimes be unfair, including limit freedom and equality of individuals. Justice – one of the basic principles of the law is crucial in defining it as a regulator of social relations, one of the dimensions of human rights [7].

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To determine the normative grounds of judicial discretion in the implementation process of justice there should be determined the legal process which is carried out by the Constitutional Court of Ukraine. According to the wording of Article 30 of the Law of Ukraine «On the Constitutional Court of Ukraine» [8] (Organisation of the Constitutional Court of Ukraine) the issue of proceedings and activities of the Constitutional Court of Ukraine, the Secretariat, the procedure for record keeping, internal regulations, the Constitutional Court of Ukraine shall be determined by this Law and acts of the Constitutional Court of Ukraine, which shall govern the inner workings of the Constitutional Court of Ukraine.

Detailed analyzes of the abovementioned regulation makes it impossible to conclude that a wide selection of examples exists in the law that would oblige judges of the Constitutional Court of Ukraine to use discretion in the implementation of constitutional justice. This position of the legislator seems quite justified, because the specificity of the above-mentioned kind of legal process is usually associated with the legal relationship of a public law nature, its context determines the need for rigorous formalization of proceedings and, consequently, limits the use of discretion.

Depending on the legal criterion the judicial discretion in the administration of justice can be conditionally divided into two groups:

a) discretion in the substantive sense (iuris substantivi), which provides for such an officer the opportunity to apply their own understanding of the substantive law regarding this relationship;

b) discretion in procedural understanding (iure processuali), which defines the limits of the possible behavior of a judge under the procedures of some procedural areas of law.

Consideration of the substantive part of the constitutional process in this study seems unlikely and unpromising in terms of the principle of scientific thrift. As for the Constitutional Court of Ukraine, a case may be transferred to the court, the subject component of which serves in accordance with the Basic Law of any legal act, regardless of industry sector of its rules.

As for the procedural component of the studied variety of legal process, as noted above, it is quite clearly expressed mandatory, but we cannot say that the referee's discretion is actually absent. Present examples of the latter, in particular, include the following:

1) Part 2 and 3 of Article 55 of the Law of Ukraine «On the Constitutional Court of Ukraine» (Members of the constitutional proceedings) gives judges the opportunity to apply discretion in matters of adjournment proceedings or proceedings in the absence of the members of the constitutional proceedings on the reasonable excuse;

2) Part 2 and 3 of Article 60 of the abovementioned legal act (administrative fee) set right for this kind of officials to determine on their own will the kind of sanction for abuse of constitutional appeal as recovery from such person of public duty, and the ability for judges to recognize the legislative act as unconstitutional one wholly or in a separate part of it;

3) Part 2 and 3 of Article 70 of the researched legal act provide judges the right, if necessary, to determine to their judgment or opinion the order and timing of their implementation, as well as to make the state authorities to take the responsibility for implementing the decisions, adherence to an opinion and require the written confirmation of the decision, the observance of acts of the Constitutional Court of Ukraine;

4) Article 74 of the Law of Ukraine «On the Constitutional Court of Ukraine» (Legal settlement that arose as a result of the act declared as unconstitutional) determines that the Constitutional Court of Ukraine can point to prejudicialness of their decision when considering by the general courts of claims in respect of legal relationship, arising as a result of the unconstitutional act;

5) Article 80 of this regulation (Participation in the constitutional proceedings) establishes rules according to which the

Constitutional Court of Ukraine may involve participation in the proceedings of the representatives who appointed elections, an All-Ukrainian referendum or a local referendum in the Crimea and bodies who are in charge of the elections or referendums, representative of the Central Electoral Commission and representatives of the government, local authorities or bodies entrusted with the authority to conduct elections, referendums.

In addition, if necessary, the Constitutional Court of Ukraine may involve participation in the trial of political parties and other public associations;

6) Article 99 of the said Act (Involvement in the constitutional proceedings) provides that, if necessary, the Constitutional Court of Ukraine may involve participation in the proceedings of representatives of parliamentary factions in the Verkhovna Rada of the Autonomous Republic of Crimea.

So, summing up the conducted research in this article it should be noted that the legal use of conditionality mechanism of judicial discretion occurs across all kinds of legal processes (procedures) within Ukraine, including the constitutional proceedings on the basis of its specificity. In general, the implementation of judicial discretion is present at the level of legal principles, including the rule of law, at any area of law where legal implementation is carried out in the court. The above applies to the full exercise of constitutional justice in Ukraine.

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REGULATORY AND LEGAL BASIS OF IMPLEMENTATION OF JUDICIAL DISCRETION IN CONSTITUTIONAL PROCEEDINGS

Analyzed and summarized the problematic issues that arise during the implementation of judicial discretion. Studied this phenomenon in the context of the principle of rule of law and defined legal grounds for its use in the constitutional proceedings.

Keywords: the rule of law; Constitutional Court of Ukraine; constitutional litigation; judicial discretion.

CIVIL LAW

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THE ACQUISITIVE PRESCRIPTION AS A WAY OF ACQUISITION OF RIGHTS TO THE PROPERTY

An innovation in the Civil Code (hereinafter referred to as the CC) of Ukraine of 2003 is legalization of the acquisitive prescription institution. Although, as we know, this institution was used in the legislation of other countries and has existed since Roman times. The acquisitive prescription is a means of consolidating property for entities owning it, when they are unable, due to certain circumstances, to confirm the grounds of rights, and in other situations. The ownership rights may be acquired both for abandoned things and property belonging to other person based on the right of ownership. The appearance of the acquisitive prescription institution is rightly associated with the needs of the civilian circulation. That is, if the property is found to be possessed by an illegal possessor, it could not be return to the civilian circulation without a direct violation of the owner's rights. However, the owner, missing the limitation period or for other reasons, cannot regain possession without violating the rules set to protect the illegal possession. Thus, the law decided these contradictions in favor of the civilian circulation: thanks to the acquisitive prescription, the possessor becomes the owner, while the owner loses his/her right to the property.

However, the domestic civil law does not pay much attention to research the acquisition prescription as a way of acquiring title to the property. Some aspects of the problems being researched were covered in the writings of local lawyers such as T. Vakhonyeva, V.P. Hrybanov, A.V. Zhhunov, V.V. Luts, Z.V. Romovska, Ya. M. Shevchenko, O.S. Yavorska et al. A comprehensive analysis of the problem was covered in the dissertations by V.I. Tsikalo and V.P. Makoviy. In the Russian Federation, the acquisitive prescription has been the subject of the dissertation researches by M.Yu. Bubnov, V.V. Voronoy, L.A. Zelenskaya, M.B. Kalmyrzayev, V.V. Lapina, N.M. Hayrullina et al.

So, we can set the goal to explore the nature, characteristics and legal nature of the acquisitive prescription as a means of acquiring title to property.

The acquisitive prescription was legalized in Art. 344 of the CC of Ukraine

«1. A person, who honestly took in possession another's property and continues openly and continuously possess the immovable property during ten years or movable property during five years, acquires the ownership right of the property (acquisitive prescription), unless otherwise specified in this Code.

The ownership right of land by acquisitive prescription is regulated by law.

The ownership right of the immovable property that is subject to state registration occurs by the acquisitive prescription after state registration.

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2. A person who claims the acquisitive prescription may include to the period of his/her possession the whole period during which the property was owned by the person whose heir (successor) he/she is.

3. If a person took possession of the property under contract with the owner, who after the expiry of the contract did not claimed for its return, he/she takes ownership by the acquisitive prescription for immovable property in fifteen years, and for movable property in five years after the expiry of the limitation period.

Loss of the property by the possessor unwillingly does not interrupt the acquisitive prescription in case of returning the property within one year or filing a claim of its vindication within this period.

4. The ownership right of the immovable property, vehicles, or securities by the acquisitive prescription shall be acquired by the court decision» [1].

Placing of the acquisitive prescription institute in Chapter 24 of the CC of Ukraine «The Pight of Property» suggests that this prescription shall be seen as one way of acquiring title to property.

The purpose of the acquisitive prescription is consolidation and registration of the ownership right for the property by its actual owner [2, 125]. Due to the expiry of a period, it allows to take in possession the property that satisfies the conditions specified by the legislator, it «primarily serves to identify and consolidate certain rights when the evidence of their acquisition disappeared or were eliminated» [3, 120, 321].

V.A. Ryasentsev defines the acquisitive prescription as a statutory period upon the expiry of which the ownership right for another's property occurs in the person who owned it honestly and openly as the owner» [4, 21]. That is, in fact, we are dealing with the acquisition of ownership due to the prolonged possession of a thing [5, 62]. The acquisitive prescription should also be regarded as expiration of the defined term under the conditions established by law, which is aimed at acquiring by a person, who possesses another's thing, ownership or other rights to this thing [6, 52].

The domestic civil law considers the acquisitive prescription in a narrow (as a civil institution) and wide (as a complex legal fact, which is the basis of property rights) understanding [7, 16].

As a civil institution, the acquisitive prescription is a system of the civil law, which regulates homogeneous relations concerning determination of the fate of property, which is in the possession of the person within the statutory time.

As a complex legal fact, the acquisition prescription is a systematic set of legal facts (legal structure), which is the basis for the emergence of property rights in a particular subject of civil relations. For movable property, the basis of ownership by the acquisitive prescription is a legal structure that includes legal facts: acquisition in good faith, open and continuous possession, expiration of the statutory period. For a legal structure, resulting in the emergence of ownership of the immovable property, the characteristic is the presence of two additional legal facts – the court decision recognizing the right of property and its registration [7, 33].

As you know, the civil law divides all legal facts forming the legal ownership rights into primary and derived. In primary legal facts, the ownership right to a thing occurs at the first time or independently on the will of the previous owners, while in derived legal facts, the ownership right occurs as the result of the will of the previous owner.

The acquisitive prescription can be considered as one of the primary ways of the acquiring property rights, for the rights of the possessor are not dependent on the will of the previous owner, but depend on the totality of the circumstances specified in Part 1 of Art. 344 of the CC – acquisition integrity, transparency and continuity of the future ownership. Incidentally, the acquisitive prescription, as noted above, occurred not in this area, but in the circulation, and it is demands of the latter that explain its reproduction in our legislation. So, taking into account the provisions of Articles 344 and 335 of the CC, by the acquisitive prescription the ownership right can be acquired both to the derelict and to the property owned by the ownership right by another person.

It should be noted that the law distinguishes the acquisitive prescription of these grounds of property rights as a discovery, treasure,

right to a homeless pet, a moving thing, the owner of which refused (Part 3 of Art. 335 of the CC). That is the regulations of Articles 336, 338, 341 and 343 of the CC are special, but in case if they cannot be applied for the settlement of any situation, the provisions of Art. 344 of the CC [7, 23] must be used.

The Civil Code contains special requirements for the possessor – he/she is not the owner of the property (which is alien to him/her), that is he/she did not acquire title to the property for other grounds provided by law.

Among the circumstances in which the law defines the emergence of the property rights by means of limitation, there is such a condition as good faith acquisition that involves awareness of his/her will expression by the subject at the moment of the acquisition of the certain property. That is a will sign shall take place at the beginning of acquisition, because the further possibility of ownership shall depend on how the acquisition was made.

The ownership by the acquisitive prescription, above all, may occur to the property suitable for ownership, which refers to any form of ownership other than that which has been removed from the civilian circulation. By the acquisitive prescription, possession cannot be acquired for incorporeal things that are not the subject of property rights, so the plaintiff is not entitled to refer to the good faith acquisition of the property, such as trademarks or other rights to the results of intellectual property, as well as to share in the authorized capital of a business partnership. However, the provisions of Art. 190 of the CC and Chapter 14 of the CC give reasons to argue that the securities, both in documentary and non-documentary form, in particular may be the subject for which there is ownership by virtue of the acquisitive prescription, as also stated in Part 4 of Art. 344 of the CC.

To acquire the ownership right of another's things by the acquisitive prescription under Art. 344 of the CC of Ukraine, the following conditions shall be required: the property that found to be in the possession of the person must be objectively non-owned; the owner of the property must be a good faith purchaser; the ownership was open during the whole period of possession; the ownership continued uninterrupted; the term of ownership of the immovable property is 10 years, the movable property – 5 years. Pursuant to Art. 119 of the Land Code of Ukraine, such a period for land is 15 years [8].

A bona fide purchaser is a person who does not know and cannot know that he/she possesses another's thing or property. As one of the general principles of civil justice, integrity means the actual fairness of entities in their behavior, striving to protect diligently the civil rights and to enforce the civil obligations. In resolving disputes related to the acquisitive prescription, court must take into account the integrity at the time of transfer of property (a thing) to the plaintiff, i.e. the initial moment, which will be included into the whole period of the acquisitive prescription prescribed by law. As an illegal owner, the plaintiff, during the whole period of possession, must be sure that the property is not claimed by others, and he/she got the property on the grounds sufficient to have ownership of it.

In accordance with Paragraph 8 of the Final and Transitional Provisions of the CC, rules of Article 344 of the CC of the acquisitive prescription shall also apply to cases where possessions began three years before the effective date of this Code. Thus, the question of acquiring title to the immovable property could not be resolved by court before January 1, 2011.

Transparency of ownership means publicity of the ownership, i.e. availability of the property of third parties, access to it, obtaining the information about it, etc. Openness is the opposite of secrecy when there is suppression of the fact of the possession of property by the person. In the last case, the property is used so as to hide it from others. However, this does not mean that the possessor must specifically inform others of his/her possession. The acquirer must own property without any suppression of this fact, because there will be a suspicion and doubt in good faith, and therefore in open possession. Therefore, the requirement for transparency of the ownership provides a balance of interests and provides the owner with the guarantees to reclaim property [9, 185].

Continuity of the long-standing ownership means that the long-standing term shall run

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within the statutory period without obstacles and gaps in time. Continuity of limitation indicates permanent possession of the property by the person, i.e. the property in its actual domination. In addition, continuity means obviously that the possessor who seeks to become the owner should not leave the property, i.e. take actions that clearly indicate the removal of ownership. Analysis of the rules of the acquisitive prescription provides an occasion to recognize that continuity of the ownership is not refuted by replacing the possessor with his/her successor and does not necessarily mean a permanent physical impact of the possessor on the property. Possession of a thing should be only potential; the possessor shall not have to carry it every minute. In particular, when leaving the house the possessor keeps in touch with the property that remained at home.

At the same time, the term of acquisitive prescription can be interrupted, for example, in the case of loss of property by the possessor unwillingly. The same can happen as a result of failure of the possessor of ownership, even if after a while this possession resumed. These circumstances are factual in nature. Paragraph 2 of Part 3 of the said Article distinguished the property that the owner lost unwillingly and that was returned to him/her within a year or if the property was vindicated within the specified period. With regard to this category of the property, the acquisitive prescription is not interrupted, i.e. the legislature assumes the presence of continuity in this case. Break caused by the presence of the rest of the factual circumstances is that, keeping the conditions of the long-standing possession, the long-standing period runs initially, while the time that elapsed until the break, is not included in the total duration of such possession.

Subject to the provisions of Part 2, universal and singular succession is not the circumstances that interrupt the prescription. In particular, transition of the property by inheritance that has been under the influence of the acquisitive prescription does not interrupt it. The possession that began by one legal entity, in the case of its restructuring will be carried out by another legal entity that became the successor of the former.

When sale, gifting, changing property, the acquisitive prescription also continues to run for the successor. Transfer of the property by the possessor to another person by lease, free use, storage and other agreements does not interrupt the acquisitive prescription, too. It is necessary to point out that taking into account the analysis of the said article, to the successor a good faith is not a mandatory attribute both at the time of acquisition (the long-standing ownership continues) and beyond.

Analysis of the provisions of Articles 397, 398 of the CC allows us to assert that the long-standing possession is illegal, i.e. such that has no proper legal basis (title). It should be noted that in the event of the circumstances specified in Part 3 of the Article on the acquisitive prescription, the legitimate possessor after the expiration of the contract (legal basis) becomes the illegal and at the same time mala fide possessor (who knows or should know of the fact of the illegality of his/her possession).

Otherwise, the long-standing possessor at the time of acquisition of the ownership does not know and should not know about its illegality, because otherwise an item such as integrity during acquisition falls out of the legal structure of the acquisitive prescription. However, further understanding of the fact of his/her illegal possession by the long-standing possessor does not play any role for acquisitive prescription. Thus, one more attribute of the long-standing possession is its illegality or lack of legal grounds for possession.

For the occurrence of legal implications associated with the acquisitive prescription, important is the end of the statutory period. Prior to that, regardless of how much time has passed, the legal effect does not occur. The law does not attach importance to the facts of inactivity of the owner and prolonged non-use of his/her right. Consequences of the long-standing period considerably depend on the fact of expiry. Time in excess of the prescribed time limit no longer plays any legal role because with the end of the statutory period the ownership has occurred.

In general terms, in accordance with Part 1, terms of the long-standing possession are 10 years for the immovable property and

5 years for the movable property. However, Part 3 defines a different term in relation to the property received by the possessor under a contract with the owner, if the latter does not request for the return of property – namely 15 years.

These terms are defined imperatively, so they cannot be prolonged or shorten by will of participants of the civilian circulation. Also, they cannot be changed by bylaws.

Terms of the acquisitive prescription can be described according to the standard classification of civil law terms. By the grounds of identification, they may be referred to as such that are specified by law. By the degree of autonomy of participants, they are imperative, i.e. not subject to change by agreement of the parties. The law defines the terms as the end of a certain period of time that in terms of acquisitive prescription is calculated for years.

When describing the terms, important is determining the initial and final moment of their occurrence. In terms of the acquisitive prescription, under Part 1 of Art. 254 of the CC, the end moment of their occurrence shall be the appropriate month, the number of the last year of the term. That is, in the case of movable property – a corresponding day of the relevant month of 5th year.

Article 253 of the CC determines that the period starts from the day after the calendar date or an event related to its beginning. In case of the acquisitive prescription, the starting point of the term shall be obviously the next day after taking possession of another's property without proper grounds and in good faith. If the possession of the property is lawful (contractual), the term of the acquisitive prescription begins from the day after the date on which the statute of limitations expired concerning the property.

In view of the provisions of paragraph 3 of Part 1 of Art. 344 of the CC, title to the immovable property that is subject to state registration occurs by the acquisitive prescription after registration. At the same time, Part 4 of Art. 344 of the CC states that ownership of the immovable property, vehicles, or securities by the acquisitive prescription shall be acquired by the court decision. That is for legalization of ownership of the said objects of civil relations arising from the acquisitive prescription, in case of a dispute, a person should go to the court for setting the actual composition of the acquisitive prescription or a claim for recognition of ownership acquired by the acquisitive prescription.

After the court decision regarding the property, the long-standing possessor must register the property to turn into the owner. According to Art. 182 of the CC, the procedure of state registration of the immovable property rights shall be established by law. This special legal act is the Law of Ukraine «On State Registration of Rights to Immovable Property and Their Limitations» of July 1, 2004 No. 1952-IV (as amended by Law No. 1878-V) of February 11, 2010 [10].

The term of the acquisitive prescription begins with the moment of possession. However, the legislator established an exception of the general rule of Part 1 of Art. 344 of the CC. By virtue of Part 3 of the same Article, the course of the period in respect of the property, of which the person took possession under contract with the owner, who, after the expiry of the contract, did not present the request for its return, starts in fifteen years for the immovable property, and in five years for the movable property after the expiry of the limitation period.

This is due to the fact that during this period the property can be compulsorily required by the legal owner by vindicatory action, and illegal possession cannot be considered bona fide. This is a general term of three years. The above indicates that the course of the term necessary for acquisition of ownership by the acquisitive prescription shall be interrupted by actions of the possessor who acknowledges his/her obligation to return property (thing) to the owner as well as the owner's (or authorized person) claim for the return of property. After such an interruption, the acquisitive prescription (provided that the conditions necessary for acquisition of ownership rights are again available) begins to run again, while the term that ended prior to interrupt shall not be included to the new term of the long-standing possession [11, 427].

In summary, we shall note the following:

– the ownership right of the immovable property can be acquired only by the

acquisitive prescription after January 1, 2011;

– meeting the court requirements for recognition of title to the immovable property for the owner under Article 334 of the CC is possible only if the necessary conditions are met: integrity of acquisition, transparency, continuity of possession;

– by the acquisitive prescription, the title to the immovable property can be acquired that has no owner, or the owner is unknown, or the owner gave up ownership of the rightful immovable property and the property acquired by a bona fide purchaser and demand of which by the owner has been denied;

– the deadline of the acquisitive prescription begins with the acquisition of immovable property; in the event the possessor seized the property under a specific agreement with its owner, the term of acquisitive property shall be calculated from the date of expiry of the limitation period;

– in case of loss of property by the owner unwillingly (removal of the possessor from owning the immovable property), failure to return the property in the possession and no claim for demand of such property within a year, the acquisitive prescription period shall be interrupted; when returning property in the possession or making a claim about its demand, the acquisitive prescription period shall not be interrupted, and the period during which the possessor had been unwillingly deprived of possession shall be included in the acquisitive prescription period.

So, the acquisitive prescription is an extremely important legal institution as it protects the actual owners of the property against requirements of other non-owners and those who have no real rights to the property and provides an opportunity to return the property in the civil circulation.

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Oleksandr GOLOVKIN

ACQUISITIVE PRESCRIPTION AS METHOD OF ACQUISITION OF RIGHT OF OWNERSHIP ON PROPERTY

Complex research acquisitive presccription as a new institution of civil law and complex legal fact. The essence, characteristics and legal nature of acquisitive presccription as a way ot acquiring title to property.

Keywords: acquisitive presccription; property; method of acquisition of right of ownership; honesty of possession; openness of possession; continuity of possession.

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FINANCE LAW

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THE PROBLEMS OF LEGAL SAFETY OF FINANCIAL SYSTEM OF UKRAINE

The stable and effective functioning of the financial system of Ukraine is an important factor of realization of the functions by the state and municipality organs. The inalienable constituent of the financial system of Ukraine is a mechanism of it legal safety, which provides implementation of financial duties legal and physical entities by the state, municipality organs and observance of financial legal relationships of orders of legislation subjects, including the system of different facilities (including measures of public compulsion). It is directed on warning, exposure, stopping of illegal acts of participants of financial legal relationships.

The amount of violations of financial legislation has grown in the last few years, as well as financial harm, inflicted the public funds of money, above all things to the State budget of Ukraine and local budgets. In accordance with Report on the results of activity of the State financial inspection of Ukraine and it territorial organs for 2013 found out 5 595 financial violations which resulted in the losses of financial and financial resources to the amount of 3 689 178,16 hryvnyas. Due to the effective legal safeguard of the financial system of Ukraine it is possible to remove financial offences and turn financial resources to the budgets and other public funds, what of them received less in the case of their feasance.

The mechanism of legal safety of the financial system of Ukraine includes the measures of public compulsion for violation of financial legislation, question, in relation to which examined in labours of V.D. Ardashkina [1], T.O. Kolomoets [2], I.S. Samoschenko and M.H. Farukshina [3] and other scientists. The separate aspects of their application became the article of research of representatives financially legal sciences, in particular, A.I. Ivanskogo [4], L.K. Voronovoy [5], N.Y. Prishvi [6], N.A. Sattarovoy [7], V.V. Sergeevoy [8] and others. At the same time the questions of legal safety of the financial system of Ukraine need subsequent research.

This is a definition of certain terms, as when a new edition of the Budget Code of Ukraine dated 8 July 2010 (BC Ukraine), the Tax Code of Ukraine on December 2, 2010 (TC Ukraine) and other regulatory legal acts occurred significant changes in the use of different legal regulation issues.

In view of the purpose of the article – the theoretical justification of the contents of the mechanism of legal protection of the financial system in general and state

specific activities and characteristics of their application to business finance, as well as providing recommendations for improving legislation in this area.

However, we note that certain terms in this area do not fully reflect the public nature of financial relationships and to guide the behavior of their subjects to the publication of financial interest [2, 13]. Certainly, various measures including forced using the legal protection of the financial system of the state, are public, as applied to public authorities powers. Therefore there is reason to use both common and separate concepts under «public enforcement» and «public financial and legal coercion». General public offering financial and legal coercion defined as a system of public enforcement action in the form of limitations for personal, organizational or material nature applicable Designated Authorities for the protection of the financial system of Ukraine, observance of proper conduct in the financial sector of the state, local governments and the prevention and suppression of offenses and when they occurred – the punishment of offenders.

Consider measures of public enforcement, a system which most scientists – V.D. Ardashkin, I.S. Samoshchenko, M.H. Farukshyn – defines as: accountability measures and coercive measures – the latter directed only to the restoration of the rule of law and do not involve the implementation of free, educational spout punishment [3, 54–61]; preventive measures, the use of which serve as the basis of the presumption, that legal predicting the possibility of socially harmful conduct certain subjects [1, 36].

A financial and legal science (A.I. Ivansky, N.A. Sattarova, V.V. Sergeyeva, N.Y. Pryshva) proposed a set of measures to consolidate public enforcement:

– warning, stopping, recovery [4, 11–12] (fine, penalty), the application of which is possible in the form of liability for tax violations, special security measures and enforcement of tax debt [3, 162];

– preventive suspension, provopoulos punishing [6, 128–129];

– prevention measures (prevention), termination, Praveen, legal liability [7, 26–28].

Analyzing these and other scientific approaches need to be specified as criteria for the classification of measures of public enforcement, and the names of the individual activities and their groups. I agree with the opinion T.A. Kolomoets regarding the division of such events on the criterion of «application» into two separate groups, and the first to include measures, the use of which is not related to the wrongful acts of the subjects of financial law (measures), while the second measure, the application of which is connected with unlawful acts of the subjects of financial law [2, 62–68].

Given the content of norms of financial legislation and scientific sources that report on the measures come to the conclusion about expediency to call such preventive measures, as their application has to prevent violations of financial laws. In addition, the proposed system of preventive measures to allocate these types of them:

– measures applied to prevent violations of the budget legislation (warnings about improper execution of the budget legislation, with a demand to eliminate violations (articles 117 BC Ukraine));

– measures applied to prevent violations of tax legislation (the invitation of taxpayers (their representatives) to check the correctness of calculation and timeliness of payment of taxes and duties; receive from taxpayers and institutions of the National Bank of Ukraine (NBU), financial information and (or) copies of documents on the availability of Bank accounts, information about the volume and turnover of funds on accounts (on the basis of a court decision), information, certificates, copies of documents on financial and economic activities, as well as the study and validation of primary documents on accounting and tax accounting, other registers, financial, statistical reports related to the calculation and payment of taxes and fees; conducting inspections, inventory of basic funds, commodity-material values, money; obtaining the necessary information from the authorized bodies of the state registration and the granting of licenses to economic entities and others (articles 20 TC Ukraine));

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– measures which apply to prevent violations of banking legislation (sending a written warning; convening General participants' meeting, the Supervisory (Supervisory) Board, the management Board (Board of Directors) of the Bank for compilation of the financial rehabilitation plan or plans of reorganization of the Bank; the conclusion of the written agreement with the Bank, which has developed an acceptable plan of measures on elimination of infringements in its activity; the establishment of a Bank for increased economic standards, increase of reserves for covering possible losses on loans, other assets) (section II of the resolution of the NBU Board dated 17 August 2012 № 346 «On approval of the Regulations of the National Bank of Ukraine of measures of influence for violation of the banking legislation»).

About measures, the application of which is connected with the wrongful acts of the subjects of financial rights, their system is comprised of preventive measures and measures of legal responsibility.

The purpose of preventive measures is to eliminate the negative consequences of wrongful acts, as they are used to prevent the completion of the operational interruption or cessation of wrongful acts of the subjects of financial law. Separate subgroups are measures that should be used to stop the violation of budgetary, tax and other financial legislation. So, to stop violation of the budget legislation, apply: suspension of operations with budgetary funds; the suspension of the budget appropriations; the reduction of budget appropriations; the return of budget funds of the respective budget; the suspension of the decision about the local budget; indisputable withdrawal of funds from local budgets (articles 117 BC Ukraine).

The peculiarity of activities, which aim is to stop the violation of tax legislation, is that their adoption was preceded by contacting bodies of the State tax service (STS of Ukraine) to the court, in the result of which may be terminated as a legal entity, invalidated the constituent (constituent) documents of economic entities; suspended transactions on the accounts of the taxpayer; in certain cases, the law liens on cash and other valuables of the taxpayer, located in the Bank exacted the money of the taxpayers who have tax debt, with the serving of accounts in banks on the amount of the tax debt is exacted from the taxpayer's debtors, which has a tax debt, amount of accounts receivable, which maturity has occurred and a right which is translated to the tax authorities of Ukraine, as a repayment of tax debt of such tax payer (article 20 of the TC of Ukraine). Separate subgroup activities termination amount is tax lien, administrative arrest of assets, deferred payment, deferment and writing off tax debt. Measures under articles 81-88, 100, 101 of the Tax code of Ukraine are the methods of enforcement of financial debt, we offer to call security.

To stop the violation of banking legislation in accordance with the above section II of resolution of the Board of the National Bank of Ukraine can be applied such measures as suspension (the limit) or the termination of separate kinds of the banking transactions.

Exploring the scientific papers that discuss General issues of legal responsibility [1, 6], it can be argued that it is this institution that provides protection for Ukraine's financial system, because the purpose of legal sanctions in General and financial-legal and financial-legal fines, financial and legal penalties) aim at preventing and eliminating public harmful and dangerous acts in this sphere, in restoring the violated rights of subjects of financial relations.

So, financial and legal sanctions, pointing out the consequences of violations of financial laws and defining its form and measure the financial liability is an important factor of protection of the state financial system, the effectiveness of which depends on the legal regulation of the procedure of application of measures of public enforcement, which now need to be improved. Specified primarily concerned with the relevant standards BC Ukraine and PC Ukraine.

Considering the above, we offer the ways of perfection of the mechanism of legal protection of the state financial system, namely:

– senior 117 BC of Ukraine clearly define groups of measures of public enforcement imposed for violations of the budget legislation: the measures, the application of which is not connected with criminal activities (preventive measures); measures, the application of which is connected with unlawful activities (preventive measures, protective measures, measures of responsibility);

– Chapter 11 of the Tax code of Ukraine should be called «Financial and legal responsibility for a tax offence» and combine it with Chapter 12; in this Chapter using the concept of «financial and legal penalty» and «financial and legal penalty»;

– in Chapter 11 of the Tax code of Ukraine to incorporate rules on the application of the results of inspections depending on the nature of the committed offence and the guilt of the subject of the financial and legal fine – in the differentiated size, and financial and legal penalties in a fixed size.

Therefore, integral part of Ukraine's financial system is the mechanism of legal protection of the financial system, which ensures the stable and efficient operation, contributes to removing financial offences and return to budgets of other public funds of financial resources of the shortfall in funds. It includes measures of public enforcement for violation of the financial laws in the form of restriction of personal, organizational, or property character, apply specially authorized bodies for compliance with good behavior in the sphere of public financial activities and the prevention and suppression of crime, and in case of their occurrence, the punishment of offenders. Their separate group consists of: measures the adoption of which is not related to the wrongful acts of the subjects of financial law (preventive measures); measures, the application of which is associated with wrongful acts of such entities (the measure; provisional measures; measures of responsibility).

Protection of the financial system of Ukraine is provided: preventive measures to prevent infringement of the law by the subjects of financial rights; measures of restraint and interim measures that eliminate the negative consequences of wrongful acts that have not yet ended, to prevent their being complete, operational, discontinuance; measures of legal responsibility, first of all, financial penalties, which indicate the consequences of violations of financial laws and determine the form and extent of the financial liability.

For the proper protection of the financial system of Ukraine should improve the relevant norms of the Budget code of Ukraine and Tax code of Ukraine.

The importance of the further development of this problem is caused by the growth in the number of illegal actions of the subjects of financial law and application of measures of public enforcement; coercion was and remains a regulator of behavior of subjects of financial law, the need formulation of recommendations for improvement of the relevant legislation.

We have also other questions may serve as separate directions of future research in this area.

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Emilia DMYTRENKO

THE PROBLEMS OF LEGAL SAFETY OF FINANCIAL SYSTEM OF UKRAINE

The mechanism of legal safety of the financial system of Ukraine is analysed in the article. The system of preventive and stopping measures, which apply in the case of violations of financial legislation, is considered. Certainly place of institute of legal responsibility in the guard of the financial system of Ukraine and the separate ways of his improvement are offered.

Keywords: financial system of Ukraine; measures of public compulsion; preventive measures; measures of stopping; financially legal approvals.

CRIMINAL LAW AND CRIMINOLOGY

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PROBLEMS OF CRIMINAL LAW PROTECTION OF ELECTION AND REFERENDUM RIGHTS OF CITIZENS

The Constitution of Ukraine guarantees the citizens the right to participate in national and local referendums, to freely elect and be elected to bodies of state power and local self-government.

The state provided the proper conduct of the referendum election means necessary, including and criminal law – Articles 157 to 160 of the Criminal Code provides for liability for a variety of attacks in the area of election and referendum rights.

At the time of the adoption of the Criminal Code of 2001. (original version) criminal protection of voting rights provided by Articles 157 to 159 of the Criminal Code, referendum rights – separately, st. 160 CC. Criminal liability envisaged by: obstruction of the electoral law (Articles 157 of the Criminal Code), unlawful use of ballots, forgery of election documents or incorrect counting of votes or incorrect announcement of the vote (158 of the Criminal Code), violation of secrecy of vote (st. 159 CC) violation of the law on referendums (st.160 CC).

Eventually (in 2003, 2005 2009 r.r.) State criminal protection of election and referendum rights unaltered. Have changed the wording of Articles 157, 158, 159 of the Criminal Code (in particular they provide simultaneous protection and election and referendum rights of citizens while st. 160 CC has not been ruled out) and the Criminal Code was amended by adding a number of new articles: 158 of – 1 (voting at a polling place more than once), 158 of 2 (illegal destruction of election documents or documents of the referendum), st. 159-1 (violation of campaign finance candidate, political party (bloc).

However, these changes in the state of perfection criminal protection of election and referendum rights is not achieved. In general we can distinguish two groups of current problems in the state of criminal law protection of election and referendum rights:

1) imperfections of certain provisions of Articles 157, 158, 159-1 of the Criminal Code;

2) the existence of parallel criminal protection referendum rights. Criminal protection of these rights is ensured on the one hand in Articles 157, 158, 159 of the Criminal Code, on the other – st. 160 CC.

The existence of these problems and the necessity to solve them and causes the need for investigation of criminal protection of election and referendum rights.

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1. As for the imperfections of certain provisions of Articles 157, 158, 159-1 of the Criminal Code

1.1. Flaws of certain provisions of the Criminal Code Articles 157

Due to changes in the Criminal Code Articles 157, in its current wording provides for liability and infringement on citizens' electoral rights and the encroachment on the referendum rights. The common criminal protection of election and referendum rights – something which is in general positive. Indeed, in some norms carried penal provision virtually identical relations. However, if the Criminal Code Articles 157 voting rights are fully covered by criminal law protection, the referendum law – in part.

For clarity, we present a comparative characteristics and protection of electoral rights referendum in Articles 157 CC number in Table 1.

As for the criminal protection of voting rights.

From Table number 1 that in Articles 157 of the Criminal Code applicable to specific types of electoral law: implementation of citizen's suffrage; activity of an election commission; Activities official observer; activities of the electoral commission. In addition to these kinds of suffrage are on – the other business activities of the electoral process.

An indication of obstruction of another entity electoral law covers virtually everyone who sells suffrage.

For the citizen, as we know, their right to vote can implement differently. In ch. 7 Article 2 of the Law «On Elections of People's Deputies of Ukraine» provides that citizens of Ukraine who have the right to vote may participate in the work of election commissions as their members, as well as campaigning, to observe the elections of deputies and other events in the manner prescribed by this law and other laws of Ukraine.

Thus, it can be argued that in this way (indicating the interference of another entity election) all voting rights secured by interference methods set out in Articles 157 CC.

In this context, we note that the prediction in Part 1 of the Criminal Code Articles 157 to liability for «avoidance of an election commission in the commission without good cause» can be considered redundant. After a member of the Electoral Commission, which avoids work in the Election Commission without good cause, thereby encroaching on the legislative determined the order of the commission. In other words, it prevents the person of another entity election – Election Commission. The same applies to other listed species voting rights.

This allows you to reach a conclusion on the feasibility to review the disposition of part 1 of the Criminal Code Articles 157. It is necessary, as in our opinion, provide only entity to obstruct the process. Pererahovannya rights of each of the entities

Table number 1

Comparative characteristics of health election and referendum rights in Articles 157 CC

Voting rights protected in Articles 157 CC	**Referendum rights protected in Articles 157 CC**
free exercise of citizen's suffrage	free exercise of citizen's right to participate in the referendum
activity Election Commission	the commission on referendum
activity of an election commission	activities of the commissioner of the referendum
activities of an official observer	activity referendum initiative group
activities of another entity election	activity referendum initiative group member
	activities of an official observer

that process – is overloading the disposition of the article.

Regarding interference referendum law.

From Table number 1 shows that in the Criminal Code Articles 157 number listed species referendum rights, criminal law protection of which is guaranteed.

However, if we turn to the Law «On national referendum», we see that by this Act are somewhat different list of subjects. These are: 1) citizens of Ukraine (referendum participants); 2) The President of Ukraine as an appointment (declaration) referendum; 3) The Parliament of Ukraine as an initiator and an all-Ukrainian referendum; 4) Commission referendum, established pursuant to this Act or the Law of Ukraine «On the Central Election Commission»; 5) working group on holding referendum established under this Act; 6) official observers of the initiative group on referendum, registered in accordance with this Act; 7) international observers registered in accordance with this Law.

In order to complete criminal protection referendum rights is also considered not necessary Counters varieties referendum rights. It is enough to point to obstruct the referendum process. This is consistent with the provisions of the Law of Ukraine «On about a referendum». In Part 6 of Article 6 of the Act states: «Citizens of Ukraine have the right to vote may participate in the commission of the referendum as their members, as well as campaigning referendum, to observe the conduct of referendum and other events for the preparation and conduct of referendum in the manner prescribed by this law and other laws of Ukraine».

1.2. Flaws of certain provisions of 158 of the Criminal Code

1.2.1. First of all, note that this paper consists of 12 parts. It is unique in itself, as in the case of the Criminal Code only. «To use» of such a section difficult. That is why we offer a reformat, based on the objective manifestations of the parties.

Thus, the «base» Ch. 9–12 158 of the Criminal Code, which provides for liability for actions to the State Register of Voters, we propose to form a separate article.

In the «base» p. 4–6 158 of the Criminal Code, which provides for liability for illegal transferable election ballots to voters; by theft or concealment of election or reference documents, and other items – to form a separate article.

1.2.2. In Part 1 158 of the Criminal Code establishes liability for the unlawful manufacture, storage or use of knowingly illegally produced ballots blank absentee ballots, the ballots in a referendum.

As you can see, not only the responsibility established by use of knowingly illegally produced ballots blank absentee ballots, the ballots in the referendum, but also the fact of the illegal manufacture or storage of these items. In our opinion, the responsibility for the illegal manufacture or storage of these items need to put in depending on the purpose of their use (sales). As an example, in st. 199 Criminal Code, which establishes liability, in particular for the manufacture, storage of the national currency of Ukraine with the purpose of sale.

1.2.3. In part 4 158 of the Criminal Code provide for the responsibility not only for illegal transferable ballot voters, but also for the illegal transfer of referendum ballot.

1.2.4. Positions Part 8 158 of the Criminal Code: the intentional provision of a member of the election commission or referendum commission citizen the opportunity to vote for the other person to vote or more than once during the voting or granting of the ballot or ballot referendum on a person who is not included in the list voters (citizens eligible to participate in the referendum) on the appropriate polling place (precinct referendum), or allowing voters completed ballots (ballot in a referendum) – actually the identical disposition part 2 158 of the Criminal Code – forgery of election documents, documents of the referendum, and the use of deliberately falsified election documents, documents of the referendum, committed member of the election commission, referendum commission of, a candidate, his authorized representative, the authorized officer of the party (bloc), a member of the referendum initiative group. It give the citizen the possibility of illegal

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voting member of the electoral commission or referendum commission can only by forgery of election documents or documents of the referendum and their use. Therefore, Part 8 158 of the Criminal Code should be deleted.

1.3. Flaws of certain provisions of the Criminal Code st. 159 -1

This article provides for liability for violation of campaign finance candidate, political party (bloc). Responsibility for violation of the financing for the Referendum in st. 159 CC – 1 is not provided. However, the law «On national referendum» in several articles regulating the mode of financing of the referendum. For example, in Part 2 of article 62 of the Act reads: «Action Team no later than five days from the date of registration forms fund referendum. Referendum fund formed to finance the costs of collecting signatures, funding referendum campaigning and other purposes under this Act. «In order to ensure not only the order of campaign finance candidate, political party (bloc) offer in – 1 st. 159 CC establish liability and breach of funding referendum.

2. As for the parallel criminal protection referendum rights in Articles 157, 158, 159 of the Criminal Code and the Criminal Code under st. 160

On concurrent, parallel, criminal protection of election and referendum rights of citizens in the scientific literature are being driven conversation.

In particular, the monograph «The criminal liability for violation of election and referendum rights» under the general editorship V.P. Tyhoho (2008) stated that» the provisions of the Criminal Code st. 160 competing with the relevant provisions of Articles 157, 158, 159. Its preservation in CC when a new edition of these articles is an error that has occurred as a result of non-systematic changes in the criminal law in this regard. The presence of such competition makes it difficult to apply the provisions of the criminal law, as defined by Articles 157, 160 of the Criminal Code. This situation requires urgent legislative coordination of these articles ...».

Since then it has been more than five years, and the situation you are talking about, is at the same level. This situation can be resolved only by law – namely excluding st. 160 CC. It is necessary to improve the Articles 157, 158, 159 of the Criminal Code, because some positions more fully st. 160 Criminal Code provides state criminal protection referendum rights.

Yes, in the Criminal Code Articles 157 ways obstruction called: bribery; deception; coercion; avoidance of an election commission in the commission without good reason; violence; destruction of or damage to property; threats of violence or destruction of or damage to property; commit obstruction by prior conspiracy; commit obstruction of election officials or other officer of using his official position; intervention of an official through abuse of office in the implementation of the electoral commission or referendum commission of their powers established by law committed by illegal demands or instructions to influence the decision of the electoral commission or referendum commission .

In st. 160 CC also pointed out some ways to obstruct violence, fraud, bribery, commission member of the Commission on referendum or any other officer, or by prior agreement group of persons. However, st. 160 CC as a way to commit and are obstructing otherwise. This approach should also establish and Articles 157 CC.

It is also advisable that in our view, use the «experience» st. 160 Criminal Code and to establish responsibility for the violation of the Criminal Code st. 159 secret ballot – Do not occurred disclosure of the contents of the will of a citizen or not. For violation of the secrecy of voting can take place in a different way. For example, by monitoring for use later in his view information about the will of citizens.

Consideration of comments posted will not only improve the criminal protection of election and referendum rights of citizens, but also to promote rule of law in law enforcement and the judiciary, which ultimately To undertake and ensure human rights.

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PROBLEMS OF CRIMINAL LAW PROTECTION OF ELECTION AND REFERENDUM RIGHTS OF CITIZENS

In Article investigates the position of criminal law protection of election and referendum rights. Outlined the current problems. Suggestions for improvements Articles 157, 158, 159-1 Criminal Code of Ukraine.

Keywords: criminal-legal protection; election and referendum law; proposals to improve.

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SEPARATION OF CRIMES AGAINST ENVIRONMENT FROM CRIMES AGAINST PROPERTY

Rational usage, protection and restoration of natural resources are relevant issues of the present. Intensive and constantly increasing anthropogenic influence on environmental objects and as a consequence environmental pollution cause fast exhaustion of natural resources, disappearance of whole biological species, significant deterioration of person's vital activity circumstances.

Chapter VII of the Special Part of the Criminal Code of Ukraine «Crimes Against Environment» address criminal offenses against environment in the Criminal Code of Ukraine. With the adoption of these criminal provisions direct definition of the group of crimes against environment is provided in the law that meets the necessity of its protection and allows to group these norms into a specific system, assists in providing uniform approaches to criminalization and penalization of offenses in the ecological area. At the same time a few aspects of criminal law characteristics of crimes against environment belong to the controversial ones, though relevant problematic is being actively researched in part by such scholars as: P.C. Berzin, S.B. Gavrish, T.V. Kornyakova, V.K. Matviychuk, I.I. Mitrofanov, V.O. Navrotsky and others.

The mentioned above also applies to separation of crimes against environment from crimes against property. Under the circumstances when active inclusion of natural resources into the civil law circulation takes place (for example, forests in Ukraine can be in municipal or private ownership and animals can be specific object of civil rights covered by the legal regime of thing), the traditional criteria of «tangible work of a human» may be not enough to make the mentioned separation. This actualizes illustration and resolve of the mentioned problem on the grounds of analyses and systematization of approaches that are formulated in domestic legal literature.

Up to date the leading one is the theory of work under which only the thing that is excluded from its natural state by the

input of human work can be the subject of crimes against property. As N.O. Antonyuk correctly mentions, «For the subject of crimes sets against environment it is typical that it maintains ecological connections with the biosphere, does not embody specifically defined labor (is not commodity). Specifically defined human labor is put into the property that serves as a subject of crimes sets against property that extracts it from natural environment» [1, 119].

M.I. Panov and P.V. Oliynik also view the crime subject as the most important feature while separating crimes against property from crimes against environment. At that the dominant approach is recognized by the researchers as the concept of human labor contribution into creating specific things during production of material goods. At the same time they stress on the groundlessness of identification of property relations as economic category that is named by a legal definition «property right» and relations in the environmental area for which usage of the close definition «property right to natural resources» is typical [2, 163–168; 3, 88–93].

Taking into account the mentioned above such crimes against property as theft, extortion, appropriation, embezzlement, seizure by means of fraud, abuse of person's official position can not include natural resources in their natural state as their subject – benefits that although have objective value but are not created in full or in part by human work. Illegal seizure of such benefits under relevant grounds is qualified as a relevant crime against environment (in particular under articles 246, 248, 249 of the Criminal Code of Ukraine). At the same time, for example, animals, that are bred in animal farms, decorative trees and bushes that are cultivated for sale, caught fish that is placed into a net can be counted as subject of crimes against property. Named and similar to them subjects of offenses despite their natural origin do not exist in the same ecological link of nature and as such do not influence the state of environment and its protections. So it is necessary to consider not only the existence or absence of human labor contribution but also its direction. Natural resource to which human labor is applied that is not directed at its extraction from natural environment (deprivation of natural status) should not be viewed as the subject of crimes against property. While identifying subject of crime against environment it is necessary to differ unchangeable biological features of this subject and its legal characteristics that can change (for example caught fish becomes alien property).

Let us explain the said in detail on the examples of specific crimes against environment.

Thus for qualifying offense under Article 246 of the Criminal Code of Ukraine «Illegal Cutting of Forests» it is important that trees and bushes as types of flora did not achieve goods and monetary form that is a status of property. As such illegal seizure of prepared and stored wood, illegal cut of trees and bushes with self-interested motive in nursery-gardens, botanical and zoological gardens, flower farms, and also other illegal cut besides the borders of forest fund of Ukraine (on agricultural lands, adjoining the farm, cottage and garden land parcels etc.) constitute a set of relevant crime against property or arbitrariness.

Making a relevant note here, artificially cultivated green plants that consequently have not achieved features of wild grown woods with distinction to wood plantings do not belong to the wood fund and as such can not be viewed as a subject of crime under the current edition of Article 246 of the Criminal Code of Ukraine. Besides this trees that constitute natural formations also grow in settlements (alongside artificially grown), so dependence of qualification of cutting from the tree origin that the violator is usually unaware of is not logical. Under such circumstances Article 246 of the Criminal Code of Ukraine in the improved edition should, in our opinion, provide liability for illegal cutting of those tree formations that belong to forest fund as well as those that do not belong to it. Besides, Article 260 of the Criminal Code of Russian Federation establishes liability for illegal cutting of

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those trees and bushes that do not come into forest fund.

It is explained in paragraph 9 of the resolution of the Plenum of the Supreme Court of Ukraine from December 10, 2004 № 17 «About Court Practice in Cases About Crimes and Other Offenses Against Environment» that seizure of trees that were cut and prepared to store or transport depending on circumstances should be qualified according to relevant parts of Article 185 or other articles of the Criminal Code of Ukraine about liability for committing crimes against property. Concerning this the following is mentioned in the legal literature: «Here it is said not about forest as the object of nature but about commodity production – wood extracted from the environment by employing labor. With this person realizes that such goods have already «left» from the environment with the help of adding labor to them and also have some value and are an asset» [4, 170].

The circumstance that a person was not yet able to use the illegally gained do not influence qualification of the committed under Article 246 of the Criminal Code of Ukraine as a completed crime. Seizing cut forest committed by a person who has done illegal wood cut does not require additional qualification as a crime against property. So that a thought that illegal cut and further seizure of cut trees and bushes attempt on different objects of criminal law protection (relations of protection and rational usage of forest plants and relations of property accordingly) is incorrect, thus mentioned acts should be qualified as a total of crimes. Taking into account established in science and partially mentioned above thoughts as to separation of crimes against environment from crimes against property there are no reasons to see in this offense intrusion in two different generic objects in case of extraction of trees and bushes from natural environment by illegal cut. Illegal cutting of forests should not be viewed as a means of its theft. At the same time illegal cutting of forest can constitute real totality with an appropriate crime against property (including larceny) in case of seizing by a culprit of trees or bushes that were illegally cut by him and further brought on charge by authorized employees of forest enterprises.

By the ruling of judicial board of the Court Chamber in criminal cases of the Supreme Court of Ukraine qualification of acts of a forest-guard of one of the forest farms in Zakarpatska region was recognized correct under Article 197 of the Criminal Code of Ukraine. Tyachivsky district court has found him guilty in improper execution of his responsibilities of forest protection from illegal cutting and other violations because of what unknown to the investigation persons have cut trees in the walk assigned to him causing damages to the state in the amount of 2 495 hrivnas [5].

Not agreeing with qualification of the act, committed by the forest-guard under Article 197 of the Criminal Code of Ukraine, M.I. Panov and P.V. Oliynik write that the object of crime under this article are relations of property and the subject – alien property. In this particular case forest including trees with roots that were entrusted to the forest-guard to protect, are natural objects in their natural state and accordingly they do not belong to relations of property that are protected under Article 197 of the Criminal Code of Ukraine. With the purpose of eliminating such flaw in the criminal law protection of natural objects scientists stand for supplementing Chapter VIII of the Special Part of the Criminal Code of Ukraine with a provision that would include liability for non-execution or incorrect execution of one's responsibilities by persons who are entrusted with protection of natural objects – forests, animal world etc. [3, 91–92].

We suppose that there is no flaw here (at least in the part of forest protection) because it is mentioned in the literature [6, 256–265] that both a forest-guard and a forester should be recognized as public officers under the criterion of realizing functions of public agent. Thus in similar situations criminal law norms about liability for crimes in the area of public activity should be used, including official negligence. At the same time absence of unified approach as to

recognizing a forest-guard in criminal law sense that is observed in court practice even on the level of Supreme Court of Ukraine decisions is unwanted.

Domestic animals (they belong to material values and to subjects of crimes against property) are not recognized as subject of illegal hunting as a crime against environment (Article 248 of the Criminal Code of Ukraine) and also captured hunting animals – animals that are kept in relevant structures where they do not have opportunity to eat natural feed and independently exit such structures (nurseries, enclosures, farms, zoos etc.). In this case actions of a person who illegally seizes wild animals and birds can be qualified as a crime against property. Such criminal law assessment also covers hunting animals that are extracted from natural environment, bred in captivity, half free circumstances or acquired by another legal way and stay in private or municipal property of legal or natural persons because such animals have exited from the system of natural connections, have lost natural state and have become property.

According to Article 2 of the Convention on Biological Diversity of 1992, that was ratified by Ukraine in November of 1994, domestic species of animals are species whose evolution is influenced by a human. Thus it is appropriate to view all other animals as wild. The main moment in the question: when an animal should be recognized as a domestic and when – as a wild one is the moment of animal's entrance into the state of natural freedom and exit from it. This takes place with exit of an animal from property are (for example, setting free for breeding) or with a birth of an animal but under the terms of natural freedom [7, 15]. An animal should be recognized as such that has exited natural freedom state when human labor was used to obtain it as a result of which such animal becomes parted from natural environment by a material object. In connection with this it is not correct, for example, to consider as wild an animal that has been entrapped in a net or a trap. On the other side, animals that were artificially grown or bred by a person and set free are extracted from property relations sphere and perform natural function and as such acquire features of a subject of a crime against environment under Article 248 of the Criminal Code of Ukraine.

Fish and other alive water organisms that because of human labor do not serve as natural wealth in its natural state but are included into the production labor process and thus become goods are not recognized as a subject of crime against environment punishable under Article 249 of the Criminal Code of Ukraine «Illegal fishing or hunting or any other sea hunting industry». Seizure of fish or other water alive resources that are in nets or other similar catch tools or were previously caught by another person has to be assessed as a crime not against property but against environment. Actions of persons guilty of illegal fishing, sea animals hunting that are grown by enterprises, organizations or citizens in specially equipped or adapted ponds or acquisition of fish, water animals that were caught by these organizations (persons) also have to be qualified as a crime against property.

We should note that there is a definition of aquaculture in acting legislation. This is agricultural activity of artificial breeding, keeping and growing of aquaculture objects in totally or partially controlled conditions with a purpose of receiving agricultural production (aquaculture production) and its selling, producing feed, renewal of bio resources, maintaining selection breed, introduction, migration, acclimatization and reacclimatization of hydrobionts, replenishment of water bio resources, saving its bio diversity and also providing recreation services (Article 1 of the Law of Ukraine from September 18, 2012 № 5293-VI «About Aquaculture»).

So it is necessary to establish in which ponds fish and other water animals were caught, if the ownership of ponds was covered by the culprit's intent, and then depending on this to qualify his actions. As for fish and other water animals, that stay in specially equipped or adapted ponds and also animals that are bred in animal farms, it is worth

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adding that these objects of animal world exist in the state close to natural that is created and maintained because of human efforts that shows inclusion of named objects into production labor process and acquisition by them of feature of commodity production – the subject of crimes against ownership.

While separating crimes against environment from crimes against ownership, it is necessary to pay attention to the circumstance that human labor input into natural objects not always separates these objects from their natural state, transforms them into property. Thus artificial woodland belts, valuable species of fish, which offsprings was firstly bred on fish farms and then released to open ponds, wild animals that are fed by a human during cold part of the year and others should not be viewed as property as subject of crimes against property. Such natural objects are subjects of crimes against environment because the purpose of such human activity is renewal and maintenance of ecological environment favorable for a person and not entering such objects into commodities circulation.

Issue of qualification of water biological resources that were bred and (or) stay in artificially created (adapted) environment and that are designed to replenish natural resources, improve ecological situation or conduct ecological scientific researches as a crime against environment raises not accidentally. We talk about comprehending the purpose of animal world objects stay in half free circumstances and the influence of such factor on the qualification of committed offense. In particular, if the purpose of relevant objects stay under the named circumstances is business (commodity) breed, then committed offense is proposed to estimate as theft and if – natural resources restoration – as an ecological crime [8, 149; 9, 24–25]. Despite the availability of such approach it is totally obvious that its realization in practice will seriously complicate qualification of criminal offenses against animal world objects, thus this issue requires further study.

Referring to the mentioned above we consider inaccurate A.M. Shulga's pronouncement that subjects of crimes against environment «are not created by human labor…» [10, 26]. At the same time V.O. Navrotsky who divides natural objects as subject of crimes against environment into those that have natural origin and those that were created or changed by a human stressing that both first and second maintain connections with other objects of nature and whole biosphere [11, 13]. Also support is deserved by expressed in literature thought about referring two groups of natural resources to subjects of crimes against environment (depending on specifics of their social feature): 1) those to which human labor is not included at all; 2) those that accumulate a certain amount of labor of previous and current generations of people but stay in natural environment or are included in it for serving their biological and other natural functions [12, 95].

Useful fossils in their natural state are the subject of violating rules of protection or exploitation of subsoil (Article 240 of the Criminal Code of Ukraine). Transfer of natural resources extracted from subsoil by human labor into own or other people self-interest should be viewed as not a crime against nature but against property. In historical aspect it is worth reminding here that Resolution of the Council of Ministers of the USSR from March 10, 1975 «About Affirming Typical Statute of Prospectors Artel» obliged all citizens including prospectors to deliver all gold found by them to the government. Because raw material that contained gold from the moment of its extraction from subsoil was recognized as state property, appropriation of such raw material by members or prospectors artel was qualified not under Article 167 of the Criminal Code of RSFSR (this norm covered violation of rules of subsoil exploitation and delivering gold to the government) but as theft of state property [13, 32–34].

Social feature of useful fossils as subject of crime under Article 240 of the Criminal Code of Ukraine means that «useful fossils are not separated from natural environment (not extracted) with employment of specifically determined labor, are not property»

[11, 49]. We consider that this good thought should be further developed. We agree with O.I. Boitsov who mentions that self extraction of precious metals and stones is not theft because of absence of its subject. At the same time precious metals and stones that are located within separated territory of mining enterprise or exploited minefield (mines, open-cast) – this is no longer natural treasure but a product of unfinished cycle of production directly included into technological and labor processes of extraction. Thus seizure of mentioned subjects under such circumstances can be fully qualified as theft of alien property [14, 147]. Other scientists also mention that valuable fossils are recognized a subject of theft if they are located (separated) in industrial zone of mining enterprise [15, 17; 16, 95].

Though natural treasures stay in immovable natural status, are not extracted from the environment, human labor and material resources are put into them, because of what such natural reassures are extracted from direct connection with environment, included into production process and as a result become subject of crimes against property.

Thus, in order to recognize natural resource as property (and as such a subject of crimes against property), it should, firstly, contain a specific amount of defined socially necessary human labor, secondly, be extracted or by other means separated from outside natural environment. Thus, in order to recognize natural resource as property (and as such subject of crimes against property) it must, firstly, contain a specific amount of specific socially necessary human labor, secondly has to be extracted or by other means separated from environment. It is necessary to make clear if that or another object of intrusion existed in the system of ecological connections with surrounding it natural environment and depending on this to qualify committed intrusion on such object.

Recently there is a spread thought in legal literature about, so to say, moral obsolescence of the mentioned traditional approach (it is recognized a result of socialistic world view). It is mentioned that illegal acts against natural objects that are not only physically extracted from natural state because of human labor but also legally separated from natural environment (for example, land or forest parcel is transferred into private property, list of natural objects allowed for extraction is defined), included in civil law (economic) circulation and in such manner have acquired property features (goods with exchange value), should be regarded as a crime against property. Some authors assert that in case when deposit field of valuable fossils is purchased by a specific person, relevant valuable fossils are not as much natural resources for other persons as alien property even if the deposit field owner does not use them [15, 15–17; 17, 15–16; 18, 42–45; 19, 116–117]. Accordingly, it is proposed to locate such crime set as illegal (unauthorized) mining of valuable fossils in a Chapter about crimes against property and not in the chapter about ecological crimes taking into account that illegal (unauthorized) mining of valuable fossils primarily causes damage to the subsoil owner the state [8, 17; 16, 75].

Within the exposed approach proposals to recognize woods as property and to supplement Article 185 of the Criminal Code of Ukraine with a separate part (part 6) of such content: «Theft of alien woods by means of illegal cutting, destructing or damaging of forest vegetation in woods of any category of protection, committed iteratively or systematically or that has caused significant damage to the woods owner…» are understandable [20, 186].

Such proposal makes us express other thoughts as well. Among others, a question raises about how «forest» can be stolen. Even under terms of accepting such norm by the legislator, trees and bushes have to be recognized a subject of crime described in it as this is defined in Article 246 of the Criminal Code of Ukraine and not the forest. It is not quite clear how new ban (part 6 of Article 185 of the Criminal Code of Ukraine) will sort with existing criminal law bans (in particular, illegal forest cutting as a crime

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against environment), which destiny is not defined by the author of reviewed proposal. Under such circumstances realization of mentioned proposal will lead to rise of unnecessary collision of criminal law norms. The idea of inclusion of new norm about theft of alien woods into Article 185 of the Criminal Code of Ukraine clearly does not adjust with another author's thesis – that «social danger of illegal forest cutting is embodies in the fact that damage is done to natural environment, plant kingdom in general and first of all to its main component – forest» [20, 163].

Today one of the main issues in global scale is the issues of forest protecation because trees and bushes absorb carbonic acid and at the same time release oxygen that is necessary for human vital activity. Forests are an important component of biological diversity of Ukraine. Illegal cutting of trees and bushes cause soil erosion, exhaustion of rivers, negative changes of climate, death of wild animals and birds etc. Thus we are convinced that stay of this or another forest in specific person's ownership should not influence criminal law assessment of committed illegal cutting of trees and bushes. In contrast to provisions of Articles 89 and 90 of the Criminal Code of Ukraine of 1960, in which forest is recognized not only as natural resource but also as property, such contradiction is eliminated in active Criminal Code of Ukraine and forest if characterized first of all as a type of natural resources.

L.M. Demidova thinks that natural resources can serve as subjects of crimes against environment as well as against property depending on their: 1) enter into civil law and (or) economic circulation without separation from ecosystem (for example, land parcel or forest are transferred into private person's ownership but this land or forest stay part of the ecosystem); belonging to ecosystem without entering circulation [21, 270].

So the scientist recognizes the apparent fact that even under the circumstance of entering natural resources into civil law circulation the later continue being a part of environment (ecosystem). Just by this, we think, direction of criminal invasions against natural resources should be defined and their criminal law assessment accordingly. Point of view according to which in case of seizure of natural resources that belong to ecosystem that are simultaneously in civil law circulation the committed act has to be qualified as total of crimes (both as a crime against environment and as a crime against property) [21, 564], will confuse separation of mentioned crimes, is not coordinated with the contents of objective features of crimes against environment, means artificial creation of plurality of crimes where it really does not exist and thus is inacceptable.

Thereby, position of scientists about separation of crimes against environment from crimes against property with no reasons to refuse from comes to the fact that illegal seizure of natural resources first of all causes (together with property damage) damage to ecological balance (ecological safety etc.) because objects that exist in natural state unlike other property posess the feature of general value. Main role in regulating social relations in the area of natural objects circulation belongs not to the civil but rather ecological and land law. Inclusion of environmental objects into the group of subjects of crimes against property twists real character of social danger of ecological crimes, conceals main object, directs law enforcement practice to wrong way while act's social danger assessment because ecological value of any object not always correaltes with its material worth [22, 153–154].

Thus separation of criminal law offenses against property from crimes against environment has to be based on analyses of crime's subject as a part of the latter's object. Isolated analyses of the subject does not allow to comprehend those relations that are damaged and as a result causes mistakes during qualification of crimes. Such state of environment and its separate factors under which there is no danger for life and health of people, protection, rational exploitation and renewal of natural resources are provided, appropriate

ecological state of biosphere is maintained should be recognized as generic object of crimes against environment. Components of environment that are not separated by human labor from natural circumstances or those that accumulate specific amount of labor by previous and current generations of people but stay in natural environment or are placed in it for serving their biological and other functions are considered to be subject of mentioned crimes.

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SEPARATION OF CRIMES AGAINST ENVIRONMENT FROM CRIMES AGAINST OWNERSHIP

Points of view concerning separation of crimes against environment from crimes against ownership that are expressed in legal literature are being analyzed. Provision about propriety of approach established in theory and practice within which mentioned separation has to be based on the analyses of the criminal offense's unit as a component of the latter's object is argued.

Keywords: environment; ownership; crime; natural resources; separation.

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LEXICAL FEATURES OF LEGAL CONSTRUCTIONS IN THE TEXT OF THE CRIMINAL CODE UKRAINE (FOR EXAMPLE THE TEXT OF SECTION XVII SPETIAL PART)

Shaping of legal constructions attracted and attracts many domestic as well as foreign researchers. However, so far not managed to achieve unity in understanding this phenomenon.

Research problems of using legal constructions have been addressed, including such scholars as S. Alekseev, V. Babaev, V.M. Baranov, T.A. Dotsenko, A.V. Ivanchyn, R. Ieringa, D.A. Kerimov, A.A. Knyzhenko, M.I. Kovalev, N.M. Korkunov, L.L. Kruglikova, V.P. Konyahin, N.M. Kuznetsov, A.S. Pigolkina, Y.A. Tikhomirov, M.D. Shargorodskii, V. Chevychelova, A.F. Cherdantsev. However, in their writings neglected issue of linguistic expression legal constructions in the text of the Criminal Code of Ukraine (hereinafter – CC of Ukraine). Therefore, the paper will consider it as an example of the text of Section XVII of the Criminal Code of Ukraine «Crimes in service activities or professional activities related to the provision of public services».

The aim of the paper is to analyze the linguistic expression of legislative constructions in the Criminal Code of Ukraine. To analyze this in a general point of view of scientists on the concept of «legal constructions» will offer its «working» definition, and demonstrate the specificity of linguistic expression legislative constructions of the crimes stipulated in Articles of Section XVII of the Criminal Code of Ukraine «Crimes in service activity or professional activity related to the provision of public services».

For the first time in the category of «legal constructions» noted R. Iering. This researcher perceived it as a kind of «legal body» [1, 361]. According to N. Korkunov legal construction is taking scientific research, which is the combination of common elements of any phenomena obtained by analysis [2, 175]. S.S. Alekseyev wrote that the legal construction is an organic part of its own content law, its internal form, having its special meaning (internal form) and suitable to on the basis of new experience, scientific data, the strength of mind to receive further development of the new standard excellence [3, 277]. A.F. Cherdantsev believes that the legal constructions is a means of knowledge of legal phenomena, and their construction – this is a special case of the use of simulation methods in legal scholarship. Legal constructions, according to this scholar, is an ideal model that reflects the complex structure of the settled law of public relations, legal facts or their elements [4, 13]. This opinion is shared by modern scholars. Yes, A.V. Ivanchyn believes that the legal constructions – a structural model – representation, a structural model of homogeneous groups of legal phenomena, a

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combination of elements which the legislator fills legally significant information, thereby regulating the criminal law of the relevant kind of phenomena [5, 8, 99]. M.L. David also argues that the legal constructions is developed doctrine of law and law adopted by the scientific community an ideal model that allows theoretically, regulatory fix, be found in the legal text and legal relations in the real logical, sequential , logical relationship of the various structural elements of legal phenomena [6, 152]. According to A.A. Knyzhenko legal constructions is the best way «... reflected in the law complex legal reality, the legislator creates designs using typed model legislation: regulations, notes, presumption, fiction, each representing specific types of society» [7, 317].

So, in theory of law have many perspectives on understanding of legal constructions. Clarification of this issue is beyond the scope of our study in this paper. We have offered only a general overview of the most common views of scholars on this issue. In addition, legal structure as a process of logical deduction [8, 73], the theoretical position [9, 139–141], the method of social relations [10, 106–110] «architectural element» law-making [11, 729] and so on.

In our opinion, the main drawback of the above points of view expressed is that scientists describe the legal constructions lopsided, forgetting what it is – a multi-dimensional phenomenon. At the same legal constructions can be seen in broad and narrow sense. In terms of the broad approach legal structures – it is almost all legal effects, which have a structure, the structure and method of legal knowledge, his method of hermeneutics. In a narrow sense, the same legal structures – a special tool relatively independent legal technology. In this case the appropriate structures should be addressed procedural and structural static values. In the first case the procedure, the process of building, creating something by combining, merging, fusion of disparate elements into a coherent whole. And the second – the final result, the final product of this procedure, ie structural and static formation [12, 89–90].

Formulating a «working» understanding of legal constructions, we note that, in our opinion, this legal category has the following main features. First, the legal constructions – a means of legal technology. Their use facilitates the formulation of legal rules provides the necessary formal expression of the law. Based on legal structures legislator «replicates» separate legal structure. Second, the legal structure – a kind of legal model. Thus it is a perfect legal model that expresses the social relationships or elements in a legal form, is a means of constructing logical normative material and reflect the complex structure of legal phenomena. Thirdly, legal constructions – a method of legal knowledge and corresponding social relations corresponding means hermeneutics law. Fourth, legal constructions – a system of interacting elements that can form a subsystem of this design. These initial thesis will be used by us in the study of linguistic expression legal constructions in the text of Section XVII of the Criminal Code of Ukraine and developed in the following.

As noted above, the legal constructions is a means of standardizing legal information, internal stability, which allows you to store a block of text as a composition of the Criminal Code of Ukraine and its individual parts. Legal constructions acts as a shortcut code that helps to «decode» the information that the charge which was laid in the structural elements of the legislator according to the individual case. V.M. Kudryavtsev, considering the structure of the offense, he wrote that the transfer of the categories of features, which are included in the composition, yet does not disclose its contents, but indicates its structure [13, 74]. Any legal constructions, despite the fact that there is only a kind of key to decode the information contained in them should not contain «dead» information, which ignores the objective features of a phenomenon. Even Karl Marx wrote that the legislature does not make laws, they did not invent, but merely defines it expresses positive laws in conscious internal laws Spiritual relationship. The law is universal and true exponent of the legal nature of things. Therefore, the legal nature of things can not adapt to the law – the law, however, must adapt to it [14].

Legislative constructions of specific offenses must be based on the legal

constructions of the crime, which was developed in the theory of criminal law. In addition, in our opinion, is to talk about the typical legal constructions, characteristic, in particular, for those offenses that the legislature placed in one section of the Criminal Code of Ukraine. Thus it is possible to distinguish the legal structure of criminal law in general, the typical legal structure characteristic institutions of criminal law, certain sections of the Criminal Code of Ukraine and the legal construction that penal structures phenomenon (eg, construction specific offenses). Thus any type of constructions examined by us there on intellectual, conceptual level. For its implementation requires a certain normative terminology that helps to individualize the legal structure of the text of the Criminal Code of Ukraine, ie, turn it into a legal constructions.

In this article, the example of Section XVII of the Criminal Code Ukraine will try to highlight the issue of linguistic expression legislative structures in the text of the Code. We mention features such expression that occur in the text of Section XVII of the Criminal Code of Ukraine.

First, we note that the typical legal constructions of the offense in the performance management and professional activities related to the provision of public services, includes four essential elements – an object objective side, the subject and the subjective side with a set of relevant features. For specific legal constructions of Section XVII of the Criminal Code Ukraine is characterized by such features with corresponding linguistic expression:

– The object crime: an official document (Article 366), illegal benefit (Articles 368, 368-3, 368-4, 369-2), illegal benefit in a significant amount (Article 368-2);

– Socially dangerous act: the use of power or position against the interests of the service (Article 364), use contrary to the interests of the legal entity of private law, regardless of the legal form of its powers (Article 364-1) abuse their powers (Article 365-2), committing acts that are clearly beyond the scope of granted rights and powers (Article 365), drafting, issuing, entering false information, other forgery (Article 366), non-performance or improper performance of their duties because of unfair attitudes (Article 367), acceptance of an offer or promise to give her or a third party (Part 1 of Art. 368), obtaining for himself or a third person (Part 2 of Art. 368, Part 2, Art. 368-2, Part 3. 368-4, Part 2, Art. 369-2) receiving or transmitting close (Article 368-2); offer or give it to a third party or the provision (Part 1 of Art. 368-3, Part 1, Art. 368-3, Part 1, Art. 369), or give it to a third party (including 2 tbsp. 369), offering or giving (Part 1 of Art. 369-2) intentional creation of circumstances and conditions that cause the , promise or giving of an undue advantage or acceptance of an offer, promise or receipt of such benefits (Article 370);

– Socially dangerous consequences: substantial harm to legally protected rights, freedoms and interests of individuals or the state or public interests, or interests of legal persons (Articles 364, 364-1, 367), substantial harm to legally protected rights, the interests of individual citizens, state and public interests, the interests of legal persons (Articles 365, 365-2);

– A causal relationship: task (Articles 364, 364-1, 365, 365-1, 365-2, 367);

– Time commitment: During the execution of these functions (functions of the person who provides public services) (Articles 365-2, 368-4);

– Special subject: officer (Articles 364, 366, 367, 368, 368-2, 369, 370), the law enforcement officer (Art. 365), officer of the legal entity of private law, regardless of the legal form (Article 364-1, 368-3), auditors, notaries, appraisers, another person who is not with a public official, officer of the local government, but provides professional activities related to the provision of public services, including the services of an expert, trustee in bankruptcy, an independent mediator, a member of a labor arbitration, the arbitrator in the exercise of those functions (articles 365-2, Part 1, Art. 368-4), auditors, notaries, expert, appraiser, arbitrator or other person engaged in professional activities, air associated with the provision of public services, as well as an independent mediator or arbitrator when considering collective labor disputes (Part 2 of Art . 368-4);

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– Wine, intent (Articles 364, 364-1, 365, 365-1);

– Objective: obtaining any undue benefit for himself or another person or legal entity (Article 364), receiving (receiving) undue advantage for himself or others (Articles 364-1, 365-2), then uncovering who offered, promised or given undue benefit accepted the offer, promise or receive a benefit (Article 370).

Let us focus on the analysis of only certain features of the legislative structures of Section XVII of the Criminal Code of Ukraine (subject, socially dangerous act and the subject).

Linguistic expressing the subject of crime in performance management and professional activities related to the provision of public services, the legislators in one case limits (restryktuye) the ability to bring the person to justice. It's about art. 368-2, in which the object of the crime described as illegal benefit in a significant amount. Legislative constructions of this type can be attributed to the dimension structures when a person can be prosecuted only if undue advantage exceeds 100 tax-free minimum incomes. We believe that legislators should carefully approach the use of restrictive signs when typical legal structure corresponding crime related items are not limiting. As we see in other related elements of the crime of object called undue advantage, regardless of size. Therefore, in our opinion, it would be about the size of the view approach undue advantage in the legislative design art. 368-2 of the Criminal Code of Ukraine.

Linguistic expression of an indicator of legislative constructions crimes related service activities or professional activities related to the provision of public services makes it possible to draw several conclusions. First, it is unclear why legislators in some cases describing a socially dangerous act (Article 364, 364-1), while others – only calls it (p. 365-2). Obviously, each of these articles, including typical legal structures should follow one mode of linguistic expression of a socially dangerous act. In our opinion, the most appropriate way to describe is the language in Articles 364 and 364-1, which is advisable to use the legislative design of an offense under Art. 365-2. Second, a brief look at the so-called «Bribery». As you can see, the legislators in some cases as a reward considering the action as the person who offered or gave undue advantage, and the person who received (Articles 368-3, 368-4), and others – in one article – the proposal or promise of obtaining undue advantage (p. 368), and another – a proposal or provision (Article 369). In this case, the titles of articles 368-3, 368-4 used umbrella term «bribery». The Ukrainian language is the effect on the value pidkupaty, bribe. A «bribe» means «encourage, persuade someone to certain works to their advantage bribes, gifts, money and so on». [15, 956]. That is, the word «bribe» includes only the actions of the person who offered or gave undue advantage. That is, the legislature, in our opinion, more properly construct two independent corpus delicti in Articles 368 and 369. Moreover, given the etymology of the word «bribe» the name of Art. 369 it would be stated as follows: «Bribery of public servant». «Thirdly, there is a different approach to linguistic expression «even» socially dangerous acts which constitute the necessary complicity in the crimes:

Proposal	Part. 1 of Art. 368-3	Obtaining	Part. 3 of Art. 368-3
Granting	Part. 1 of Art. 368-3		
Proposal	Part. 1 of Art. 368-4	Obtaining	Part. 3 of Art. 368-3
Granting	Part. 1 of Art. 368-4		
Proposal	Part. 1 of Art. 369	Acceptance of an offer or promise to give	Part. 1 of Art. 369
Granting	Part. 1 of Art. 369	Obtaining	Part. 2 of Art. 369

Analyzing these even socially dangerous act is puzzling why the legislator, on the one hand, says the proposal to give undue advantage, on the other – the receipt of unlawful benefit (Articles 368-3, 368-4). It turns out that if the proposal to give undue advantage in this case, criminal liability is not provided (at least, this conclusion is based on the design of other related legislation enshrined in Articles 368 and 369). Secondly, in art. 369 criminalized proposal to give undue advantage, while «even» socially dangerous acts in the art. 368 provides not only the acceptance of the offer, but promises to give undue advantage. Therefore it is not a criminal offense is a promise to give undue advantage, while making such a promise with criminal penalties provided. In the Ukrainian word «proposal» and «promise» are its lexical meaning. Thus, the «offer» – a «... what is offered to someone instead of something to choose from as Accords, and so on». [15, 1164], and «promise» – is «voluntarily given obligation to do anything» [15, 805]. Given the lexical tones of the words «offer» and «promise» we consider it necessary to amend socially dangerous act in Part 1, Art. 369. Analysis of the linguistic expression of socially dangerous acts in the legal structures of Section XVII of the Criminal Code of Ukraine.

Symptoms also include a special subject to restrictive (restrictive). Select, on the one hand, officials, officials of legal entities of private law, regardless of the legal form, the other – people who provide public services shows that the latter do not belong to the first category, they are opposed. Unsuccessful, in our opinion, the legislator describes those individuals who perform professional activities and provide public services. First of all, revealing the unknown through unknown (using «open» list of persons stating that they include other persons who provide public services, and the concept of services in Ukraine there is no legislation). Also, the disposition of part 1 of article. 365-2 and Part 1 of Art. 368-4 offered a list of people who provide public services, and the disposition of part 2 of article. 368-4 – another. Great for people who provide public services recorded in Part 2 of Art. 358. By carrying out an analysis of the linguistic expression, it is unclear where lawmakers started a list of people who provide public services: the private entrepreneur or auditor. Also, the people who provide public services include lawyer (as opposed to articles 365-2, 368-4). We believe that to eliminate these differences, it is advisable to abandon the disposition of articles listing people who provide public services, shifting the corresponding list in the footnote to the article, which was first shown in a specific perpetrator as a person who provides a public services (of course, with the proper legal definition of most public services).

The research results can be used for further research of legal constructions in the general theory of law and the criminal law doctrine, as well as analysis of legislative constructions Criminal Code of Ukraine.

Thus, we have identified general theoretical approaches to the concept of legal constructions, determined that it is advisable to isolate the legal structure of criminal law in general, the typical legal constructions characteristic institutions of criminal law, certain sections of the Criminal Code of Ukraine and the legal construction that penal structures phenomenon (eg composition specific offenses). Linguistic expression of individual traits legal structures used in Chapter XVII of the Criminal Code of Ukraine has certain disadvantages, particularly relating to system connections with other legal constructions, the unsuccessful use of terms like. This causes an error in the «decoding» of information in the process of law, prevents an adequate understanding of the will of the legislator.

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Zoya ZAGYNEY

LEXICAL FEATURES OF LEGAL CONSTRUCTIONS IN THE TEXT OF THE CRIMINAL CODE UKRAINE (FOR EXAMPLE THE TEXT OF SECTION XVII SPETIAL PART)

This article discusses the general theoretical approaches to understanding the essence of legal structures, proved the need to allocate the overall legal structure, typical legal structure, as well as the legislative structure. Analyzed linguistic expression such signs legislative structures of Section XVII of the Criminal Code of Ukraine, as a matter of crime and socially dangerous act of the perpetrator.

Keywords: legal constructions; legislative constructions; lexical features; the offense; elements of a crime; the text of the Criminal Code of Ukraine.

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COUNTERACTION TO GAMBLING BUSINESS IN UKRAINE

Human imagination and tendency to take risks, combined with greed often cause person's desire to instant beneficiation. So gambling became the answer to this query. Participation in gambling enables either to win the prize or to loose the bet by chance.

Organized forms of such activities are called gambling, and the rapid development of modern technologies, especially telecommunications, only increases the scale of this business. However, gambling brings much more damage to society than benefits. It is not measured only by economic losses (diversion of players from socially useful work, deterioration of their financial conditions through the defeats in gambling), but also effects on mental health, spoils the moral principles of life.

Reforming the policy in the area of criminal justice and law on criminal liability caused some changes in the system of combating gambling that have not been studied yet. Therefore, the goals of this article are to highlight the existing system of means to counteract gambling business in Ukraine, to find out the problems of their practical application and formulate proposals for improving the efficiency of such countermeasures.

An absolute prohibition of gambling can not be a reliable barrier for gambling, that is one of the super-profitable types of illegal business along with the trade of arms and drugs. Experts estimate that gambling business in Ukraine brings to the organizers billions of dollars of illegal profit every year.

According to the Law of Ukraine dated 22.12. 2010 Criminal Code of Ukraine (hereinafter – CC of Ukraine) had been supplemented by Article 203-2, that provided responsibility for gambling. In the period from 25 June 2009 to 13 January 2011 individuals, involved in gambling, have been subjected to liability under Art. 203 CC of Ukraine («Prohibited business activities»).

Under the Law of Ukraine dated 15.11. 2011 sanctions of Art. 203-2 CC of Ukraine were reduced. Gambling, qualified before the adoption of mentioned Law as misdemeanor, refers now to serious felony. It is considered even more dangerous than, for example, intentional grievous bodily injury that caused the victim's death (Part 2 Art. 121 CC of Ukraine). Justification of this decision is at least controversial due to the requirements of Art. 3 Constitution of Ukraine: person's life and health, honor and dignity, inviolability and security are recognized in Ukraine as the highest social values.

952 crimes under Art. 203-2 CC of Ukraine were registered in 2011, 926 crimes were registered on November 20, 2012. 1,248 criminal offenses under this Article were counted in the Single Register of pre-trial investigation during 2013 (34.8%)

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and 428 persons became suspected for gambling. According to the State Judicial Administration of Ukraine statistics 58 people were sentenced under Art. 203-2 CC of Ukraine in 2011, 217 persons in 2012 (+374%), 200 persons in 2013 (-8%).

System analysis of national legislation enables to distinguish 4 basic countermeasures to gambling business in Ukraine:

1. Financial penalties (fine) in the amount of eight thousand times the minimum wage: provided in Part 1 Art. 3 Law of Ukraine «On prohibition of gambling business in Ukraine» dated May 15, 2009. Financial penalties are applied by court to business entities that organize and conduct gambling on the claim of police and/or bodies of income and fees. This penalty is an administrative and economic sanction. According to Articles 238, 241 Commercial Code of Ukraine it can be applied by competent public authorities to business entity that violates the rules of economic activity. The scale of specified penalty is fixed and it doesn't depend on magnitude or duration of gambling business. It is paid to the state budget and is not a subject of judicial discretion. Such claims are under the jurisdiction of administrative courts.

2. The confiscation of gambling equipment. Application of this measure of gambling counteraction is aimed primarily to prevent continuing of criminal activity by subsequent use of such equipment. Supplement the sanctions of Art. 203-2 CC of Ukraine by confiscation of gambling equipment in January 17, 2012 caused three interrelated questions that were ambiguously solved not only in scientific publications, but also in judicial practice: whether the confiscation of gambling equipment is an additional punishment; whether is it obligatory; can it be applied to persons, who have committed crimes before January 17, 2012. Since Art. 51 CC of Ukraine provides a comprehensive list of penalties, confiscation of gambling equipment is not a kind of punishment. Compulsion of this measure is strictly (without alternative) established by the Law of Ukraine «On prohibition of gambling business in Ukraine» since its entry into force, in June 25, 2009. Since then, gambling was recognized as a crime according to Art. 203 CC of Ukraine.

Organization, implementation and access to gambling are impossible without gaming equipment that is an instrument of crime. Therefore gaming equipment belongs to the material evidences. According to paragraph 1 of Part 9 Art. 100 Criminal Procedure Code of Ukraine instruments of crime are confiscated, unless their owner (legal holder) did not know and could not know about their illegal use. Thus, ownership does not play a decisive role in the confiscation of gambling equipment.

It should be also noted that there is no legislative definition of «gambling equipment» in Ukraine. Such equipment often includes slot machines, computer simulators, lottery terminals, tables and chips for poker, roulette, etc. However, considering of particular equipment as gambling in any particular criminal proceedings should be established on the basis of expert's conclusion.

The issue about gaming equipment confiscation from a business entity is often solved simultaneously to financial penalties in administrative procedures. However, such an order of gambling equipment confiscation is possible only if two conditions are followed: the equipment is a property of the defendant in administrative claim; the equipment is not considered as material evidence in criminal proceedings.

3. Enumeration of the profit (income) from gambling in the State Budget of Ukraine. Funds paid to participants of gambling or used for the payment of compensation, that are obtained as a result of a criminal offense and/or an income from them, are being temporarily withdrawn during inspection of the crime scene. The issue about the confiscation of such funds is resolved while adjudication, that ends criminal proceedings.

Profit (income) form gambling that exceeds the amount of money seized during inspection of the crime scene should be also charged to the budget of Ukraine on the claim of authorized body to administrative court.

Special confiscation is used to money, valuables and other property obtained as

a result of the crime and/or are the income from such a property and were picked up, constructed, adapted or used as means or instruments of crime, except property returned to owner (legal holder), who did not know and could not know about their illegal use. Gambling equipment and profit (income) from the organization of gambling entirely correspond the criteria of property subjected to special confiscation. However, special confiscation can be applied only in cases, provided in the Special Part CC of Ukraine. This legal requirement doesn't allow considering special confiscation as one of the means of gambling counteraction.

4. According to Art. 203-2 CC of Ukraine the only punishment that can be imposed for gambling is fine. Dimensions of the fine shall not be less than the amount of property damage caused by a crime or income obtained from the crime. If there are several circumstances that mitigate punishment and significantly reduce the gravity of the crime court may sentence a person to fine, the amount of which is not more than a quarter lower than the lowest limit adjusted in Art. 203-2 CC of Ukraine.

Based on the foregoing it can be concluded that all these countermeasures to gambling business in Ukraine have exceptionally property character. It is determined by moneymaking motivation of such acts. However, the use of these means in modern conditions can not reduce the scale of gambling business. Sentencing to fine, even in its largest amount, is not sufficient for correction of such persons and prevention of further crimes. That's why sanctions of Art. 203-2 CC of Ukraine should be complemented with alternative and more severe form of punishment – imprisonment for a certain period. This will strengthen preventive and retributive potential of criminal law; will allow to consider the real nature and degree of public danger of such acts and to determine the severity of crime. Solving this problem is of great practical importance, therefore is a promising direction for further researches.

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COUNTERACTION TO GAMBLING BUSINESS IN UKRAINE

The means of counteraction to gambling business in Ukraine are revealed in the article. The author analysed problems of judicial application of such means and their impact on the policing in the economic activities. In order to increase the efficiency of counteraction to gambling business certain suggestions are offered.

Keywords: counteraction; prohibition; gambling; gambling business; financial sanctions; penalty; confiscation.

CRIMINAL PROCEDURE

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THE EUROPEAN COURT OF HUMAN RIGHTS PRACTICE WITHIN THE MECHANISM OF CRIMINAL PROCEDURAL REGULATION

Sociological analyses of enforcement activities of judges, prosecutors and interrogators showed a list of problems, connected with understanding and application of practice of the European Court of Human Rights (henceforth the European Court) [1, 148–150]. In the practice of the European Court the standards of human rights defense in criminal proceedings are defined, that is why it draws great interest of scientists and practical workers. Considerable contribution to the European Court practice on these issues was made by M. Batuiev, A. Burkov, V. Butkevich, D. Gomien, O. Deviatova, O. Drozdov, Y. Zaitsev, O. Kaplina, V. Lutkovska, D. McBride, V. Maliarenko, V. Manukian, D. Merdok, V. Paliuk, O. Paseniuk, I. Petrukhin, I. Rabinovich, M. deSalvia, V. Tumanov, S. Shevchuk and others. Unfortunately, any comprehensive study on implications of the European Court Practice within the mechanism of criminal procedural regulation has not been carried out in Ukraine, although this is the main part of its further humanization, and harmonization with international legal standards.

In juridical literature the category of criminal procedural regulation mechanism is recognized as «unified system of criminal procedural means, which provides effective procedural impact on criminal procedural relationships with the aim of their ordering, protection and improvement» [2].

European Convention on Human Rights and Fundamental Freedoms (further Convention), its Protocols and the European Court practice are the inseparable part of the criminal procedural regulation mechanism. Such a statement has both normative and theoretical background. Particularly, in Part 2 of Art. 8 of the Criminal Procedure Code (hereinafter – CPC) it is stated, that rule of law principle in criminal proceedings is applied with the consideration of the European Court practice, and part 4 of Art. 9 suggests that in case of contradiction of the Code's norms to the international treaty recognized as obligatory by the Supreme Council the principles of correspondent international treaty of Ukraine are applied. Besides, Part 5 of the Article admits, that criminal procedural legislation of Ukraine is applied with the consideration of the European Court practice.

According to Article 1 of the Law of Ukraine «On the Implementation of the Decisions and Practices of the European Court of Human Rights» the practice of the European Court and the European

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Commission of Human Rights consists of their decisions regarding application of the Convention and its Protocols. The following are recognized as decisions: a) the final resolution of the European Court in the case against Ukraine on the recognition of Convention's violations; b) final decision of the European Court regarding impartial satisfaction in cases against Ukraine; c) decision of the European Court regarding friendly settlement in case against Ukraine; d) the decision of the European Court on approval of unilateral declaration conditions in case against Ukraine [3].

According to international law, the European Court decisions have their own legal power. However, to understand its sense it is important to find out what kinds of particular obligations may arise as a result of such decision's adoption. To do this it is necessary not only to analyze specific conclusions, which the European Court has the right to formulate regarding compensation and reimbursement of costs and expenses and require the actual return of the victim to a state that existed before the violation (restitutio in itegrum) [4, 855].

In Ukraine, the resolution's fulfillment is to pay compensation to the collector and take additional individual measures. The extra individual measures are as follows: a) restoring as far as it is possible of the former legal state, which the collector had before the violation of the Convention (restitutio in integrum); b) other measures provided by the Resolution.

The restoration of the previous collector's legal condition is fulfilled, in particular, through the retrial court, including recovery proceedings or retrial administrative authority.

One of the grounds for the judicial review by the Supreme Court of Ukraine of the decisions, which entered into force, is the establishment by an international judicial institution whose jurisdiction is recognized by Ukraine of the violation by Ukraine of international obligations in the determination of the case by the court (Article 445 CPC). This manifests the basic legal role of the European Court within the mechanism of criminal procedural regulation.

To resolutions and activity of the European Court regarding the Convention's norms, in our opinion, the doctrine of judicial precedent can be provisionally applied whose content is the obligatoriness for the judiciary in following their former decisions (stare decisis). The background for the judicial precedent is ratio decidendi thesis (from Latin – the background for the decision) [5, 53]. It is located in the reasoning part of the decision and appears as legal position (judicial standard) – explanation why was the case resolved in such a way. To justify this position, the judges, approving decisions within the case apply legal norms, former precedents and their own motivation, citations from authoritative doctrinal sources, references to foreign precedents etc. There are certain complications for the defining of such a legal position as the reasoning part of the resolution does not contain any distinct formulation as for example, the legal norm in law.

The European Court develops and formulates legal positions as to interpretation of conventional norms. These well-established positions on the conventional norms understanding have the general effect. The European Court is guided by them when considering similar cases, and they also regulate the activity of the Council of Europe member states, their state organs in the sphere of human rights and fundamental freedoms [6, 82]. In particular, the interpretation of precedent has binding nature and imposes the duty on the legislator to put the criminal procedural law in accordance with the provisions of the Convention.

Many scientists put equal sign between judicial findings «ratio decidendi» and legal positions which due to the legal nature are obligatory for the fulfillment by everybody [7, 82; 8, 208]. Whether to see the practice of the European Court as precedent of interpretation» of the Convention [9, 19] or as the precedent of specification» of the Convention [10], or in general as independent source of law – it is understandable that

defining its «nature of precedence» we admit the ability of the European Court to produce normative interpretation of law. Unfortunately, while applying the decisions of the European Court they are perceived in Ukraine in individually legal aspect, more like individual legal act. Namely, particular decisions in case against Ukraine regarding particular declarant should be applied, and the procedure of such application must strictly follow the parameters stated in it: the size of the compensation, actions which the state should provide to renovate the violated law etc [11, 19]. Scarcely do national enforcement authorities pay appropriate attention to general standards, principles, basic rules for human rights defense, which can be found in such resolutions. That is why, while applying the European Court decisions in Ukraine not as the least should be the importance of understanding by national legal, judicial and law organs the concept of legal standards in the sphere of human rights defense.

In its decisions the European Court specifies and expands the norms of Convention and its Protocols disclose the contents of the legal notions and formulate legal positions. At the same time, the application of legal norms covers three issues: legal analysis of specific cases, which are to be solved; interpretation of the Convention and the Protocols and their consistent logical development. The last element of the enforcement procedure evidences, that the European Court goes beyond the boundaries of particular case which it considers on its merits. Developed in such procedures opinions on specific cases become a model for other similar cases and obtain recognition as appropriate regulations of controversial criminal legal proceedings.

Thus, for the enforcement of criminal procedural activities while applying criminal procedural rules not only is there the very final decision of the European Court on conventional issues interpretation, but also the legal position, which is laid to the ground of such a decision. It should be noted, that applying of European Convention norms, as they are interpreted by the European Court, the national enforcement representative will be ruled not only by the decision in general, but also by legal positions which are found in the court's decisions. It is the very element of the resolution having complete legal content, and appearing as legal information in criminal procedure activity. This legal fact causes movement of the mechanism of the criminal procedure regulation when viewing judicial decisions due to new circumstances; by its decision it obliges the national legal system to actualize effectively the ideas of law and justice, promotes in this way the responsible fulfillment of international treaties, undertaken by Ukraine.

The most problematic are systemic Convention's violations. Their reasons are violations, conditioned by imperfect criminal procedural law, as well as continuous failure by law enforcement agencies of its provisions [12].

With the aim to provide elimination of underlying systemic shortcomings, which form the basis of revealed by the European Court violation, general measures are used. According to Article 13 of the Law «On the Implementation of the Decisions and Practices of the European Court of Human Rights» general measures are the ones directed to elimination of the stated in the Resolution systemic problem and its fundamental causes, in particular:

a) Amendments to existing legislation and practice;

b) Changes in administrative practices;

c) Legal review of legislation;

d) Vocational training on studying issues of the Convention and the European Court practice for prosecutors, lawyers, law enforcement workers, immigration officers, other categories of workers, whose professional duties are connected with law enforcement and holding people's liberty;

e) Other measures, which are defined under conditions of the Committee of Ministers' observance by the respondent state according to the Resolution with the aim to provide elimination of systemic shortcomings, termination of violations of the Convention caused by these shortcomings (and maximization of redress for these violations).

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The European Court practice's analyses shows that systemic violations dominate in European Court against Ukraine. The most commonly violated in criminal proceedings are the Convention's Art. 6 (right to a fair trial), Art. 5 (right to liberty and security) and Art. 3 (the individual's right not to be subjected to torture and other ill-treatment).

Among the statements of fair justice the important for defining of human nature and content of criminal offences is the understanding by the European Court the category of «criminal charge», which in terms of Part 1, Art. 6 of the Convention has «independent» meaning (see the decision of «Deweer v. Belgium»).

The European Court applies three criteria for recognizing of the criminal's accusation: first, the criterion of national law, second, the standard range of destinations criterion and the third, criterion of legal consequences for the recipient (see the decision of «Engel and Others v. the Netherlands»).

The first criterion acts as the basic one. The European Court analyses whether this wrongful act falls under the crime indicators according to national norms of the criminal law. However, this criterion plays quite an insignificant role in the context of guarantee of fair trial, as the state could avoid the fulfillment of Convention the 6th Article's requirements through recognizing of crimes as other kinds of offence [13, 22].

The next criterion is the performance of norm, by which the responsibility for the number of persons is laid. If liability is applied to indefinite circle of persons, the offence must be classified as the criminal one.

The third criterion is to assess the nature and severity of punishment for its commitment. According to the general rule, in case if the element of punishment is available and suggested sanctions are hard enough, the offence has the crime's nature and its trial should correspond to the sign of justice according to Article 6 of the Convention (see the decision for the case Eggs v. Switzerland).

The criteria stated above are the alternative ones and their application must be consistent – the correspondence to at least one of them determines the criminal nature of accusation (see decisions in case of «Lutz v. Germany»).

However, in accordance with the principle of maximum assistance to the plaintiff the European Court may systematically evaluate these criteria in cases when separate analyses of each of them does not provide conditions for the univocal conclusion regarding the criminal nature of accusation (see the decision in case «Garyfallou AEBE v. Greece»).

The Convention does not prohibit states to distinguish the internal law between criminal and administrative offenses, although the European Court in case of «Lutz v. Germany» emphasized that in some states the accusation of a person in committing an administrative offense should be recognized as the criminal one. For example, some traffic violations in Germany which are considered «non-criminal» according to the internal law are referred to «the sphere of criminal law» according to Art. 6 of the Convention, based on its nature. The penalties for these offenses are of repressive nature, and violated norms refer not to a certain group of people, but to all citizens as the road users (see the decision in case «Ozturk v. Germany»).

In our opinion, in Ukraine as «criminal charge», according to Art. 6 of the Convention, administrative offences punishable by arrest for up to 15 days (Articles 31 and 32 Code of Ukraine on Administrative Offences) can be assigned. That is why while considering such cases in the court the offender should be granted with all procedural safeguards provided in parts 2 and 3, Article 6 of the Convention. For instance, in case «Gurepka v. Ukraine» a person underwent the administrative penalty and a representative of Ukrainian government pointed, that the procedure was an administrative one and that the national legislation strictly distinguishes between criminal and administrative crime. The government also pointed that the person who is admitted guilty of an administrative offense is not considered to have a criminal record. Referring to the case of «Brandão

Ferreira v. Portugal» the government stated that seven-day arrest for the administrative offence, considering the fact that maximum penalty could comprise of 15-days arrest, cannot be seen as criminal punishment.

However, the European Court in its decision concerning the case of «Gurepka v. Ukraine» considering its settles case-law admitted, that due to severity of sanctions, this case is essentially criminal and administrative punishment was actually of criminal nature with all guarantees of Article 6 of the Convention and, respectively, also Art. 2 of the Protocol № 7 of the Convention (see the decisions in case «Engel and Others v. the Netherlands», «Ozturk v. Germany», «Escoubet v. Belgium»).

Thus, the European Court perceives the criminal accusation as a universal concept, appearing as a result of an act of illegal nature regardless of the degree of its social danger. In O. Soloviov's opinion, in the practical activity of the European Court there is a tendency of gradual universalization of the concept «criminal accusation» within the context of Art. 6 of the Convention due to the increase of autonomous and liberal interpretation of the concept. It is caused by an extreme importance of the adequate protection of the individuals' rights in relationships with representatives of public power for modern democratic society.

Identifying of the exact moment of «criminal charge» nomination is often very important as from that very moment a course of «reasonable time trial» begins, provided by Art. 6 of the Convention. The European Court defined «criminal accusation» as «official informing a person by a competent authority about the statement that this person has committed a crime» and noted, that «in some cases it may be performed though other forms of activities, whose implementations contain such a statement and in fact influence similarly on the suspect's position» (see the decision in case of «Eckle v. Germany»).

Reasonableness of the proceedings length is defined by the European Court due to appropriate circumstances of the case, considering such criteria as complexity of the case, plaintiff's behavior, as well as of authorities, connected with the case (see decisions in cases of «Pelissier and Sassi v. France» and «Philis v. Greece»).

While defining the level of case complexity the nature of facts, which should be stated, number of witnesses, and possibility of cases' unification as well as the entry of new participants into the process are taken into consideration. The excessive complexity of the case may serve as justification for extended criminal proceedings, but is not an absolute factor, which could define the absence of violating the reasonable term.

The only duty that European Court imposes is to «demonstrate the readiness to participate in all stages of the proceeding, which are directly related to it, refrain from using measures delaying the process and maximize the use of every means of domestic legislation to enhance the proceeding». In the case «Merit v. Ukraine» the European Court stated, that the plaintiff may be considered responsible for some insignificant delays in the proceeding when he was inspecting the materials of the case. Besides, in the decision of «Smirnova v. Russia» the European Court expressed the idea, that the period when the accused was hiding from investigation and trial must be eliminated from general period of the proceeding (see also decisions in cases «Girolami v. Italy»).

To the criteria of criminal proceeding delays, which cause violations of reasonable term belong the following: unjustified delay in the investigation of the case, failure to conduct proceedings and not approving of proceeding decisions, repeated return of the criminal case to further investigation, delay and termination of case's consideration; breaks in the hearing due to the delay in provision or collecting evidence, provided by the state. Sometimes it is connected primarily with the extremely excessive workload of the courts, underfunding of the courts, absence of enough number of judges and support workers.

The importance of case consideration's guarantee during the reasonable term caused the European Court to formulate the requirement regarding the necessity

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of availability in national legislation of procedures and means with the help of which the accused could appeal against the length of the proceedings and speed it up.

Today in Art. 28 of new CPC of Ukraine the reasonableness of time-period length is defined amongst general principles of criminal proceedings. The reasonable terms cannot exceed the terms of certain proceedings' fulfillment or approving of certain proceeding decisions provided by the Code.

Caring out of pre-trial proceedings within the reasonable time is provided by the prosecutor, investigating judge (regarding the terms of consideration of issues within his competence), and trial proceedings – by the court.

The criteria for defining reasonability of terms for the criminal proceeding are the following:

1) Complexity of criminal proceedings;

2) Attitude of the criminal proceeding participants to the exercising of rights and freedoms;

3) The way of conducting by the investigator, prosecutor and the court of their authorities.

Criminal proceeding regarding the person, kept in custody, and juvenile should be carried out immediately and considered primarily in the court.

Everyone has the right that the accusation against him becomes the subject of litigation within the shortest term or criminal proceeding being closed. The word combination «within the shortest term» corresponds to the expression «as soon as possible» and in our opinion, introduces higher standards than provided by the Convention's right for trial within reasonable time.

Thereby, on the one hand, the decisions of the European Court sequentially form a certain standard of criminal proceedings and on the other hand, they develop legal guidelines for judges in controversial issues of justice in the sphere of human rights as to different directions of legal influence on national legislation. Due to this, nowadays court decisions have transformed into an important factor of legal system development, because of their impact new legal norms are being formed, that correspond to international legal standards in terms of the human rights consideration, which cannot the effectiveness of the criminal procedure regulation mechanism leave without an influence.

In this case the effectiveness of the criminal procedure regulation mechanism is achieved by improving the law-making and enforcement in criminal proceedings, where normative regulation is designed to ensure stability and necessary similarity in regulation of criminal-proceeding relationships, and the enforcement – consideration of a particular conditions, the uniqueness of each legal situation. The optimal combination of enforcement and lawmaking, basing on the European Court decisions, provides versatility over the mechanism of criminal procedure regulation.

The decisions of the European Court as the legal fact are characterized by the following peculiarities:

First, may contain legal position, which acts as a rule of behavior for criminal-proceeding participants;

Second, influences on specific criminal-proceeding relationships, causes their occurrence, change or termination;

Third, as the element of mechanism of criminal-proceeding regulations acts as the factor of criminal-proceeding legislation development, and formation of unified approaches in the enforcement practice;

Forth, changes the enforcement's sense of justice, introduces principles of case law into national criminal-proceeding system.

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Oleksandr TOLOCHKO

THE PRACTICE OF THE EUROPEAN COURT OF HUMAN RIGHTS IN CRIMINAL PROCESSUAL REGULATING MECHANISM

The article considered the problem of application of the European Court in the mechanism of regulation criminal processual. Research of this problem made within a specially-legal approach which provides analysis of the interaction of legal means providing legal impact on the criminal procedural relationships. Defined international legal standards humanization of criminal procedural institutions.

Keywords: human rights; law of the European Court of Human Rights; the mechanism of criminal processual regulation; international legal standards humanization of criminal procedure Institutes.

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CRIMINAL EXECUTIVE LAW

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CONTROL MECHANISM OVER THE ENFORCEMENT OF JUDGMENTS ON UKRAINIAN TERRITORY IN X–XVI CENTURIES

It is obvious that the present and the future are inextricably connected with the past. Thus the scientific study of a socio-legal phenomenon without an impartial investigation of all phases of the history of its development is impossible.

Legal changes that took place in the country should be assessed primarily taking into account the socio-political and economic system that prevailed in society at a particular historical stage.

The development of legal regulation of control and supervision activity over the observance of laws in the penal sphere is closely connected with the history of the formation of the punishment execution system. In turn, the establishment of the punishment execution system depends on the legislative consolidation of a variety of punishments, the definition on a legislative level places for their implementation. It is necessary to take into consideration the organizational principles of activity of the bodies (officials) who performed these penalties.

Thus, a historical overview of the formation and evolution of the legal regulation of control and supervisory activity over the observance of laws in the penal system can not be separated from relations, which evolved in punishment execution system, the study of procedure and conditions for the enforcement of criminal penalties in different historical periods.

On Ukrainian territory the right formation took place in the days of the Grand Duchy of Kiev. The first codified act of Kievan Rus became a collection of laws «Russian Truth». The main sources for its creation (XI–XII century) were agreements between Rus and Byzantium of 911, 944 and 971 years [1, 6–10, 30–35, 58–59], the first international legal documents of Kievan Rus. More than 100 listings of «Russian Truth» have survived to present day. 3 main editions are eliminated in scientific literature: Short («Short edition»), Common («Ample edition») and abbreviated («Abbreviated edition») [1, 77–80, 108–120, 197–201].

The crime in «Russian Truth» is called an insult. This term meant any financial, physical and moral damage, caused to a person. In other words, the crime was considered as harm to a person or property made by the action [2, 72].

The articles «Russian Truth» contain the system of penalties, which emerged in the historical period.

The most common type of punishment was monetary penalty, including «vira» – a

fine that was levied in favor of the prince for the murder of a free man; «holovschyna» – monetary compensation which was paid to relatives of the murdered; «sale» – the fine for committing a number of property and personal crimes, charged in favor of the prince; «lesson» – a fine that was paid to the victim [2, 29–34].

The severest form of a punishment specified in «Russian Truth» – «stream», «robbery». This punishment was imposed for the most serious crimes – murder in the robbery, horse stealing and setting fire to the house (Articles 7, 35, 83 of «Prostorova Truth») [1, 109, 111, 117].

According to the opinion of V.I. Serheyevych, a penalty in the form of «stream and robbery» was ended by the sentence in «zatochenye» [3, 188–189]. The essence of the sentence «stream and robbery» was in criminal's expulsion from the community and the confiscation of his property for the benefit of the community, says S. Kudin [4, 132–135]. I. Foynytskyy believes that «the right of the stream» meant the right to dispose at the discretion of the prince or people, and in some cases, such discretion led to death, or to expulse, in the third case – to exile, even giving in slavery» [5, 193].

Analysis of articles «Russian Truth» shows that in that time there was no distinction between criminal and civil offenses. Punishment was primarily aimed at compensation the damage caused to the victim by the offender, to treasury reimbursement. So we can support the view of those scientists who consider term «robbery» as confiscation of the property of a guilty person and the prototype of the later confiscation [6, 394–395; 7, 142].

Thus, confiscation of the property of a guilty person («robbery») was one of the elements of the concept of «steam and robbery» and was connected with the expulsion of a person and his family from the community or giving in slavery («steam»).

It should be noted that the rules of «Russian Truth» didn't contain such punishment as the death penalty. Instead these rules provided vendetta associated with the tradition of common law. For example, Art. 1 of «Short Pravda» stated: «If man kills other man, it means he avenge for brother, son for father, father for son, brother's or sister's sons; If it's was not avenge – 40 hryven for his head ...» [1, 77]. Vendetta was permitted only for murder.

Certainly, the «Russian Truth» was the code of substantive and procedural law. It contained information about what actions should be considered as a crime and the punishment to be imposed for them.

Court existed to resolve conflicts that arose in a society. Firstly the judge was the prince and persons hired by him, so called «Tiuns» or «Posadniki» [7, 627]. Departments and courts were inseparable in ancient Rus.

According to the researchers opinion, the judicial system was as follows: 1) prince, which owned all judicial power; 2) governors princes on places (mainly in cities) – «Virniki», which replaced «Tiuns» in criminal conflicts; 3) headman, who administered justice in villages in small cases 4) religious courts (crimes against the faith and the church); 5) «12 people» («12 men»), the status of which wasn't examined by scientists; 6) preferred patrimonial courts (community court on the ground). The accusation is made solely by victim (plaintiff) [8, 14, 17; 9, 78–80].

While analyzing researches and publications we conclude that at the time of Kievan Rus the only body of judgments enforcement didn't exist. Judicial decisions were executed by plaintiff himself. There have been people who contributed to the implementation of these decisions, particularly the younger warriors of Prince, on which he placed an additional duty to perform judicial and prince's decisions [10, 159–160]. Art. 1 of Short Truth stated that in case of attempt on the life the person ought to pay 40 grivnas [1, 77]. Later in the Article 1 of Long Truth (XII century) the terms «yabednyk» was referred to as «tyvun boyaresk» [1, 108]. So «yabednyk», swordsman, and later «Boyarsky tiun» were the warriors of the prince, in which he placed a duty of judgments enforcement. V. Pastuhov mentions that in «Russian Truth» are also stated provisions concerning «child», «parishioners» that collected from

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the public «faith» and «sale», «mytelnyki» who dragged judicial custom [11, 85–86].

According to the researchers, in any of the documents of that time there is no term «prosecutor» as a record regarding the control organization over the activities of persons on which the duty of judicial decisions enforcement was entrusted.

As the prince in Kievan Rus headed legislative, executive and judicial power, that is the judicial function was not separated from the prince's power and the price personally administered justice, so we can conclude that the control over the execution of judgments was directly administered by the prince himself. On the grounds this function was relied on members of the prince.

The second half of the XII century was marked by the collapse of the ancient Russian state for a large number of fragmented feudal principalities, on which the right of Kievan Rus continues to act. The largest formations were Novgorod and Pskov. It should be noted that in the agreement of Novgorod the Great the prince Yaroslav of year 1270 mentioned usher as a performer of judgments [12, 140].

Scientists are unanimous in their views that the ushers were the first agency of judgments execution. They were appointed to the position by the prince. In addition to the judgments their duty was to arrest the debtor at the request of the plaintiff and ensuring the appearance of persons summoned to court [13, 7].

Higher level of law development had Charters of Novgorod and Pskov, which were the main source of law for these cities. By the provisions of these monuments were defined more developed system of judicial organization and procedural law, and in Pskov Judicial Charter civil law had an important place [12, 210, 282–283].

The second half of the XV and early XVI centuries is the period of feudal fragmentation and the creation of a centralized Russian state. At this time, there is a need for the establishment in the state the only law to strengthen political unity and reinforce centralized power. With this aim in September 1497 the Grand Prince Ivan III and its «Duma» approved the so-called Code of Law, which was the result of all previous legislative activity and was responsible for a new stage of feudal society [14, 37, 342, 347]. It contains provisions of earlier period, including «Russian Truth», Pskov Judicial Charter, Charters, and judicial decisions on certain issues.

While describing the Code of Law of 1497, M.F. Vladimirskiy-Budanov said that its main content was procedural law. This regulation does not cover all legal rules that were in legal circulation and therefore didn't exclude the application of customary law [15, 262].

Analysis of articles of «Sudebnik» indicates that property penalties begin to give way to other, more severe, such as the death penalty and corporal punishment: «Murderer of master (peasant who killed the owner) and plotter, thief who committed murder, person who disclosed confidential information, person who set fire to the city with the aim to give it to the enemy – admittedly criminal (from its number) should be put to death penalty by putting to the sword (Article 9). If thief is arrested for the first time (except theft in the church and theft with murder), and in other theft (committed previously) there are no evidences, he should be put to the trade penalty by Knuth ... (Article 10)» [14, 359].

In «Sudebnik» there is a list of officials who are required to enforce judicial decisions. Many times bailiffs are mentioned as judgments executors (Articles 5, 7, 28, 33, 36, 44, 50); «Nedelschyky» – ushers, who perform they duties weekly (Articles 4, 28, 29, 31, 33, 34–35); «Pravedchyky» – bailiffs who carry penalties by court order (art. 50). Art 8 of «Sudebnik» we learn that the death penalty is carried out by Tiun of Grand Prince of Moscow. Article 35 states: «If, the bailiff has thieves under arrest he can't sell them and release without bail» [14, 357–374, 399]. So, we can talk about appearance of legal provisions which form the control institution over the activities of officials, which enforce judgments.

It should be noted that the «Sudebnik» imposes on police officers and «Nedelschyk» an obligation not only to exercise the court

judgments in criminal and civil cases, but also cause the parties to the court, organize trial, transfer the case to court, perform detective investigative measures [14, 365].

«Sudebnik» did not define order of sentences execution, and contained only a list of officers authorized to carry them out. «Sudebnik» of 1497 became the main source of 1550 year's «Sudebnik» of Ivan IV Grozniy – the period of formation of the Russian estate-representative monarchy. In «Sudebnik» of 1550 year was firstly mentioned imprisonment as an independent type of sentence (Article 4)» [16, 233].

Thus, the «prison» is an institution where imprisonment is executed. However, «Sudebnik» does not contain any provisions relating to the regulation of the activities of these institutions and officials who led them.

Exploring the provisions of «Sudebnik» of year 1550, V.A. Rogov identifies four groups of imprisonment: 1) private prisons, which were located at the courts and lords residences; 2) State prisons; 3) monastery prisons, designed to hold the clergy persons, and opponents of ecclesiastical authority; 4) prisons in cities [17, 235–236].

I. Foynytskyy gives a description of prison of that time: «Applying as punishment, prison meant severe bodily harm, accompanied by the imposition of the chains, chaining to a wall that was in damps cellars etc.» [5, 308].

Without changing the basic principles of the work organization of the bailiffs, «Nedelschyki», and other officials who provided the enforcement of court decisions articles 44–50 of «Sudebnik» of 1550 more clearly prescribed exercise of their functions. In particular, «Nedelschyk» contains the procedure for obtaining of the document on the right of profit for the performance of their duties. «Nedelschyk» is forbidden to use his own servants and relatives for exercise of his functions at a place of his residence. It is provided that his orders should have been were carried out by «Yizdok» who took those duties under a contract with him.

«Sudebnik» sets liability of «Tighnevik» and «Yizdoka» responsibility and provides their registration in special books [16, 242–245].

Article 47 of «Sudebnik» of 1550 year mentions the so-called «Feeding Dyaks», whose duties included conducting special registration books of all officials who were dependant on population [18, 76]. Despite differing opinions on their tasks in public administration, all scientist are unanimous that the institution of «Feeding Dyaks» was one of the form of control over the activities of «Nedelschyki», which executes court decisions [16, 291–292]. However, the «Sudebnik» of 1550 year contains rules of penal nature, relating to the control of persons who are held in detention.

Thus, the analysis of historical documents of studied period shows that the control and supervision activity is not released in an independent state activity. Although there are references to the sources of public officials, which are charged with monitoring and supervising control over the execution of judgments, but the clear separation of powers was absent.

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Valentin NEDILKO

THE MECHANISM FOR MONITORING THE EXECUTION OF JUDGMENTS ON UKRAINIAN TERRITORY DURING X–XVII CENTURY

Historical development of control-supervisory activity after execution of court decisions in X–XVI centuries investigated in the article. The author analyses historic – legal documents which regulate the problems of court decisions execution, defines subjects of control – supervisory activity, their authority in the indicated period.

Keywords: monitoring and supervision activities; enforcement of judgments; penalties; court system.

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THE WAYS TO OPTIMIZE THE ENSURING OF THE PERSONAL RIGHT FOR LIBERTY AND SECURITY IN CRIMINAL PROCEDURE

Article 3 of the Constitution of Ukraine stipulates that the rights and freedoms and their guarantees determine the essence and orientation of the state, and the establishment and protection of rights and freedoms is a duty of the State. So, there are identified two main stages of government activities on the rights and freedoms: the first – their assertion, formalization in the form of legal norms; second – their ensuring, which is directly covered by the enforcement procedures of their implementation.

The ensuring of the personal rights for liberty and security in criminal procedure in Ukraine, enshrined in Article 29 of the Constitution of Ukraine, is not perfect. It is associated with traditional not enough active state activity in this area. Art. 2 of the Criminal Procedural Code of Ukraine (CPC of Ukraine) specific objectives with a proper direction of the criminal proceedings defined: the protection of individuals, society and the state of criminal offenses, protection of rights, freedoms and legitimate interests of the criminal proceedings. In its turn, art. 3 of the Basic Law of Ukraine refers to a much broader activity – ensurance. So, in CPC of Ukraine is legally scuttled the constitutionally defined state behavior regarding the rights and freedoms. Considering this it is a shaky confidence in the correct implementation of guarantees of the personal rights for liberty and security in criminal proceedings. Given the above, it is seem that researching issues related to the optimization of mechanism on the rights under Art. 29 of the Constitution of Ukraine are actual.

Their development associated with a need to perform important scientific and practical tasks, such as provided by the Verkhovna Rada of Ukraine on 28th of April 1992 «On the Concept of Judicial Reform in Ukraine» and other legal acts. In addition, this development corresponds to priority directions of development of legal science on 2011–2015, approved by the National Academy of Sciences of Ukraine (judgment on 24th of September 2010 № 14-10).

Analysis of recent research and publications provided an opportunity to establish that the liberty and security of person was the subject of attention for many scientists, including: L.D. Voevodina, E.A. Volohinoyi, A.P. Horshenova, L.M. Gusev, P.M. Davydova, T.N. Dobrovolsky, V. Kaminska, I. Kozachenko, V.M. Kornukova, L.A. Krasavchykovoyi, O.A. Lukashev, P.I. Lublin, V.T. Malyarenko, V.I. Marynіva, G.D. Meparishvili, O.R. Mikhaylenko,

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I.V. Michael, M.N. Myheyenka, I.L. Petrukhin, M.A. Pohoretskoho, M.N. Polyansky, A.L. Rivlin, F.M. Rudynskoho, I.E. Farber, I. Foynytskoho, A.L. Tsypkina, H.I. Changuli, I.A. Shumak, M.E. Shumylo and others. Their significant scientific contributions are important in understanding the investigated problem. However, with the adoption of the Criminal Procedure Code of Ukraine and its small relatively practice, there is needed a scientific work on the issues of optimization mechanism to ensure an individual's right to liberty and security of a person. The novelty of this process is associated with both lack of experience in applying the provisions of the CPC of Ukraine and the need to use advanced integrated cross-sectoral approach to study the problems of guarantees the rights and freedoms of the individual.

Taking this into account the purpose of the article is to highlight the ways to optimize mechanism to ensure an individual's right to liberty and security of person in criminal proceedings.

Analyzing the provisions of the current legislation of Ukraine, we can establish that content of the guarantees of rights and freedoms during a preventive measure in the form of detention are reflected in the legal provisions and in publications on legal subjects. Analysis of this «registration» allows not only summarizing information about guarantees content, but also providing some suggestions for improving the forms of their realization.

For example, in Art. 12 CPC of Ukraine is observed that during the criminal proceedings, no one can be hold in custody, be detained or restricted in the exercise of free movement in a different way because of suspected or charged with a criminal offense except on such grounds and in the manner prescribed by this Code. The purpose and reason for preventive measures set out in Art. 177 Code of Ukraine. The construction of that article provides, at first glance, the inquiry agency, investigator, prosecutor or judge's subjective right to choose such an event, in addition to the fairly wide range of them. But keep in mind that safety precautions are selected by taking into account the reasons and circumstances which are divided into three groups: general, special and unique. In Part 2 of Art. 177 CPC of Ukraine states: «The reason for the preventive measure is to have a reasonable suspicion that the person committed a criminal offense, and the presence of risk, which give reasonable grounds investigating judge of the court to believe that the suspect, accused, convicted can carry out the actions specified in paragraph one of this article. Investigators, prosecutors have no right to initiate a preventive measure for this without a reason prescribed by this Code». Applying the precautionary measures necessary to consider the general conditions set out in Art. 178 Code of Ukraine, which are referred to as «circumstances». The application of detention provided in Art. 183 CPC of Ukraine.

The application of preventive measures against the individual, according to scientists – is a manifestation of state coercion, exactly its type, which is a legal responsibility [1, 491–492]. Therefore, regardless of the stage of criminal proceedings it is expedient first to improve institute legal liability of the investigator, prosecutor and judge in order to avoid the use of their illegal actions on the part of individual rights and freedoms of a person. Officer, who is leading a process, bound to comply strictly with legislative requirements in his functions, particularly those, relating to the protection of rights and freedoms. The determining factor here is the observance of procedures for the use of procedural coercion. In addition, due attention should be paid to improving their content. It should be noted that the opinions of scientists on this issue are somewhat different.

In particular, according to J.D. Livshits, should be distinguished: preventive measures; measures for the detection and seizure evidences; measures to ensure order in the courtroom. However, as you can see, he did not said the measures which are updated unlawfully infringed rights and freedoms of individuals [2, 6]. In turn, the Z.F. Kovriga, ranging measures of procedural coercion divides them only into two groups: 1) measures

of procedural coercion (precautions, the obligation to appear, arrest, drive, search, removal the accused from office); 2) providing tools (search, seizure, placing people in medical facilities, seizure of property) [3, 29–30]. V.M. Kornukov also integrates these measures into two groups: 1) measures to ensure participation and proper conduct of the accused and other persons in criminal proceedings (precautions, the obligation to appear, arrest, drive, removal the accused from office); 2) Measures that ensure the identification, removal and examination of evidence (search and seizure, examination, obtaining samples for comparative studies, placing individuals in medical institutions) [4, 25].

It is clear that at present time this measures classification of procedural coercion is obsolete, so it should be viewed solely in the light of the provisions of the current CPC of Ukraine. There is no longer such measures as «taking away the obligation to appear» (at this time – «personal commitment») and «seizure» (somehow this precaution was transformed into «temporary access to objects and documents»). Bringing positions of criminal scientists of the Soviet period was made exclusively for more knowledge of the social and legal nature of appropriate measures and prediction directions of further development.

Thus, given the different definitions of the content of procedural coercion, it should be noted that they:

– For the first, applying specifically by authorized official who conducts criminal proceedings;

– For the second, directly relating to a person who is involved in the criminal proceedings.

On the behavior of these criminal legal proceedings entities depend the proposals for improving the mechanism of implementing legal guarantees of rights and freedoms during the remand in custody. In this context, it is necessary to consider protective function of law, manifested in three forms such as:

– Legal liability;

– Measures to protect justice;

– Preventive measures.

Legal liability – a penalty, a punishment that is imposed by the competent authorities on person, who is guilty in violating the law, who did not fulfill the legal obligation laid, so who's behavior on behalf of the state subjected to public censure, the very same person charged with additional penalty duty, resulting in restrictions, denial of certain benefits and more.

Criminal Procedure responsibility distinguish as a separate legal liability that some scientists are reduced to special cases of fines [4, 10], and the second extend to the constraint it to associated with the abolition of procedural acts, and even – to preventive measures [3, 31–32; 5, 7].

A special feature of the Institute of Criminal Procedure responsibility, as seen, is an extremely wide range of subjects that can be brought to it. As a subject may be any member of procedural relations that has procedural rights and duties, but violated procedural rules. Specifically, P.S. Elkind distinguishes several groups of subjects of criminal procedural responsibilities, including in particular: government agencies; citizens who are in the criminal process have personal criminal and civil legal interests; persons who represent in criminal proceedings other business interests, etc. [6, 100].

It is wise to note that the special subjects of legal liability are those who belonging to public bodies. They can combine as an entity that is responsible, and the entity that imposes it on others. Public officials and authorities have powers and are entitled to use means of coercion and procedural justice.

At its core, these features appear in the psychological, physical or material impact on crime and subjects related to the legal restrictions of personal and property. However, government agencies than any other subject, have increased responsibility for strict compliance with the procedural laws.

It should be noted that the liability of the members of the legal process is different. Liability of officials and authorities in criminal proceedings for violation of procedural

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law provided mainly by means of disciplinary and criminal liability. Other participants to be less significant consequences for procedural responsibilities: fine, change the preventive measure for tighter and more.

Thus, the theories of criminal proceedings acknowledge Criminal Procedure responsibility as an independent kind of responsibility. Criminal Procedure responsibility – is an inevitable consequence of the committed procedural violations. Its basis is a procedural offense – guilty, wrongful act or omission that causes harm to the criminal process. The development social and legal nature of this kind of legal responsibility is extremely relevant and promising.

Thus, in Articles 62, 64 and 129 of the Constitution of Ukraine clearly defined reasons for failure to use evidence obtained in violation of the law. In Section 2 of Part 2 of Art. 87 CPC of Ukraine elaborated that is inadmissible evidence obtained through torture or cruel, inhuman or degrading individual treatment or threats of such treatment. It should be noted that according to the provisions of Art. 23 Code of Ukraine court examines the evidence itself. This requirement negates the use of torture during pre-trial investigation, because the hearing will be identified and leveled instances of illegal obtaining «confessions» of crimes.

Some guarantee of inappropriate use of torture in criminal proceedings is also authority for the defense, enshrined in Art. 93 CPC of Ukraine, namely independent of the prosecution the right to gather and present evidence to the court and initiate their collection.

One should also pay attention to the content of Part 3. 176 CPC of Ukraine under which the investigating judge, the court rejects the application of precaution, if the investigator, the prosecutor can not prove that found during the examination of the application preventive measures are sufficient conditions for the belief that none of the softer precautions provided Part 1 of this article shall not prevent granted when considering the risk or risks. So detention is solely exceptional precautions.

In summary, it is useful to note that due to the requirements of Part 2 of Art. 64 of the Constitution of Ukraine individual rights under Art. 28 (contains the prohibition of torture) and Art. 29 of the Basic Law of Ukraine are absolute and attacks on them are not allowed. In case of violations of Art. 55 of the Constitution of Ukraine include specific guarantees of protection: judicial protection (in the court of redress); information and legal protection (enable to obtain the necessary knowledge to advocate their rights and freedoms); protection of personal rights and freedoms, or self-defense (sales person functions Defender own legal status); legal aid lawyer-defender; state protection (limited by the state); constitutional protection (appeal to the Constitutional Court of Ukraine of the constitutional appeal of the need for an official interpretation of the Constitution of Ukraine and laws of Ukraine to ensure the realization or protection of constitutional rights and freedoms of human and citizen); international legal protection (application for protection to the relevant international judicial institutions or bodies of international organizations, member or participant of Ukraine). The methods somewhat coincide, overlap, interact with each other, including in criminal proceedings. Improving their content is a promising direction for further research.

As remarked I.L. Petruhin justice protecting measures as the following forms of protected functions of law include:

– Enforce the obligations of parties to the process in its criminal legal proceedings with the body, which is processing, that is – carrying out enforcement investigation;

– Cancellation of unjustified illegitimate judicial decisions;

– Withdrawal of investigator, prosecutor on the further implementation of the proceedings;

– Forced realization of subjective rights [7, 68].

In the latter case we are talking about the realization of the right, not the obligation (for example, where a person because of age or mental disabilities are not able to evaluate

the opportunity to protect their legitimate interests of a suitable protector – so-called compulsory protection).

Thus, there is a rather urgent and development institute providing quality legal assistance to those who for some reason both objective and subjective, are unable to protect their rights and freedom.

The application of preventive measures as another form of manifestation of the protected functions of law aimed at preventing illegal or otherwise objectionable, in terms of state actions of the criminal process. Prevention in the law – is preventing abnormal behavior of individuals and entities, to prevent harmful consequences that might predict in advance. You can see general and specific preventive measures that may be contained in the rules of criminal law or administrative or disciplinary in nature and are able to keep people from committing new offenses. To preventive measures of coercion include: detention; precautions; other measures of procedural coercion. Typically, preventive measures are applied to the suspect and the accused, but the CPC of Ukraine provides instances of their application to witnesses, experts, victims, specialists. In this aspect here is the current CPC of Ukraine provides a general form of prevention of possible violations of rights and freedoms by the investigator and the prosecutor as evidence of recognition formation only at the trial stage.

Considering the above, we reach the following conclusions below. Improving the mechanism on the rights to liberty and security of person in criminal proceedings should occur primarily because of the behavior of subjects that lead the process. Thus it is necessary to take into account the protective function of law, which is manifested mainly in three forms: legal responsibility, justice and protection measures as preventive measures. In the theory of criminal proceedings acknowledge Criminal Procedure responsibility as an independent type of legal action. Criminal Procedure responsibility – an inevitable consequence of procedural violations. Its base, in turn, is committing procedural violations – wine, wrongful act or omission that causes harm to the criminal process. It is the development of social and legal nature of this kind of legal responsibility in matters of limitation of the right to liberty and security of person in criminal proceedings seen to date and may be subject to further scientific research. In addition, given the form of implementation for the security functions of law need proper development and the following areas of law provisions of Art. 12 CPC of Ukraine, as proof of the grounds for a preventive measure; ensure law enforcement procedural decisions related to the restriction of the right to liberty and security of person; appropriate response to misconduct investigator, prosecutor or judge; ensuring proper during criminal proceedings individual rights under Art. 29 of the Constitution of Ukraine on prevention and investigation of potential violations.

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OPTIMIZATION METHODS OF ENFORCEMENT OF HUMAN RIGHT TO LIBERTY AND SECURITY IN CRIMINAL PROCEEDING

The article considers the main issues related to ensuring human rights and freedoms during the application of preventive measures such as detention. On the basis of the conducted analysis of the approaches to the improvement of the mechanism of implementation of relevant legal safeguards.

Keywords: measure of procedural coercive; measures the pre-trial investigation; preliminary investigation; duress; detention.

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PROVIDING THE RIGHT TO LIBERTY AND SECURITY OF PERSON AT DETENTION

The adoption of the Criminal Procedure Code of Ukraine (CCP of Ukraine) in 2012 [1] substantially influenced on reformation of criminal justice, based on – Human Rights and Fundamental Freedoms. The main goal of such transformation is the approaching of national procedural law to the requirements of the international community.

The right to liberty and security is an inalienable right of everybody. However, of particular relevance to ensure it gets it the field of criminal realization. Confirmation of such position is an idea that the personal freedom – the basic condition that all must use. Privation of it can negatively influence on using other rights, including such as the right to family and private life; right to freedom of collections, association and expression of own opinion; the right to freedom of movement. Moreover, any imprisonment renders negative influence on personality, it appears the fear of being subjected to torture, inhuman and degrading treatment. Judges should remember that in order to guarantee the freedom to be meaningful, any of its privation should always be exceptional, objectively reasonable and last no more than it is absolutely necessary [2, 4].

Note that in the Criminal Procedure Code of Ukraine of 1960 (CPC of Ukraine of 1960) [3] is not fully implemented this human right unlike the valid Criminal Procedural Code of Ukraine.

So, the article 14 of Criminal Procedure Code of Ukraine of 1960 was called «Inviolability of person» and contained such position «Nobody can be arrested as on the basis of court decision. A public prosecutor must immediately release anyone who unlawfully imprisoned or held in custody over the period provided by law or judicial sentence».

Thus, in the Criminal Procedure Code of Ukraine in detail the normative settlement of investigated are certain by us principles. So, during criminal proceeding nobody can hold to under a guard, be detained or limit in the right to free movement in a different way because of suspected or charged with a criminal offense except on the grounds and in the manner prescribed by the Criminal Procedure Code of Ukraine.

Everyone who is detained through suspecting or charged with a criminal offense or otherwise deprived of liberty shall be delivered as soon as possible to the investigating judge to decide on the legality and validity of his detention, arrest and other subsequent detention.

The detained person shall be immediately released if, during seventy-two hours from the moment of detention, he is not given a reasoned court decision on detention. About detention of person, taking her into custody or restricting the right to free movement in another way, as well as its seat shall be informed immediately of its native relatives, family members or other persons at the option of the person in the order prescribed by the CPC of Ukraine. Each, who over a

term certain in Criminal Procedure Code of Ukraine detained or deprived of liberty in other ways, should be released immediately. Detention, taking a person into custody or restricting the right to freedom of movement in a different way during the criminal proceedings carried out by absence of reason or in violation of the procedure prescribed Code of Ukraine, and pulls a responsibility under the law.

As you can see, such detailed regulation of the right to liberty and security of person is connected with the implementation of the provisions of the Article 5 of Convention of the Protection of Human Rights and basic Freedoms [4] and practice of European Court of Human Rights. In the Criminal Procedure Code of Ukraine is allowed the possibility of limitation of this integral human rights, which means the application to the person of criminal procedure measures of coercion as reason, personal obligation, house arrest, Extraditional events and other like that.

Normative regulation of content has changed not only the formation of the «Principles» all procedural issues were corrected, that was associated with a possible limitation of the right to liberty and security during realization of criminal proceedings.

The changes occurred institute detention. In accordance with paragraph 2 of Article 149 of the Criminal Procedure Code of Ukraine of 1960 the suspect was considered a temporary preventive measure. Grounds for detention, that were determining in the articles 106 and 115 of Criminal Procedure Code of Ukraine of 1960, considered the following: 1) if the person is caught committing the crime or immediately after its commission; 2) when witnesses, including victims, directly say to this person as the one who committed the crime; 3) when on suspected or on his clothes with him in his home there are clear traces of the crime; 4) at presence of other data give reason to suspect the person of committing a crime, he may be detained only when he attempts to escape, or when a person does not have a suspect; 5) in the case of suspected crime, which provides a basic sentence of a fine of more than three thousand non-taxable minimum of acuestss of citizens, only if the suspect is not performed duties related with it using preventive measures, including duties provided for in Article 149-1 of the Criminal procedural Code of Ukraine of 1960, or failed to follow the established procedure requirements for depositing as collateral and provide the document confirms this. Analyzing these grounds, we conclude the presence of the aforementioned controversy over the wording specified in Art. 14 Code of Ukraine of 1960 «arrested differently as on the basis of court decision»: for entities authorized to arrest a person, it was determined the inquiry and the investigator, but not the court.

The current CPC of Ukraine applied a new approach to the interpretation of the institute of detention. Thus, according to Part 1 of Art. 131 CPC of Ukraine to the measures of criminal proceedings include detention (Section 8) and safeguards (Section 9). However, in the Part 2 of Art. 176 CPC of Ukraine stipulates that temporary protective custody detention is applicable on the grounds and in the manner prescribed by the CPC of Ukraine. Such formulation without the detailed analysis of the legal nature can not be at once named a collision regulations. First, it is necessary to refer to the classification of the institute of detention.

In particular, the name of § 1 of Chapter 18, «Precautions, detention on the basis of the decision investigating judge and court» suggests that the legislature: 1) clearly delineates the category «Precautions» and «detention on the ground of the investigating judge and the court»; 2) distinguishes «detention on the basis of the decision of investigating judge and court» as a separate detention. Actually, the use of detention on the basis of the decision investigating judge and the court is only for the effective examination of the application of the prosecutor, the investigator in consultation with the Prosecutor for permission to arrest a suspect in order to drive him to participate in the consideration of a request for use as a preventive measure of detention. This is the institution of a permit detention for the purpose of issue, and gives an opportunity to

provide effectiveness of criminal realization referred to Part 1, Art. 131 of CPC of Ukraine, particularly in the application of preventive measures such as detention.

However, § 2 of Chapter 18 is called «detention without approval investigating judge of the court», that testifies not only to the presence of another type of detention, but also the exclusivity of the nature of criminal procedural coercion. The structure of § 2 of Chapter 18 provides a differentiation arrest: the lawful detention (Art. 207 of CPC of Ukraine) and detention authorized by an official (Article 208 of CPC of Ukraine).

Will consider the reasons for the use of these types of detention. Thus, the legal detention can take place: 1) when committed or attempted to commit a criminal offense; 2) after the commission of a criminal offense or during continuous pursuit of a person who is suspected of committing. However, an authorized officer has a right without the decision of investigating judge, court to detain the person, suspected of commission a crime for which punishment of imprisonment, except in the following cases: 1) if the person was caught during the commission of a crime or an attempt to commit; 2) if immediately after the commission of crime witness, including the victim, or a combination of obvious signs on the body or clothing scene indicate that this person has just committed a crime; 3) if the suspect has not fulfilled obligations imposed on him by a custody or has not complied with the requirements prescribed manner of depositing as collateral and to present the document confirming if suspected of committing a crime, which provided the main sentence of a fine of more than three thousand tax – exemption minimum income of citizens. These grounds for detention decisions without investigating judge, court indicating the presence of all symptoms and objective grounds for the application of preventive measures (Art. 177 of CPC of Ukraine), which is to prevent: 1) to hide from the pre-trial investigation; 2) to destroy, to hide or distort any of the things or documents that are essential to establish the circumstances of the criminal offense; 3) unlawfully to influence on a victim, witness, another suspect, accused, experts, scholars in the same criminal proceedings; 4) to prevent to criminal realization by another character; 5) to commit another criminal offense or to continue a criminal offense, which is suspected, accused. Thus, we believe that the institution of detention in accordance with the CPC of Ukraine should be understood as a measure to ensure the criminal proceedings (detention is after the decision of investigating judge with the aim of occasion) and a temporary preventive measure (lawful detention and detention by an official).

Analyzing these positions of CPC of Ukraine as for the institute detention, it can be argued that they comply with the provisions of paragraphs b and c Part 1 of Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms, which stated: 1) the legal arrest or detention of person for non-lawful order of a court or in order to ensure the fulfillment of any obligation prescribed by law; 2) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offense or when it is reasonably considered necessary to prevent his committing an offense or fleeing after having done so.

However, in practice, quite often there are situations where detention is not possible, such as in the case soon after fleeing the crime (after committing a grave or especially grave crime), as legislators use category, meaning a short time: «In the commission of or attempt to commit», «immediately after the commission of» «in the continuous prosecution of the person», «person caught while committing a crime», «the person has just committed a crime». Given this, the question of the detention of the offender in a day or longer period of time as such is already beyond the legal framework. In this case, the use of detention for the decision of the investigating judge about the purpose of this case is inefficient because it requires the solution of many procedural issues, which the prosecution is unable to make objective reasons. Furthermore, active involvement

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of operative subdivisions can results to the identification of a suspect, but after the expiration of the term specified in the Articles 207 and 208 of the CCP of Ukraine. In accordance with the provisions of Code immediate detention is done by impossible, for example, suspected of commission of a grave or especially grave crime in obtaining sufficient evidence to commit the said offense by that person within a few days after it occurred even in the presence of reliable data on the person's efforts to hide from the investigating authorities and courts (for example, to leave the country). We consider it possible, by deleting the word «just» from paragraph 2 of Part 1 of Art. 208 Code of Ukraine, eliminating this deficiency in the Code.

Obstacles arise regarding the possibility of detaining a person in an international (intergovernmental) wanted for crimes committed in foreign countries. The normative settlement of this question is absent both in § 2 of Chapter 18, and in the provisions of Title IX «International cooperation in criminal proceedings», and therefore such detention can take place outside the limits of the CPC of Ukraine. Therefore, we consider it appropriate to supplement Part 1, Art. 208 of the CCP of Ukraine of Section 3 as follows: 3) if the person is in the international (interstate) wanted for crimes committed on the territory of the foreign countries». Consider that this proposed construction of Art. 208 of the Code of Ukraine will promote a balance between respect for human rights to liberty and security of person and objectives of criminal proceedings. Nobody denies the detained person the right to appear before the investigating judge to verify the grounds for detention periods by Art. 211 of the Code of Ukraine.

Taking into account, we note that the adoption in 2012 of the Criminal Procedure Code of Ukraine contributed to the development of the national criminal justice in relation to regulatory support an individual's right to freedom and personal inviolability in the application of detention. The achievements of the international community in this area has been implemented. At the same time, the use of CPC of Ukraine were certain of its deficiencies that require immediate removal by law.

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Kyrylo VOLKOV

NEW APPROACHES IN UNDERSTANDING THE RIGHT TO LIBERTY AND SECURITY IN THE CONTEXT OF REFORM INSTITUTE OF DETENTION IN CRIMINAL PROCEEDINGS OF UKRAINE

The article investigates the modern regulation of human rights to liberty and security of person. Analyzed and classified Institute detention in criminal proceedings through the prism of ensuring human rights to liberty and security of person.

Keywords: human right to liberty and security measures to ensure the criminal proceedings; the measure of restraint; detention of a person on the basis of the decision of the investigating judge; the lawful arrest; detention authorized official.

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CRIMINAL LIABILITY OF PERSONS ENGAGED PRETRIAL INVESTIGATION FOR CRIMES AGAINST JUSTICE: A HISTORICAL REVIEW

Formation and development of criminal law that punish persons engaged in pre-trial investigation for crimes against justice cannot be considered apart from the historical past. Historical survey of the relevant group of crime is extremely necessary for formulating scientific statements and conclusions. More M.S. Tagantsev wrote that the goal of this study should be not only dogmatic interpretation and presentation principles applicable law, but also their critical assessment on the basis of practice of science principles and provisions of national law history [1, 30]. As aptly put famous pre-revolutionary Russian scientist N.D. Sergeev, see origin of the institution or statutory provisions, we will know the conditions that gave rise to it and which influenced his development, knowing this, we can assess its current value, in other words, we get the chance to decide whether to be saved statute or it must succumb to another place as having lost its base due to changes in life conditions [2, 8].

Fully support the position expressed above and note that the historical and legal analysis of offenses against justice committed by persons engaged in pre-trial investigation is extremely important. After all, it will help to analyze the evolution of criminal law at certain points, find out the structure of social relations of the time, which were put under the protection of the legislator of criminal law and the effectiveness of such criminal protection, identifying the advantages and disadvantages of criminal legal regulation in this group Crimes against justice, and propose and justify the changes and additions to the current Criminal Code of Ukraine.

The aim of the paper is to take a historical view of the formation of the criminal justice those who carry out preliminary inquiry. This will be analyzed historical monuments, operating in Ukraine.

Note that actually the first historic landmark that has provided criminal penalties for similar acts was Sudebnik 1550. Article 70 provided for liability for unlawful arrest and the imposition of fetters to the person who needs bail, without a city clerk, who performed judicial duties and the governor, who was in court, as well as representatives district nobility in the face of a palace, old age, barmen.

During the reign of Peter the Great, which made the transition to the investigative form of proof. Decree of 21 February 1687 «in Revelation Cancel sudnыh delah ochnыh rates at Genesis Instead onыh questioning and rozыsku, witnesses, at otvode onыh O oath of punishment and lzhesvydeteley at poshlynnыh Money» actually brought the investigation, which was carried out special government officials [3, 397]. However, other legal document that era is not provided for

criminal liability of persons who conduct pre-trial investigation.

Not contain the relevant legal provisions Lithuanian Statute 1529, 1566 and 1588 [4–6], and the right, which is suing Little people in 1743 [7].

In the Ulogenie of penal and correctional and correctional in 1845 [8] justice primarily acquired significance independent of the object of criminal law protection. This legal act structure has been allocated a separate chapter 5, «On injustice» Section V «On Crimes and misdemeanors in government and public service». However, the crimes are similar in that we studied were provided in another chapter of the same section. This chapter 11, «On Crimes and Misdemeanors officials in some specific lineages Service» section 1 «On Crimes and Misdemeanors officials during the investigation and trial». It assumed responsibility for these crimes: Violations of the rules stipulated in the law, which resulted in slowness or negligence in the performance of official duties, committed officer who has a consequence of negligence or ignorance of their duties, and also any relevant act intentionally (art. 426), non-infringement of criminal proceedings due to negligence in cases when there are reasonable grounds or intentionally committing the act, if proven personal interest in it (Article 429), the act of committing the coroner, which was reflected in the fact that he was not questioned by the accused, and not the protocol during the day in case of no-show policemen investigating judge to interrogate the accused and no announcement of the reasons for his detention (Article 430), the slow implementation of the official investigation without good cause or intentionally committing a relevant offense or in the presence of personal interest, or hate, hostility or other unlawful inducement (Article 431), forcing investigators through the use of threats or other unlawful means to recognize the accused or a witness to testify, which was considered qualified by the use of torture or violence (Article 432).

In addition, the department, Chapter 11 Section V Ulogenie contained section 3, «On Crimes and Misdemeanors police officials», which assumed responsibility of the person from activities which largely depended on the performance of judicial acts. The articles included in this section were designed to encourage officials to police activity in the timely detection, suppression or prevention of the commission of other crimes. In this department assumed responsibility for neglect or willful admission of police officer committing the crime, which he could not prevent (p. 466) failure timely to the appropriate instance of crime or no detention suspect if there is sufficient evidence, committed negligence or intentionally (Article 467), illegal detention in a place not designed for this purpose or in the absence of grounds for it (Article 448), detention longer than the period specified in the court verdict without legal basis (Article 451), or prisoner escape recruit, devoted to the test in the hospital due to the negligence of the police officer or detention (Article 447), due to negligence causing significant harm to a police officer any party in a civil case (Article 454), providing the advantages of a police officer a party in a civil case against another in the performance of the judgment (Article 455), failure by officials who carry out the investigation provided for him procedural rules and forms (Article 456), the use of official authority to provide its guilty means provided by the law to avoid responsibility or to weaken the strength of evidence provided against the defendant (Article 463).

Thus, we can conclude that Articles 1845 defended justice sufficiently. Thus, firstly, its norms provided criminal penalties not only judges, but also persons who conduct pre-trial investigation (in modern terminology) – an official who has the investigation, police officials and others. In this case, the criminal responsibility of these subjects contained in the Articles of independent structural and secondly, the relevant entities subject to corporate responsibility is not only intentional, but also for negligent acts that were the result of error or misinterpretation of the law that violated the legal rights of and freedom of the victim.

In the Criminal Ulogenie in 1903, which operated in part, in Chapter XXXVII «On

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criminal acts by government and public service» contained a number of rules, which included responsibility for the attacks to justice on the part of officials [9]. According to Art. 636 of the Criminal Law officer recognized any person who performed the duties or temporary assignments performed by the state or public service as an officer, either a police officer or other servant or guardian, or a person of rural or bourgeois government. To employees also had judges and investigators. Such persons would be subject to criminal liability for abuse of power (Article 636), government inaction (p. 639), failure to take action or action for non-committing the offenses or the enforcement of court decisions (Part 4 of Article 369).

In addition, the Criminal Ulogenie assumed responsibility for the failure to take measures to prysikannya crimes failure of the authorities of the crime (Article 643); hide in denunciation of significant circumstances of the offense (Article 644), failure to take steps to arrest the offender (Article 645), illegal deprivation of personal liberty as a result of the detention, imprisonment, extending the period of imprisonment or a more severe kind of imprisonment because of ignorance of their duties or by reason of negligence (Article 649), search, inspection slot in the wrong law (Article 650) examination illegal females (Article 651), inadequate supervision of detention (Article 652), bribery (Article 656), as a result of coercion or abuse of power measures are not inconsistent with the justice of the accused to confess and witness testify in civil cases or proceedings concerning criminal or disciplinary liability (Article 676).

Criminal Ulogenie also provided for liability for falsification of evidence: for fraud or for processing written or physical evidence to cause a person suspected of committing a criminal act or official misconduct, if the false evidence was the subject of inquiry or result in proceedings or to bring the person to disciplinary action (Part 1 of Article 259).

Thus, the analysis carried out by the Criminal Law in 1903 suggests that the crimes that legislators in the current Criminal Code of Ukraine relates to offenses against justice on the part of officials (including those who carried out preliminary inquiry), belonged to crimes against life state or community. In addition, to improve criminal law that the responsibility for offenses against justice committed by persons in the course of the preliminary investigation, it is possible to adopt the following: illegal include the review, a search of the home or other property by a person who carries out pre-trial investigation to offenses against the administration of justice. Also, it would be reasonable to foresee criminal liability under the Criminal Code of Ukraine falsification of evidence, since such actions constitute a significant danger to society (which requires further study in these studies).

The history of the Soviet criminal law testified that the interests of justice, on the one hand, were the focus of legislators in those years. However, problems in the criminal justice and legal protection remained. There was no codified law was not clearly established the judiciary, not followed the procedure of investigation and legal proceedings.

During the Soviet era criminal justice and legal protection has been developed in the USSR Criminal Code in 1922 [10]. Thus, in section 2, «offenses against public order» Chapter I «State crimes» contained Article 94, which is of interest for our study. In Part 1 of this article mounted responsible for the release of the arrested from custody or from prison or facilitate his escape. Chapter II of the Criminal SSR 1922, «Officials (corporate) crime» provided for criminal penalties for unlawful detention, unlawful drive and forced to testify under interrogation by the use of illegal actions by the person performing the investigation or inquiry (Part 1 of Article 112). So, in this code the legislator failed to distinguish between the judiciary from other institutions of public administration. That is why the criminal protection subject to all the Institute of Public Administration, which was included and justice.

In the Criminal Code in 1927 [11] offenses against justice were also not distinguished legislator in separate structural parts. Articles on related crimes legislator involved

in the following chapters: «Other crimes against public order management» – the illegal release of the arrested from custody or imprisonment, or to facilitate the escape (p. 81) and «office (corporate) crime» – the illegal detention, illegal occasion forced to testify placement in custody as a preventive measure for personal or selfish motives (Article 115).

In term of the Criminal Code in 1927 continued scientific debate over whether to isolate crimes against justice in an independent group of crime. Thus, according to M.D. Sharhorodskiy court and prosecutors belong to the governing bodies in the country. Therefore, the attack on them must be included in the chapter «Crimes against public order» [12]. Conversely I.S. Vlasov stressed that the allocation of group crimes against justice agencies that administer justice and assist him, not as a legislator interested in link state machine and not as public administration, as well as a special «mechanism» that performs a task of particular importance [13]. However, since the 50s of last century among scientists began to dominate the view that crimes against justice impinge on an independent group of social relations, and therefore deserve to be incorporated in a separate section of the Criminal Code of Ukraine.

Given this, the Criminal Code in 1960 has been allocated a separate chapter VIII Special Section «Crimes against justice». Among the crimes that have been incorporated by the legislator in the structural part of the Code prominently occupy offenses against justice that committed parties during the preliminary investigation. It should be noted that the legislature consolidated the related articles at the beginning of Chapter VIII of the Criminal Code of the Ukrainian SSR in 1960. Crimes that committed parties during the preliminary investigation included: a knowingly unlawful arrest, detention or occasion (Article 173), bringing knowingly innocent of criminal responsibility (Article 174), forced to testify (Article 175). Thus, in the Criminal Code in 1960 crimes against justice were identified by the legislator as a separate group and placed in an independent structural part of the Criminal Code of Ukraine. Among them we see crimes committed by persons in the course of the preliminary investigation. This maintains a certain succession of criminal codes of the Soviet period in previous years.

The study of historical monuments, operating in Ukraine in terms of establishing criminal liability of persons engaged in pre-trial investigation is essential to further explore relevant issues and to improve the article of the Criminal Code of Ukraine, which provide accountability for such crimes.

Thus, the criminal rules, which may be punishable by persons engaged in pre-trial investigation for crimes against the judgment passed its historical origins. Concludes that some legal provisions relevant historical period can be used to improve the modern criminal law in this part of Ukraine. In particular, we believe that the illegal conduct reviews, a search of the home or other property by a person who carries out pre-trial investigation, it is appropriate to refer to offenses against the administration of justice. Also, it would be in the current Criminal Code to criminalize the act Ukraine as falsification of evidence that was carried out in the Criminal Law in 1903.

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Maxim MELNICHENKO

CRIMINAL LIABILITY OF PERSONS ENGAGED PRETRIAL INVESTIGATION FOR CRIMES AGAINST JUSTICE: A HISTORICAL AND LEGAL ASPECTS

This article examines the genesis of the criminalization of persons carrying out a preliminary investigation into the historical monuments of the criminal law of Ukraine. On this basis, some of the findings made to improve the existing Criminal Code.

Keywords: crime against justice; persons exercising a preliminary investigation; historical memo; penal provisions.

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TERMINATION OF COMPETENCE WHO PROVIDES SERVICES AS A SPECIAL PUBLIC ENTITY CRIMES

In our previous publication was determined by the time of the competence of the person who provides public services [1]. However, for proper criminal legal training is important to determine not only the beginning (origin), but the end (stop) the competence of such person. It is during this time the person who provides public services, are subject to special offenses provided for by Articles 365-2 and 368-4 of the Criminal Code of Ukraine.

The aim of the paper is to determine the moment at which terminated the authority of a person who performs professional activities related to the provision of public services. This will analyze the relevant regulatory legislation of Ukraine.

The question of determining the legal status of such persons is a new theory of criminal law in Ukraine, as the relevant acts were criminalized by the Law of Ukraine on 7 April 2011 [2]. Therefore, the termination of competence of the person who provides public services in the scientific literature practically not been studied. Some aspects of this problem have considered P.P. Andrushko, A.V., Galakhova, A.A. Dudorov, M.A. Magda, R.L. Maksimovic and other researchers.

In this paper, we will determine the time of termination competence of those who provide public services, which list is given in the disposition portion of the first articles 365-2 and 368-4 of the Criminal Code of Ukraine, ie, auditors, notaries, appraiser, another person who is not a public servant, official of the local government, but provides professional activities related to the provision of public services, including the services of an expert, trustee in bankruptcy, an independent mediator, a member of a labor arbitration, the arbitrator. To be analyzed in this regulatory legislation in this area.

According to the Law «On Auditing» [3] audit is conducted under a contract between the auditor (audit firm) and the client. Other audit services may be provided under the contract, oral or written appeal to the customer's auditor (audit firm). Acquainted with the provisions of this law, we can conclude that the provision of audit services to be terminated since its auditor relevant official documents. These documents (depending on the type of audit services) are: auditor's report (in the case of performance audits), certificates or other official documents (in case of audit consultations), expert opinion or certificate (in case of audit services in the form of expertise) (article 7 of the Act). It should be borne in mind that the documentation of the audit consists of two kinds of documents – working and final.

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Working documents – a record by which records the auditor conducted screening procedures, tests, and the information relevant conclusions that are made during the audit. In working documents by information that, in the auditor's opinion is important in order to properly perform the audit, and that should confirm the findings and suggestions in the audit report. The procedure for conducting the audit working documentation standards provided for in its implementation [4]. This working document has auxiliary and serves as preparation of the final audit documents, which, as mentioned, is the auditor's report. Following the audit, the auditor is the auditor's report and the auditor's report. In the audit report can be any information of interest to the client, customer audits and submission form which is regulated in the contract to audit. Auditor's report – this is not only the final document audit, but an official document that is signed and sealed by the audit firm. The procedure for preparing the auditor's report is provided in the International Standard № 700 «The Auditor's Report on Financial Statements» [5]. The date of full implementation of audit services in the form of an audit is the date when the management company signs a deed of transfer of the auditor's report. This date refers to the audit report. And that it indicates that the audit services performed in its entirety and competence of the auditor as a person who provides public services terminated.

Under Part 1, Art. 3 of the Law of Ukraine «On Notary» [5] notary (both public and private) begins to provide public services after contacting persons to commit the relevant notarial acts. Section III of this Act contain rules of notarial acts, covering: space, time notarial acts, setting the person who applied for their commitment, determination of the scope of civil legal capacity of natural persons and verification of civil legal capacity of legal persons, checking of representative individual or entity, establishing the intentions of the parties to perform the transaction; signature notarized posvidchuvanyh transactions, statements and other documents; vytrebovuvannya information and documents required for the commission of the notary, the commission certifying labels and certification, registration of notarial acts. It is for the registration of notarial acts, in our opinion, should be considered as a notary jurisdiction a person who provides a public service discontinued.

Professional activities of appraisers on the basis of the Law of Ukraine «On the assessment of property, property rights and professional appraisal activity» [7]. According to Art. 10 of the Law of Property valuation carried out under a contract between a business valuation – an entity and customer evaluation or under court order appointing the appropriate expertise to assess the property or under the order of the head of state authorities or local governments. Outcome which ends execution of this contract is the report and act on assessment. Report on the assessment of the property is a document containing the conclusions of property value and acknowledges the procedures of assessment of evaluation activity – an entity under the contract. The report is signed by the evaluators directly carried out the assessment of property, and sealed and signed by the head of evaluation activity. Evaluation of the property is a document containing the conclusions of property value and acknowledges the procedures of assessment undertaken subject to valuation – a public authority or local authority itself (Art. 12 of the Law). So, after the signing of the act and report on the assessment of property appraiser stops competence as a person who provides a public service.

Legal status and order of business of the person who provides expert services in Ukraine is regulated by three laws: «On Judicial Review» [8] «On Ecological Expertise» [9] and the «scientific and technical expertise» [10]. The basis for the forensic examination is a written statement of the victim or the defense of criminal proceedings or a written statement (letter) customer (legal or natural person) [11]. Implementation of this service ends with a written expert report or reports of the inability to express an opinion that (which)

is signed by the expert (experts) who is (are) carried out (spent) examination.

According to the Law of Ukraine «On Ecological Expertise» in Ukraine implemented State and other examinations [9]. As in previous cases, conducting these types of examinations ends to give opinions environmental review and provide its stakeholders.

Scientific and technical examination conducted by research organizations and institutions, universities, other organizations and private corporations and individuals who are accredited for this type of activity (Article 1 of the Law of Ukraine «On the scientific and technical expertise») [10]. According to Art. 22 of the Law of the main legal document that governs the relationship between the customer and the organizer in the field of scientific and technical expertise, there is agreement on its implementation. A contract is fulfilled in the case of the corresponding output of scientific and technical expertise.

Thus, the competence of the expert as a person who provides a public service ceases from the date when made and signed by an opinion or report inability to express an opinion (in the case of forensics).

Trustee in bankruptcy is an individual designated by the economic court in due course in bankruptcy as property managers, readjustment or liquidator of the number of individuals who received a certificate and included in the Unified Register of arbitration managers (Asset managers and liquidators) Ukraine (Part 1 of Art. 1 of the Law of Ukraine «On restoring the debtor's solvency or bankruptcy») [12]. The competence of the arbitration manager terminated for other reasons than other people who provide public services. First, in connection with the termination of such person. The reasons for this are defined in Art. 112 Law. Under Part 2 of this Article in case of termination of the arbitration manager he is excluded from the Unified Register of arbitration managers Ukraine, and his certificate shall be canceled. Secondly, due to the release of arbitration from duty manager commercial court (Part 3. 114 of the Act). Thirdly, due to the elimination of the arbitration manager to perform his duties by the economic court (Part 3. 114 of the Act).

The legal status of an independent mediator is defined in the Law of Ukraine «On the procedure for settling collective labor disputes (conflicts)» [13]. The reason for the start of the powers of an independent mediator is an agreement concluded between the parties on the participation of the agent in solving collective labor dispute (conflict) or an agreement on the involvement of an independent mediator to the conciliation commission created during the strike, signed by the owner or authorized body (representative) and body (s) leading the strike [14]. According to Section 2.11 of the Regulations intermediary agent authority terminates when: such decision the chairman of the National Mediation and Conciliation, a written denial agent from further exercise of the powers, the results of appraisal, in other cases provided by law [14].

Member of the Labor Arbitration (or arbitrator) – a specialist, expert or other person who is involved parties to a collective labor dispute (conflict) or an independent mediator, part of the labor arbitration and decides on the merits of the dispute (conflict) (Article 11 of the Law of Ukraine «On the procedure for settling collective labor disputes (conflicts)» [14]. According to Section 6.4 Regulations on labor arbitration powers of labor arbitration is terminated with the termination hearing and a judgment on the merits of a collective labor dispute (conflict) [15]. Consequently, and competence of the member of the labor arbitration as a person who provides public services terminated as of this moment.

Umpire – a natural person appointed or elected parties in the manner agreed upon by the parties or appointed or elected under this Act to resolve disputes in arbitration [16]. As mentioned in our previous publications arbitrator launches public service since his appointment or election to settle a dispute. According to Art. 21 of the jurisdiction of the arbitrator shall be terminated on the following grounds: the consent of the parties in the event of disqualification or

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recusal in the event of coming into force of conviction against him in the event of the entry into force of a court decision declaring him incompetent in the event of his death recognition of its missing or dead court decision that became final. The powers of the court of arbitration, which vyrishuvavsya dispute shall lapse after its decision in a particular case.

Obtained during the study on the termination of the competence of the person who performs professional activities and provides public services can be used to further study issues relating to the powers of such persons as a special subject of crime under the Criminal Code of Ukraine.

Thus, the determination of the final date of termination competence of the person who provides public services depends on regulatory legislation in this area. He is determined first, since its outcome documents of public services: the auditor's report (in the case of performance audits), information or other official documents (in case of audit consultations), expert opinion or certificate (in case of audit services in the form of expertise), report and act on the evaluation of the property (in the case of service of assessment), expert opinion (in the case of the judiciary, environmental, scientific, and technical expertise) or a notice of its inability to provide (in the case of forensics). Second, since the registration of the notary (in the case of notary). Thirdly, since the termination, dismissal or removal of a liquidator. Fourth, since the decision to terminate the powers of an independent mediator chairman of the National Mediation and Conciliation, a written denial agent from further exercise of the powers, the results of appraisal, in other cases provided by law. Fifth, since the termination of the proceedings and a judgment on the merits of a collective labor dispute (conflict) (in the case of services to members of labor arbitration). Sixth, by agreement of the parties in the event of disqualification or recusal in the event of coming into force of conviction against him in the event of the entry into force of a court decision declaring him incompetent in the event of his death, declaring him missing or declared deceased court decision that became final, or in the case of a decision by the arbitral tribunal in a particular case.

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TERMINATION OF COMPETENCE WHO PROVIDES SERVICES AS A SPECIAL PUBLIC ENTITY CRIMES

Considered grounds for termination of the competence of persons providing public services as auditor, notary, appraiser, examiner, trustee in bankruptcy, an independent mediator, a member of a labor arbitration, the arbitrator. Analysis of the appropriate regulatory legislation.

Keywords: the person providing public services, auditor, notary, appraiser, expert, arbitration manager, an independent mediator, a member of the labor arbitration, the arbitrator.

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