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Illegal Behaviour in the Modern World: Causes and Consequences

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Abstract

The criminalisation of public relations, which is noticeable in many countries of the modern world, is acutely felt in Ukraine as well. Usually a citizen is defenceless against crime, and criminals are not always punished. This situation forces modern science to turn to understanding a number of current issues related to the causes and consequences of illegal behaviour, to identify ways to prevent it. This circumstance determines the relevance of the subject matter. The purpose of the study is to identify and characterise the causes of illegal behaviour and its consequences in the modern world, in Ukraine in particular. The scientific originality of the results allow expanding and refining knowledge about the causes of illegal behaviour. First of all, this applies to the reasons that are conditioned by the challenges and threats that are relevant in modern world. These include globalisation, artificial intelligence, the spread of viruses. The practical significance is that the laws and recommendations defined in the paper can be used both in the training of specialists in the specialty "law" and in practical activities to prevent illegal, in particular, criminal behaviour. As a result, the study came to the conclusion that the causes of illegal behaviour are mainly related to the acute contradictions of society itself, injustice and social inequality, which has always existed and exists now, total corruption. Psychological and biological factors that determine one or another behaviour in each case should also be taken into account. Questionable morality of public consumption has an extremely negative effect on behaviour. It can be argued that a person's illegal behaviour is the result of a complex interaction of many factors, the action of which is mediated by specific relationships, the specific situation in which the person finds themself. Socially dangerous consequences of illegal behaviour can be crimes that cause real damage to public relations, which is expressed in a set of negative changes causally related to illegal behaviour, which affect the social, legal, economic, moral, and other values of society and the individual in particular. Civilised countries are able to control human behaviour and respond to the threats and challenges of today. Control over behaviour implies voluntary self-restriction of rights, but such self-restriction is necessary for the survival of mankind. It is necessary to change the system of values, moral and ethical norms adopted in society to reduce the manifestations of illegal behaviour. A holistic approach to neutralising the causes of illegal behaviour requires a social policy aimed at overcoming social injustice

Keywords:
crime; corruption; marginalisation; legal consciousness; globalisation

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Introduction

The criminalisation of public relations, noticeable in many countries of the modern world, is also acutely felt in Ukraine. According to the Numbeo service, which forms the Crime Index, Ukraine ranks 54th in the world (out of 135) in terms of crime as of 2021. In Europe, Ukraine ranks third after Belarus and France on this indicator. The most common crimes in Ukraine were theft and robbery. Over the past few years, the number of crimes under the articles "Human trafficking," "Banditry" and "Legalisation (laundering) of property obtained by criminal means" has increased [1]. The situation is complicated by the war in the east of the country and the spread of COVID-19. Therefore, not everyone in modern Ukraine can enjoy safety or legal protection. Citizens are usually defenceless against crime, and criminals are not always punished. This situation forces modern science to turn to the understanding of numerous current issues related to the causes and consequences of illegal behaviour and to identify ways to prevent it. This circumstance determines the relevance of the study.

The term "illegal behaviour (offense)" refers to a type of antisocial behaviour that violates a prohibitive or binding rule of law, is dangerous to the individual and society, and affects their interests protected by law. Such behaviour in psychology is called delinquent (Latin delinquens – misdemeanour, guilt). This act of a person who deviates from the current regulations, threatens the welfare of others or of the social order as a whole, and is criminally punishable in its extreme manifestations. A person who demonstrates illegal behaviour is considered a delinquent person, and the acts themselves are torts. Delinquent behaviour is a form of deviant behaviour. Deviant behaviour (Latin deviatio – deviation) means human actions that contradict the officially recognised normal, and the norms (standards, patterns) that have actually developed in this society and violate them. Deviations can be both positive and negative. Negative deviations are dysfunctional. They disorganise the system. This is a social pathology: crimes, alcoholism, drug addiction, suicide, etc. Such deviations need the attention of legal science.

Unlawful conduct is the antithesis of legal conduct that complies with the rule of law. Illegal behaviour in its essence means the existence of a conflict between the individual and society, and between individual and public interests. These conflicts are stimulated and exacerbated by various factors, primarily criminogenic.

Some authors have identified the essential characteristics of illegal behaviour, focused on criminal behaviour, and analysed the dynamics, structure, and features of certain types of crimes [2, p. 1-5]. In particular, L. Shelley encouraged to consider the alarming fact that modern advances in science and technology correlate with the emergence of similar in novelty and audacity phenomena of the criminal underworld. Nowadays, crime and terrorism gravitate to each other and cooperate because the possibilities of such cooperation increase in the context of globalisation [3]. A comprehensive analysis of theoretical and applied issues related to the protection of human rights and legitimate interests from socially dangerous encroachments was conducted by V. Haltsova, S. Kharytonov, O. Khramtsov, O. Zhytnyi, A. Vasyliev [4]. The issue of human rights protection in conflict with the law was considered by E.Yu. Barash [5]. Factors stimulating the growth of crime rates were considered by G. Farrell [6].

The above-mentioned researchers considered certain aspects of the problem of illegal behaviour and did not focus on a comprehensive analysis of all the factors that affect the spread of such behaviour in the modern world and the elimination of which would help prevent it. Such research would help to find ways to influence people prone to illegal behaviour, and to find new means and methods of combating criminal encroachment, to be able to act in advance, rather than eliminate the consequences. Such a study cannot be limited to one article. However, the authors suggest that some aspects of this problem should be considered now.

The purpose of the study is to identify and characterise the causes of illegal behaviour and its consequences in the modern world, on the example of Ukraine.

Materials and Methods

The choice of research methods is determined by the tasks set by the authors. The methodological basis of the study is a system of philosophical, general, and special scientific principles and methods, in particular: principles of objectivity, specificity, complexity, and the following methods: formal and logical, systematic, structural and functional, comparative and legal.

The authors assumed that the factors of unlawful behaviour exist independently of the subject of knowledge, and they should be considered not only at the present moment, but also all of their possible transformations in the future should be taken into account, based on the principle of objectivity. The principle of specificity has encouraged the authors to realise that there is no abstract truth because the truth is always specific. For example, unlawful behaviour is not any possible conduct, but one that violates a prohibitive or binding rule of law.

The principle of complexity has provided an opportunity to explore various aspects of the problem of globalising factors of unlawful behaviour, namely: the essence of globalisation, its consequences in different spheres, the essence of legal and illegal behaviour, its causes and consequences, corruption, crime, etc.

The formal and logical method was used to define the concepts of "illegal behaviour", "delinquent behaviour", "globalisation" and "outcast". The systematic method is used in the process of studying the preconditions of illegal behaviour in various spheres: economic, political, ideological, etc. The structural-functional method is used to describe and explain all the causes of illegal behaviour, to study the relationship between them, and to determine

the function of each of them in a holistic structure. The comparative-legal method made it possible to compare the consequences of illegal behaviour and assess the possibility of compensating them.

Results and Discussion

First of all, attention should be paid to economic reasons among other reasons for illegal behaviour. They include the crisis of the economy, even economic instability, the collapse of organisational, economic, and industrial relations and structures, and the shortcomings of the financial system of the country, the impoverishment of the population.

The report by the Oxfam International Economic Association dedicated to the international economic forum in Davos, Switzerland, indicated that the financial situation of the richest people on the planet has grown over the year and now only 1% of the world's population owns more than half of all wealth. The poor half of the population is satisfied with less than 1% or even 0.5% of world wealth if you subtract their net debts [7]. According to the report of this association, the purpose of which is to solve the problems of poverty and related injustice, it follows that property stratification does not promote lawful behaviour.

These global trends are present in Ukraine, where the gap between rich and poor is staggering. According to the report "Self-assessment of households of their income level for 2020 of the State Statistics Service" there is a dash in the category "prosperous", i.e., less than 0.1% of Ukrainians identify themselves as rich. A significant part of Ukrainians (31.9%) does not consider themselves poor, but also do not consider themselves to be in the middle class. Only 1.6% of Ukrainians indicate that their financial situation has improved over the past year. The financial situation remained unchanged in 43.6% of Ukrainians, "rather deteriorated" – in 29.5%, and deteriorated – in 21.2%" [8]. According to the Ukrainian ombudsman L.L. Denysova, 77% of pensioners live on the verge of humanitarian poverty in Ukraine [9]. Property inequality is known to generate conflicts in society and crimes against property.

One of the significant sources of illegal behaviour is **social inequality**. Some social groups receive social privileges, while others are deprived of such privileges. The sharp social demarcation, corruption, and poverty of the majority of the population are social phenomena that are present in modern Ukraine. Social inequality leads to social distortion, deterioration of the health status of the population, including psychological health, and an increase in the number of people with alcohol or drug addiction, which affects the behaviour of an individual, his degradation, and an increase in crime rates.

According to B.V. Barchi, "the study of psychological health and well-being of the individual in the extreme conditions of life is especially relevant at the present stage of development of society. First of all, this is due to a significant increase in the number of natural, anthropogenic and man-made extreme impacts on humans" [10, p. 20-21]. Such negative effects on human behaviour include coronavirus. According to experts from the international organisation Global Initiative Against Transnational Organised Crime, COVID-19 has led to an increase in demand for several goods, including protective equipment and products of pharmaceutical companies with a parallel decline in their supplies; reduction of population mobility and closing of borders; increasing demand for digital solutions, including through remote work; growing anxiety of the population; employment of law enforcement officers in monitoring compliance with quarantine, etc. Corruption and relations with organised criminal groups have become a global problem in the health care system, manifesting itself both at the state level (in procurement, resource allocation) and at the individual level (bribery for priority health care or ignoring quarantine). There are known cases of fraud when consumers are provoked to buy non-existent medical equipment, offer to transfer the money for medical care that goes to the account of criminals [11]. All these facts do not contribute to the lawful behaviour of the population.

Political causes of illegal behaviour include political instability, distrust of government, and the use of power by the authorities for selfish purposes. Ubiquitous corruption and nepotism lead to the penetration of criminals into power structures. These consequences are facilitated by the shortcomings of the legislation, and its inconsistency with modern conditions, especially its ineffectiveness. The collapse of democratic institutions, the incompleteness of reforms in all spheres of public life, its bureaucratisation, and the intensification of the struggle for power by any means, despite their legitimacy and morality, are not the least in terms of the importance and passivity of civil society. Finally, national-ethnic and religious conflicts of a political nature also have a negative impact.

Total corruption in Ukraine is of particular concern. According to M.H. Kolodyazhnyi, corruption has become a tool for preserving existing assets and further accumulation of capital for the oligarchs. Otherwise, corruption has become an integral attribute of the activities, which helps to meet the inflated social and material needs for the middle class (officials of public authorities holding positions "A" and "B" of the civil service), and some officials of local governments. "Corruption has also become profitable, even for millions of ordinary citizens. Obtaining insignificant illegal benefits is an opportunity to meet vital needs for food, clothing, payment of unreasonably high tariffs for housing and communal services, payment for children's education, medical expenses, etc. For officials holding "B" positions in the civil service, illegal corruption revenues represent some compensation for the low and socially unfair level of their cash security for these persons. Corrupt practices are also convenient for other categories of citizens because they

contribute to tax evasion for small businesses, speed up the process of providing some administrative services, etc." [12, p. 73]. This situation indicates the spread of illegal behaviour in all spheres of public life.

Ideological (sociopsychological) causes of illegal behaviour that lead to the deformation of the spiritual sphere and serve as one of the causes of crime are essential. These are social pessimism, anxiety, and uncertainty about the future, legal illiteracy, and deformation of legal consciousness. Moral degradation of the individual can lead to illegal acts. The disadvantages of moral education are manifested in the fact that a person has no idea of duty, honour, and dignity, and gets used to doing only what is beneficial and safe. There are several signs of the moral degradation of society. First of all, these signs include the creation of an illusory image of a successful person in social networks. Posting information on the Internet about jewellery, expensive clothes, leisure, parties, etc. only indicates that a person has deeply hidden his/her true dreams and seeks only the recognition of others. Degradation is also facilitated by addiction to alcohol, gambling, sex, and violence. All this takes time, money and leads to psychological problems [13]. The famous American psychologist A. Maslow identified several qualities inherent in people with personality degradation. First of all, these qualities include treating oneself as a person on whom nothing depends, as well as a minimum of desires. All actions are reduced to the satisfaction of purely physiological needs, i.e., to eat, sleep, and so on. Such people go to work only for money and meet people of the opposite gender only for sex. This includes the perception of the world only in black and white. The environment for a degraded person is divided into "own" and "other". These people try to protect themselves from "other" and have a very narrow social circle. The next sign is categoricalness. The degrading personality considers his opinion to be the only correct one and defines disputes and discussions as an unnecessary waste of time. A. Maslow also considered the poverty of the lexicon a sign of degradation. Man uses only elementary turn of phrase. In general, such people try not to talk. They want to avoid spending extra effort on verbal functions. Finally, addiction plays a big role. The already mentioned alcoholism, drug addiction, and gambling addiction are apparent signs of degradation. It is difficult to say whether they are a cause or a consequence of degradation, but the fact remains: if a person is addicted, there is a high risk that he/she will degrade [14].

Nowadays, a special type of personality with a crisis or catastrophic consciousness has already been formed. The person is fenced off from unbearable social reality by a rigid psychological barrier. He/she is absorbed by his own problems. Indifference and apathy have become a protection of man from an unjust world in which an honest man always loses. Aggression towards the outside world and oneself becomes the norm for a person with a catastrophic consciousness or even marginalised groups. A marginalised element is a person whose worldview and way of life do not correspond to what is recognised as a standard in a certain society. Marginalised behaviour is an act that reflects the sociopsychological characteristics of an outcast. Crucial to antisocial behaviour is the factor of alienation, due to which a person opposes themself to others, isolates themself, ceases to be a full member of society, does not participate in political, economic, legal processes, rejects common values, does not consider it necessary to follow common rules and norms. Disappointment and despair about society are complemented by low self-esteem, feelings of inferiority, heightened emotionality, vulnerability, anxiety, etc. As a result, there is a fear of being offended, forgotten, and neglected, which is confirmed in practice, especially in a marginalised society. Such outcasts quite often consider suicide or aggression towards others as the only way out of the situation. The marginalised person can show aggressive behaviour not only openly, but also covertly and disguised, direct aggression at such people and objects that are not related to their state of frustration, and take it out on people who are not involved in their problems [15, p. 132]. The situation when socially marginalised groups of the population are formed, which are prone to illegal behaviour and are a threat to public safety, is especially dangerous.

The social determination of adolescent criminal behaviour is of particular concern. The most important social factors influencing the formation of such behaviour of adolescents are: poverty, living in a criminal area, the presence of weapons, the availability of drugs, the presence of the non-standard school, lack of cohesion of neighbours, the presence of episodes of violence in the media, drastic social change, etc. [16].

According to foreign researchers, deviant behaviour is facilitated by: low social status, which does not allow adolescents to meet the requirements of society; state of social anomie; contradictions between the requirements of society and the available means of their implementation; availability of illegal means to achieve the goal; shortcomings in the social system and justification of their own behaviour; criminal environment; benefiting from the commission of crimes; the presence of a criminal idol; social roles and authority; lack of social control [17, p. 17].

The recognition of money and property as the main value leading to the transformation of everything into a commodity, and the alienation of the individual from society and the state, and vice versa, is the basis for the deformation of social consciousness. This situation contributes to the emergence of the psychology of individualism. All kinds of targeted information, religious and sociopsychological influences that brainwash their followers and form sectarian, extremist, and other suicidal sentiments, lead to negative consequences. According to V.A. Nomokonov, the inferiority of society is manifested in the real presence of shadow power,

"shadow law", the shadow economy, shadow social forces, and shadow ideology, which together are a source of crime [18, p. 255].

Human behaviour is also influenced by globalisation. The term "globalisation" refers to an objective process and a natural stage in economic development that initiates integration and unification in the political, social, ideological, humanitarian spheres, and manifests itself both at the level of the international community as a whole and at the level of each individual community. The era of globalisation affects the boundaries that previously defined the natural rights of each person, their personal sovereignty and privacy. Legal consciousness, both individual and public, loses the usual moral guidelines that were formed in the past. At the same time, the need for universalisation and unification of legal regulators in connection with globalisation is confronted with a protective reaction of the nationally oriented traditions of legal systems. The reaction to the tension that arises in this regard may be illegal behaviour, a type of which is criminal behaviour.

Legal globalisation leads to the same consequences. "Legal globalisation can be defined as the process of forming a new, global system of legal norms that organise and ensure global intergovernmental interaction in various areas of modern society, in which international law, national law, and the law of international business associations are in a state of close interconnection" [19, p. 580].

Each country brings its cultural characteristics to the world environment because of globalisation. Significant cultural differences often lead to many problems related to contradictions in the value system, which can negatively affect the legal awareness of the population and lead to illegal behaviour. A characteristic feature of the globalisation era and a significant factor in crime is the active migration of the population, including illegal migration, when millions of people are forced to move from one state to another in search of work, shelter, security, and a better life. Migrants are always less adapted to living conditions than locals, which is the reason for illegal behaviour in the early stages of their stay in another country.

Nowadays, there is a difficult situation on the border between Poland and Belarus, where hundreds of migrants from the Middle East, Africa, and Asia are trying to get into the European Union [20]. Migrants can resort to any behaviour, including illegal, to save their own lives in a rather difficult situation.

In general, it is safe to say that the globalising factors of illegal behaviour are social contradictions caused by globalisation or stimulated by this process. Globalisation leads to inequality, injustice, and destruction of many established forms of being, erosion of traditional values of society, and creates a state of uncertainty and uncertainty of a person in the face of possible challenges. The conservative nature of the values of individual and social legal consciousness in the era of globalisation conflicts with the dynamic nature of social change [21]. The result of such confrontation can be a distortion of legal consciousness and illegal behaviour.

Human behaviour can be influenced by artificial intelligence. It can even predict or programme behaviour. Artificial intelligence can be used both to prevent crime and for criminal purposes, for example, to influence adolescents through computer games, or to induce them to commit suicide. The police often use new technologies in their work, for example, recognition and analysis of video materials, extraction of data from mobile phones, analysis of data from social networks, criminological forecasting, assessment of individual risks, etc. The use of artificial intelligence has significant advantages, but at the same time raises serious concerns about ethical and legal positions conditioned by the high probability of errors and, therefore, discrimination against individuals or groups of people [22, p. 150-159; 23]. Arguably, artificial intelligence is a threat to human rights to some extent. Ukrainian researchers have already expressed concern about these facts. They have considered the positive and negative impact of technological advances on the privacy of individuals and have explored ways to protect fundamental human rights in the context of global digitalisation [24; 25].

Conclusions

Thus, the causes of illegal behaviour are mainly related to the sharp contradictions of society itself, with the injustice and social inequality that has always existed and exists now, and total corruption. Society is trying to overcome some contradictions, but new criminologically significant factors are emerging that determine illegal behaviour. In addition, it is necessary to consider the psychological and biological factors that determine a particular behaviour in each case.

It is alarming that modern society has become filled with questionable morals of the consumer society. First of all, globalisation, artificial intelligence, and the spread of viruses contribute to illegal behaviour and are relevant in today's world. It can be argued that the illegal behaviour of a person is the result of a complex interaction of many factors, the action of which is mediated by specific relationships, and the specific situation in which the person finds oneself.

The socially dangerous consequences of unlawful conduct include crimes that cause real harm to public relations, expressed in the totality of negative changes caused by illegal behaviour, which undergo social, legal, economic, moral, and other values of society and an individual in particular. These consequences can be varied in their manifestations and heterogeneous in content. The possibility of measuring and calculating the consequences of unlawful conduct is relative. The damage caused by such behaviour can only be partially compensated, but the previous condition cannot be restored. Society can protect itself from offenses primarily by eliminating and blocking the causes of illegal behaviour. Civilised countries are able to control human behaviour and

respond to the threats and challenges of our time. Moreover, behavioural control involves voluntary self-restriction of rights. However, such self-restraint is necessary for the survival of mankind.

All the causes of illegal behaviour are unknown to modern science. At present, humanity does not have effective ways to eliminate even the known causes of illegal behaviour. There is a direct connection between the legal consciousness of a person and his behaviour. The distortion of legal awareness is a significant threat to the security of the perpetrator, other persons, and society. Several economic, political, ideological, legal, and other challenges should be addressed to eliminate this threat. Modern science is faced with the task of identifying hidden mechanisms of influence on legal awareness to prevent the illegal behaviour of legal entities.

It is necessary to change the system of values and moral and ethical norms adopted in this society to reduce the manifestations of illegal behaviour. The holistic approach to neutralising the causes of illegal behaviour requires a social policy aimed at overcoming social injustice.

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Протиправна поведінка в сучасному світі: причини та наслідки

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Анотація
Криміналізація суспільних відносин на сучасному етапі активізується в багатьох країнах світу, зокрема в Україні. За цих умов громадянин є зазвичай беззахисним перед криміналітетом, а злочинці – не завжди покараними. Така ситуація спонукає сучасну науку звернутися до осмислення низки актуальних проблем, що стосуються причин і наслідків протиправної поведінки, визначити шляхи її попередження. Вказана обставина зумовлює актуальність теми дослідження. Метою статті є встановлення причин протиправної поведінки та її наслідків у сучасному світі, зокрема в Україні. Наукова новизна результатів полягає в розширенні й уточненні знань щодо причин протиправної поведінки. Передусім це стосується тих причин,щозумовленівикликамийзагрозами,актуальнимивсучасномусвіті,такимиякглобалізація,штучний інтелект, поширення вірусів. Практична значущість полягає в тому, що визначені в статті закономірності й рекомендації можуть бути використані як у процесі підготовки фахівців за спеціальністю «Право», так і в практичній діяльності щодо попередження протиправної, зокрема злочинної, поведінки. Проведене дослідження дало змогу дійти такого висновку: причини протиправної поведінки переважно зумовлені наявністю в суспільстві гострих суперечностей, пов'язаних із несправедливістю, соціальною нерівністю і тотальною корупцією. Варто брати до уваги також психологічні та біологічні фактори, що визначають той чи інший варіант поведінки в конкретному випадку. Сумнівна мораль суспільного споживання вкрай негативно позначається на поведінці. Можна стверджувати, що протиправна поведінка особи є результатом складної взаємодії багатьох факторів, дія яких опосередковується конкретними відносинами та ситуацією, у яку особа потрапляє. Суспільно небезпечними наслідками протиправної поведінки можуть бути злочини, унаслідок яких завдається реальна шкода суспільним відносинам, що виражається в сукупності негативних змін, причиново пов'язаних із протиправною поведінкою, яких зазнають соціальні, правові, економічні, моральні й інші цінності суспільства та окремо взятої особи. Цивілізовані країни здатні контролювати поведінку людини та відповідати на загрози й виклики сучасності. Контроль за поведінкою, безперечно, передбачає добровільне самообмеження прав, однак таке самообмеження є запорукою виживання людства. Передумовою зменшення виявів протиправної поведінки є перегляд системи цінностей, морально-етичних норм, прийнятих у певному соціумі. Цілісний підхід до нейтралізації причин протиправної поведінки передбачає провадження соціальної політики, спрямованої на подолання соціальної несправедливості

Ключові слова:
злочин; корупція; маргінал; правова свідомість; глобалізація

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Implementation of the European Union Recommendations on Strengthening the Criminal Liability for Offences in the Provision of Payment Services

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Abstract

The transition of an increasing number of social relations into the virtual space and the intensive development of information technology is accompanied by the emergence of new illegal phenomena, in particular, of a criminal law nature, which requires appropriate legal regulation. Recently, the number of infringements on public relations in the field of electronic payments has significantly increased, including by issuers of electronic wallets. This trend creates a threat to any state that encourages the international community to develop appropriate norms that should be implemented in national legislation to bring it closer to international standards. Currently, active work is underway to strengthen criminal liability in Ukraine for violations in the provision of payment services, considering the recommendations of the European Union. The purpose of the study is to analyse and develop conclusions on the advisability of implementing the recommendations of the European Union in the national criminal legislation regarding the tightening of sanctions for criminal offences committed in the field of providing payment services using non-cash means of payment. Methodological tools are selected in accordance with the goals set, the specifics of the object and the subject of the study. The study used the general dialectical method of scientific knowledge of real phenomena, their connection with prosecution for criminal offences, and general scientific and special methods of legal science. The scientific position is argued that the proposed changes to the Criminal Code of Ukraine by introducing liability for illegal actions with electronic money are formulated in such a way that it allows enforcing such a rule. According to the current legislation, it is determined that in the presence of a license to provide payment services, certain legal entities have the right to issue electronic money, in particular: banks, branches of foreign payment institutions, electronic money institutions, postal operators, the National Bank of Ukraine, state authorities and authorities local self-government. Considering that all the listed persons are legal, they are not the subject of a criminal offence, including for violations in the field of payment services. The inconsistency of national legislation with the requirements of international standards on the criminalisation of certain acts committed in the field of payment services necessitates further study and the development of recommendations for harmonising the current legislation

Keywords:

financial offences; financial crimes; offences in cyberspace; criminal offences with electronic money; offences in the field of payment services

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Introduction

In recent years, Ukraine has taken decisive steps towards bringing the standards of public life closer to European ones. The important part of that process is the sphere of protection of public legal relations from illegal encroachments and from criminal offences. For this purpose, Ukraine ratifies relevant international norms and implements them into national legislation, considers the recommendations of other directives and, if necessary, improves national regulations. Modern economic relations are characterised by the active development of payment services that go beyond the relationship "financial institution – client" in the real world, and mostly move to the virtual world. Electronic money and e-wallets in various payments are becoming commonly used. The spread of electronic money, which occurs simultaneously with the rapid development of telecommunications technologies, can radically change the existing mechanism of the monetary system of Ukraine [1, p. 39]. Today, more and more public relations are moving to the virtual sphere, and information technology relations are developing more and more intensively, which is accompanied by the emergence of new phenomena and requires appropriate legal regulation [2].

At the same time, this trend has led to a significant increase in the number of encroachments on public relations in the field of electronic payments, in particular, by issuers of such wallets – participants of domestic and international payment systems. After all, in modern world there is a situation in which people's global capabilities have changed significantly. In particular, there has been a continuous transition of public relations to cyberspace, which has led to the desire of criminals to spend more effort on committing offences in online space than in physical space. At the time when the number of illegal acts with cash money has significantly decreased, the statistics of fraud with online payments shows the opposite trend [3]. This trend leads to a decrease in the level of confidence in the national financial system. The common perception of society that the integrity of social relations in this area can be violated, leads to devastating consequences. Therefore, the fragility of trust in the security of financial transactions in cyberspace, although is not a cyberspace problem, but is directly related to it and significantly enhanced by this problem [4].

Moreover, as stated in Directive 2019/713 of the European Parliament and of the Council of the European Union[1] (hereinafter – EU Directive 2019/713) "fraud and counterfeiting of non-cash means of payment are threats to security, as they represent a source of income for organised crime and are therefore enablers for other criminal activities such as terrorism, drug trafficking and human trafficking". In addition, counterfeiting of non-cash means of payment causes consumer distrust of online payments and significant economic losses and is an obstacle to the digital single market. The above determines the relevance of the study of issues related to criminal prosecution in the field of payment services, considering the legal position of the world's leading institutions.

The issue of prosecution for offences in the field of payment services was raised by some Ukrainian researchers, in particular, O. Kryshevych [5], V. Babanina [6], A. Klochko, N. Volchenko, N. Kletsova [7], V. Topchiy, G. Didkivska, T. Mudryak [8] and foreign scientists, S. Abbass, S.E.F. Osman [9], P. Wang, M. Su, J. Wang [10], L. Kien, N. Binh [11]. However, the issue of implementing the international standards on liability for the offences in the provision of payment services is rather underinvestigated. Undoubtedly, that for Ukrainian society such phenomena as modern payment systems and electronic money are relatively new, so the legal framework, including criminal law, was unprepared for such a development of crime, which uses payment instruments, electronic transfers, and electronic payment systems [12, p. 147; 13].

The purpose of the study is to investigate the peculiarities of the implementation to the national legislation of the European Union recommendations on strengthening criminal liability for offences in the field of payment services and to determine the possibility and prospects of criminal prosecution for this offence.

Materials and Methods

The methodological basis of the study was a general dialectical method of knowledge of real phenomena and their relationship with the theory and practice of prosecuting criminal offences committed in the field of payment services, including those that are the subject of electronic money; ***formal and logical method***, which revealed elements of the legal mechanism of international recommendations for strengthening criminal liability for offences committed with electronic money; ***comparative law method*** was used in the analysis of current legislation and international regulations; ***logical and legal (dogmatic)*** – when formulating proposals for amendments to legislative acts.

The listed methods were used at all stages of the study, in particular: definition of a scientific problem, statement of the purpose and tasks; determining the specifics of establishing liability for violations in the use of electronic money under international standards; identifying the features of strengthening liability for criminal offences in the use of electronic wallets and electronic money stored on them, the problems that arise during the introduction of criminal liability for offences committed by issuers of electronic money, and ways to solve them. The theoretical basis of the study were the papers by Ukrainian and foreign researchers on aspects of criminal liability for offences committed in cyberspace with electronic money.

[1]Directive of the European Parliament and of the Council No. 2019/713 "On Combating Fraud and Counterfeiting of Non-Cash Means of Payment and Replacing Council Framework Decision 2001/413/JHA". (2019, April). Retrieved from https://eur-lex.europa.eu/eli/dir/2019/713/oj.

Results and Discussion

The current state of protection of public relations in the field of electronic payments

Nowadays, online opportunities significantly expand the prospects in the activities of any business entity, including those operating in the market of payment services. Modern organisations are actively using information technology to solve critical problems [14], one of which is the development of online payments with electronic money through electronic wallets. The following processes are taking place in the global information environment: the development of models of interaction of participants in financial settlements based on the use of the Internet resources and mobile phones. Therefore, high-quality payment services are an important factor in the development of international transactions in the field of e-business [15]. And confidence in their safety is a guarantee of widespread distribution among all segments of the population involved.

Modern development of electronic instruments of non-cash payments has led to the emergence of new tools in this area, in particular, electronic wallets, which store electronic money and through which payments can be made between different persons. The development of electronic money systems at the present stage of evolution of society is characterised by a gradual narrowing of the use of cash and paper payment documents, the transition to new payment instruments and modern payment technologies. Electronic money is widely used in circulation and becomes an important tool of financial infrastructure of economically developed countries [16, p. 703]. According to the law[1], an electronic wallet is an issuer's account (or operator, or agent, or trader, or user) generated (created) in a processing system (issuer's or operator's software) for accounting, storage and transactions with electronic money. However, the emergence of new means of payment not only simplified this procedure, but also provoked a modification of approaches to committing illegal acts in the field of payment services. At the same time, the legislator is one step behind criminals, who are constantly improving and inventing a way to avoid responsibility for their actions.

One of the determinants of the criminalisation of digital payments is the peculiarity of non-cash means of payment, namely their cross-border dimension, and the rapid penetration of the digital component in all spheres of public life and the spread of innovation in many areas, including payment technologies. Respectively, new technologies of payment transactions are possible only using innovative payment instruments. At the same time, the variety of means of payment arising from the rapid development of the Internet technologies not only creates new opportunities for individual consumers, including businesses, but also contributes to the emergence of additional opportunities in crime, conditioned by the development of criminal technology. In fact, special attention is paid to this in EU Directive 2019/713[2], which emphasises that the legal basis should be relevant to combat such offences and proposes steps to protect society from these destructive phenomena. In particular, it is recommended to recognise as a criminal offence the illegal use of stolen or otherwise illegally appropriated or obtained corporeal non-cash means of payment, as well as the illegal use of counterfeit or falsified non-corporeal non-cash means of payment. Therefore, both corporeal non-cash means of payment and non-corporeal non-cash means of payment must be recognised as the subject of a criminal offence.

According to the Article 2 of Directive (EU) 2019/713 of the European Parliament and of the Council of 17 April 2019 on combating fraud and counterfeiting of non-cash means of payment and replacing Council Framework Decision 2001/413/JHA[3] "non-cash payment instrument' means a non-corporeal or corporeal protected device, object or record, or a combination thereof, other than legal tender, and which, alone or in conjunction with a procedure or a set of procedures, enables the holder or user to transfer money or monetary value, including through digital means of exchange. Accordingly, "digital means of exchange implies any electronic money as defined in point (2) of Article 2 of Directive 2009/110/EC of the European Parliament and of the Council[4] or virtual currency. Legal tender means currency, banknotes, and coins, except for collectibles such as gold, silver and other metal coins and banknotes, which are not normally used as legal tender, or numismatic coins. This clarification is contained in Council Directive 2006/112/EC "On the Common System of Value Added Tax"[5].

According to the current legislation[6], in Ukraine it is possible to make non-cash payments, namely, transfer funds from payers' accounts to payees' accounts and transfer of payment funds provided by cash payers to

[1]Resolution of the National Bank of Ukraine No. 481 "On Amendments to Certain Regulations of the National Bank of Ukraine on Regulation of Issuance and Circulation of Electronic Money". (2010, November). Retrieved from https://zakon.rada.gov.ua/laws/show/z1336-10#n19.
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[5]Directive of Council No. 2006/112/EC "On the Common System of Value Added Tax". (2006, November). Retrieved from https://zakon.rada.gov.ua/laws/show/994_928#Text.
[6]Law of Ukraine No. 1591-IX "On Payment Services". (2021, June). Retrieved from https://zakon.rada.gov.ua/laws/show/1591-20#Text.

payees' accounts, using the following means of payment: payment document, electronic money, electronic means of payment, letters of credit, checks, bills. Directive (EU) 2019/713[1] as to offences related to the fraudulent use of corporeal non-cash payment instruments, recommends ensuring that, when committed intentionally, the following conduct is punishable as a criminal offence:

– "theft or other unlawful appropriation of a corporeal non-cash payment instrument;

– fraudulent counterfeiting or falsification of a corporeal non-cash payment instrument;

– possession of a stolen or otherwise unlawfully appropriated, or of a counterfeit or falsified corporeal non-cash payment instrument for fraudulent use; the procurement for oneself or another, including the receipt, appropriation, purchase, transfer, import, export, sale, transport or distribution of a stolen, counterfeit or falsified corporeal non-cash payment instrument for fraudulent use".

Status of implementation of international norms in the field of protection of electronic payments against unlawful encroachments into national legislation

Analysis of Ukrainian legislation proves that the above conducts are covered by the corpus delicti, the responsibility for which is provided by Article 200 of the Criminal Code of Ukraine[2] (hereinafter – CCU) – "Illegal actions with documents for transfer, payment cards and other means of access to bank accounts, electronic money, equipment for their manufacture". Thus, almost all the specified subjects of a criminal offence concern corporeal (material) non-cash payment instruments. The exception is electronic money, which is "units of value stored in electronic form issued by an issuer of electronic money to perform payment transactions, which are accepted as a mean of payment by persons other than their issuer and is a monetary obligation of such issuer of electronic money"[3]. Electronic money is accounted for and stored in electronic wallets. With their help, transactions with electronic money are carried out. Therefore, it is fair to say that electronic money is a certain sequence of numbers that symbolise banknotes and coins, and in fact the bearer's requirement for the issuer to repay electronic money, i.e., to exchange them for conventional cash or non-cash money [17, p. 162, 167], and therefore, they have a non-corporeal form.

"The Article 5 of Directive (EU) 2019/713[4] as to offences related to the fraudulent use of non-corporeal non-cash payment instruments, recommends ensuring that, when committed intentionally, the following conduct is punishable as a criminal offence:

– unlawful obtainment of a non-corporeal non-cash payment instrument, at least when this obtainment has involved the commission of one of the offences referred to in Articles 3 to 6 of Directive 2013/40/EU[5], or misappropriation of a non-corporeal non-cash payment instrument;

– fraudulent counterfeiting or falsification of a non-corporeal non-cash payment instrument;

– holding of an unlawfully obtained, counterfeit or falsified non-corporeal non-cash payment instrument for fraudulent use, at least if the unlawful origin is known at the time of the holding of the instrument;

– procurement for oneself or another, including the sale, transfer or distribution, or the making available, of an unlawfully obtained, counterfeit or falsified non-corporeal non-cash payment instrument for fraudulent use".

As mentioned above, electronic money is a non-corporeal non-cash means of payment, and therefore, the current legislation provides for criminal liability for illegal acts referred to in Article 5 EU Directive 2019/713[6]. At the same time, the legislative lack of regulation in Ukraine on the issue of prosecuting for illegal opening and servicing of electronic wallets as an unalterable means of performing payment transactions with electronic money is noteworthy. For Ukraine, as a country aspiring to join the European Union, one of the main tasks is to harmonise national legislation with European standards to achieve compliance with the legal system of the European Union. By signing and ratifying the Association Agreement between Ukraine, on the one hand, and the European Union, on the other, on June 27, 2014[7], Ukraine has committed itself to adapting national legislation to European Union standards [18].

Therefore, to implement the provisions of EU Directive 2019/713[8] and the Convention on Cybercrime[9] (ratified with reservations), the Verkhovna Rada of Ukraine registered a draft law amending some legislative acts

[1]Directive of the European Parliament and of the Council No. 2019/713 "On Combating Fraud and Counterfeiting of Non-Cash Means of Payment and Replacing Council Framework Decision 2001/413/JHA". (2019, April). Retrieved from https://eur-lex.europa.eu/eli/dir/2019/713/oj.
[2]Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.
[3]Law of Ukraine No. 1591-IX "On Payment Services". (2021, June). Retrieved from https://zakon.rada.gov.ua/laws/show/1591-20#Text.
[4]Directive of the European Parliament and of the Council No. 2019/713 "On Combating Fraud and Counterfeiting of Non-Cash Means of Payment and Replacing Council Framework Decision 2001/413/JHA". (2019, April). Retrieved from https://eur-lex.europa.eu/eli/dir/2019/713/oj.
[5]Directive of the European Parliament and of the Council No. 2013/40/EU "On Attacks Against Information Systems and Replacing Council Framework Decision 2005/222/JHA". (2013, August). Retrieved from https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=celex%3A32013L0040.
[6]Directive of the European Parliament and of the Council No. 2019/713 "On Combating Fraud and Counterfeiting of Non-Cash Means of Payment and Replacing Council Framework Decision 2001/413/JHA", op. cit.
[7]Association Agreement Between Ukraine, of the One Part, and the European Union, the European Atomic Energy Community and Their Member States, of the Other Part. (June, 2014). Retrieved from https://zakon.rada.gov.ua/laws/show/984_011#Text.
[8]Directive of the European Parliament and of the Council No. 2019/713 "On Combating Fraud and Counterfeiting of Non-Cash Means of Payment and Replacing Council Framework Decision 2001/413/JHA", op. cit.
[9]Law of Ukraine 2824-IV "On Ratification of the Convention on Cybercrime". (2005, September). Retrieved from https://zakon.rada.gov.ua/laws/show/2824-15#Text.

on administrative and criminal liability for violations related to payment services[1] (hereinafter – the Draft). According to the Draft, it is proposed to introduce criminal liability for illegal actions with electronic money by supplementing the Criminal Code of Ukraine[2] with a new Article 200-1 "Illegal actions with electronic money". It is supposed to recognise the following actions as criminal offences:

– provision of electronic money issuance services by persons who have not passed the authorisation of activities in accordance with the legislation of Ukraine;

– provision of services for the execution of payment transactions with electronic money, including the opening and maintenance of electronic wallets, to persons who have not passed the authorisation of activities in accordance with the legislation of Ukraine.

A new title and wording of Article 200 of the Criminal Code of Ukraine[3] "Illegal actions with payment instructions, payment instruments and other instruments of access to bank and/or payment accounts, electronic wallets", which deals with offences also related to electronic wallets, such as their counterfeiting, purchase, storage, transportation, sending them for the purpose of selling payment instruments or other means of access to them, or their use or sale. This position of the legislator on the adjustment of the disposition of Article 200 of the Criminal Code of Ukraine[4] and the introduction of Article 200-1 of the Criminal Code of Ukraine[5], the disposition of which contains certain acts contained in the current Criminal Code of Ukraine[6] in Article 200 "Illegal actions with transfer documents, payment cards and other means of access to bank accounts, electronic money, equipment for their production" coincides with the findings of Ukrainian researchers. In particular, the expediency of separating several types of crimes from the specified corpus delicti based on the results of the analysis of scientific views was emphasised by A.M. Klochko [12, p. 135; 19].

Returning to the analysis of the proposed in the Draft[7] statement of the disposition of Article 200-1 of the Criminal Code of Ukraine[8] "Illegal actions with electronic money" it is seen that its wording makes the norm knowingly "dead". This position is based on an analysis of sectoral legislation governing the provision of payment services. In accordance with paragraph 7, paragraph 1 of Article 5 of the Law of Ukraine "On Payment Services"[9] the provision of services for the issuance of electronic money and the provision of services for payment transactions with them are financial payment services. In part 1 of Article 10 of this Law[10] it is established a list of entities belonging to payment service providers, which include: banks, payment institutions, branches of foreign payment institutions, electronic money institutions, financial institutions entitled to provide payment services, postal operators, providers of non-financial payment services, the National Bank of Ukraine, public authorities, and local governments. At the same time, paragraph 1 of Article 57 of the Law[11] provides a list of persons who may be issuers of electronic money. It is noteworthy that they are the same entities who are referred to as payment service providers, except payment institutions, financial institutions entitled to provide payment services and non-financial payment service providers.

All the above persons belonging to payment service providers are legal entities that have the right to carry out such activities only if they have a license issued by the National Bank of Ukraine to provide payment services. In addition, a mandatory feature of the objective side of Article 200-1[12] is the implementation of these actions without authorisation in the manner prescribed by law. The authorisation of such activities is a procedure of admission of the relevant entity by the National Bank of Ukraine to the provision of payment services, which is carried out by issuing a license and (or) inclusion in the Register of payment infrastructure.

Thus, only legal entities can take the actions outlined in Article 200-1 "Illegal actions with electronic money". This makes it impossible to prosecute the person who committed the acts provided for in Article 200-1 of the Criminal Code of Ukraine[13]. Ultimately, according to the national criminal law doctrine, a legal entity is not a subject of a criminal offence. The legislation provides an opportunity to apply to legal entities measures of a criminal nature, in accordance with Article 96-3 of the Criminal Code of Ukraine[14]. However, its disposition does not provide for the criminal law measures to legal entities that have committed illegal acts with electronic

[1]Draft Law Amending Some Legislative Acts on Administrative and Criminal Liability for Violations Related to Payment Services No. 6295. (2021, November). Retrieved from http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=73173.
[2]Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.
[3]Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.
[4]*Ibidem*, 2001.
[5]*Ibidem*, 2001.
[6]*Ibidem*, 2001.
[7]Draft Law Amending Some Legislative Acts on Administrative and Criminal Liability for Violations Related to Payment Services No. 6295. (2021, November). Retrieved from http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=73173.
[8]Criminal Code of Ukraine, op cit.
[9]Law of Ukraine No. 1591-IX "On Payment Services". (2021, June). Retrieved from https://zakon.rada.gov.ua/laws/show/1591-20#Text.
[10]*Ibidem*, 2021.
[11]*Ibidem*, 2021.
[12]Criminal Code of Ukraine, op cit.
[13]Criminal Code of Ukraine, op cit.
[14]Criminal Code of Ukraine, op cit.

money, because Article 200-1 of the Criminal Code of Ukraine[1] is not included in the list of articles, the commission of which is the basis for the application to a legal entity of measures of a criminal nature. Moreover, the technological features of such activities as the issuance of electronic money and transactions with them, allows identifying a specific person from among the employees of a particular institution, who had the opportunity to carry out such actions without proper authorisation. That is why the disposition of Article 200-1 of the Criminal Code of Ukraine[2], set out in the Draft[3], is unusable for law enforcement, which necessitates its further refinement and improvement to approximate Ukrainian legislation to European standards.

Conclusions

The current situation is characterised by the rapid development of online technologies in all spheres of life. The field of payment services is no exception, most of which are distributed in non-cash form. One of the features of the development of modern payments is the emergence of such payment instruments as electronic money using electronic wallets. The latest trend in the field of settlements, along with providing counterparties with the ability to quickly carry out operations, has provoked the emergence of new ways of committing illegal acts, for example, using incorporeal non-cash means of payment. The international community is following the path of prompt response to the emergence of new challenges, in particular, the entry into force of rules on prosecution for offences in the use of electronic wallets. In contrast, national legislation is lagging, which contributes to the proliferation of illegal acts with electronic money. This, in turn, creates a negative image of the country in the international arena.

This requires further study to bring in line with international requirements of national criminal law to establish criminal liability for certain violations in the field of payment services. This will eliminate significant gaps and differences between Ukrainian legislation and the legislation of EU member states in the field of counterfeiting of non-cash means of payment, which may interfere the prevention, detection, and prosecution of such illegal activities. This approach will make international police cooperation more effective in preventing various crimes.

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Впровадження рекомендацій Європейського Союзу щодо посилення кримінальної відповідальності за порушення у сфері надання платіжних послуг

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Анотація
Активний перехід суспільних відносин до віртуальної сфери й інтенсивний розвиток інформаційних технологій супроводжуються появою нових протиправних явищ, зокрема кримінально-правового характеру, що потребує відповідного правового регулювання. Останніми роками суттєво збільшилася кількість посягань на суспільні відносини у сфері електронних розрахунків, зокрема з боку емітентів електронних гаманців. Зазначена тенденція створює загрози для будь-якої держави, що спонукає міжнародну спільноту до розроблення відповідних норм, які мають бути імплементовані до національного законодавства з метою наближення його до міжнародних стандартів. Нині триває активна робота щодо посилення в Україні кримінальної відповідальності за порушення у сфері надання платіжних послуг з урахуванням рекомендацій Європейського Союзу. Метою дослідження є аналіз і розроблення висновків стосовно доцільності імплементації до національного кримінального законодавства рекомендацій Європейського Союзу в частині посилення санкцій за кримінальні правопорушення, що вчиняються у сфері надання платіжних послуг з використанням безготівкових платіжних засобів. Методологічний інструментарій обрано відповідно до поставленої мети, специфіки об'єкта та предмета дослідження. У дослідженні використано загальний діалектичний метод наукового пізнання реальних явищ, їх зв'язок з притягненням до відповідальності за кримінальні правопорушення, а також загальнонаукові та спеціальні методи юридичної науки. Аргументовано наукову позицію стосовно того, що запропоновані зміни до Кримінального кодексу України в напрямі запровадження відповідальності за незаконні дії з електронними грошима сформульовані в такий спосіб, що унеможливлюють правозастосування такої норми. На підставі аналізу чинного законодавства визначено, що за наявності ліцензії на надання платіжних послуг право на випуск електронних грошей мають окремі юридичні особи, зокрема банки, філії іноземних платіжних установ, установи електронних грошей, оператори поштового зв'язку, Національний банк України, органи державної влади й органи місцевого самоврядування. З огляду на те, що всі перелічені особи є юридичними, вони не є суб'єктом кримінального правопорушення, зокрема за порушення у сфері платіжних послуг. Неузгодженість національного законодавства з вимогами міжнародних норм щодо криміналізації окремих діянь, що вчиняються у сфері надання платіжних послуг, обумовлює потребу в подальших наукових дослідженнях у вказаному напрямі, а також розробленні рекомендацій щодо гармонізації чинного законодавства

Ключові слова:
фінансові правопорушення; фінансові злочини; правопорушення в кіберпросторі; кримінальні правопорушення з електронними грошима; правопорушення у сфері платіжних послуг

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The Ratio of the Victim's Identity and the Perpetrator's Identity in Criminal Offenses Related to Domestic Violence

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Abstract
The article examined the correlation of such elements of criminal characteristics as a perpetrator's identity and victim's identity, classified criminal offenses related to domestic violence based on the understanding of the peculiarities of the process of interrelation between the offender and the victim, stages of violence and the level of family relations. The purpose of the research is to determine the individual characteristics of the offender and the victim, as well as the interdependency of such characteristics, which are crucial for the selection of investigative tactics and directions of investigation of criminal offenses connected with domestic violence. To achieve this goal, general scientific methods are used. There are method of analysis and synthesis, induction and deduction, analogy and modeling. Also for the description of legal phenomenon, substantiation of legality of behavior of the subjects of violation and grouping of models of behavior of the offender and victim is a special-legal method. The specific sociological method is used to summarize available scientific research and results of the survey, questionnaire and interview of practical workers. The scientific novelty of the research is that due to scientific work and the given activity of subdivisions of the National Police of Ukraine individual peculiarities of persons who are approaching domestic violence are studied, such persons are classified according to their family status, gender, age. The study also identifies the peculiarities and stages of the relationship between the offender and the victim in criminal offenses related to domestic violence. A criminal classification of criminal offenses related to domestic violence was carried out on the basis of a summary of the data on the individual of the offender and the victim

Keywords:
domestic violence; criminalistics classification; victim's identity; perpetrator's identity; investigation

Introduction

Domestic violence is a problem not only in Ukraine, but also in all countries of the world, and every year this dangerous phenomenon is becoming more and more threatening. Given the historical experience of society, the fact that many religions occupy the dominant place of man, and the role of women and children submit to men, domestic violence for a long time was considered a norm. It is such a historical heritage that today makes the victims of domestic violence not to talk about the facts of humiliation, abuse, and sometimes torturing by one of the family members, to perceive such situations as a norm, believing that the victims themselves are guilty and in such a way receive punishment [1, p. 181].

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O. Humin, V. Merkulova and others note that according to a study by the United Nations Population Fund and the Department for International Development of the United Kingdom, in the early 21st century, Ukraine became one of the first countries in Eastern Europe to recognize domestic violence as an important social problem, deprived law-enforcers of the opportunity to hide behind the screen of non-interference in private life. At the same time, in some Ukrainian segments of people, in particular, legal circles, is a common, erroneous and dangerous position, according to which family relations are a family affair and even domestic violence is not a crime [2, p. 284].

According to statistics from the National Police of Ukraine in 2020, the police received more than 200 thousand applications for domestic violence, i.e. 570 such reports daily. This is 47% more than in 2019. On average, 1 people suffer from domestic violence every three hours. At the same time, the police started 13 criminal proceedings every day and made 363 administrative protocols on the facts related to domestic violence [3].

Some questions concerning the definition of ways of prevention and counteraction to domestic violence in their works were considered by M.V. Kornienko and A.V. Labun [4], O.V. Pchelina [5], V. Meliankov, G. Usatyi [6], R. Erbas [7], P.R. Vieira, L.P. Garsia, E.L.N. Maciel [8], P. Parolari [9], V.V. Pakhomov, I.V. Karikh, M.O. Bondarenko [10] and others. In these works, scientific searches of the direction, mainly, to define administrative and legal principles of struggle against domestic violence; psychological and sociological characteristics of such violence. Taking into account the recent definition of the criminal nature of domestic violence, many scientific studies are devoted to the question of criminal-legal qualification of criminal offenses related to domestic violence; tactics of conducting separate investigative (search) actions involving victims of such violence; specifics of using special knowledge during pre-trial investigation of criminal offenses connected with domestic violence. However, comprehensive scientific research of the background and peculiarities of construction and implementation of the methodology of investigation of domestic violence was not carried out.

Some aspects of the criminal nature of the investigation of cases of domestic violence are covered in the work of T.V. Ishchenko [11], Y.M. Slukhaenko [12], K.A. Shapoval [13]. At the same time, it should be noted that many aspects of the investigation of the mentioned criminal offenses require further investigation, including criminal offenses related to domestic violence. According to the Law of Ukraine "On Preventing and Combating Domestic Violence", the following types of domestic violence are singled out. There are physical, psychological, sexual and economic. This classification is based on violence, which makes it possible to understand the scale of such a dangerous phenomenon as domestic violence, but does not reflect what is happening as a result of such violence, i.e., offenses, both criminal and administrative in connection with such violence.

Therefore, it should be noted that even more dangerous than domestic violence, criminal offenses related to it. Domestic violence is usually a starting point for other criminal offenses and crimes, which are not necessarily confined to family and common premises. Therefore, it is no less urgent to develop and implement methods of investigation of criminal offenses connected with domestic violence in practical activity. Thus, according to the published statistical data of the Office of the Prosecutor General of Ukraine, only in January 2021, 414 criminal offenses related to domestic violence were recorded, in particular according to art. 126[1] domestic violence – 328 criminal offenses, on art. 129, the threat of murder is 145, on art. 115 deliberate murder, namely murder of a young child or a woman who is known for the guilty was in a state of pregnancy – 26, etc. [14].

By analyzing the Criminal Code of Ukraine[2], the list of criminal offenses related to domestic violence can be divided into two groups: 1) criminal offenses related to domestic violence; 2) domestic violence crimes. These groups themselves have a fairly wide range of criminal offenses, including mental injuries of various severity, and beatings and morbulation, and threats of murder and mental murder, exploitation of children, and forced entry into sexual intercourse and rape, and violation of the inviolability of housing, and the exclusion of children from payment of alimony, disabled parents and many others.

Mostly, the concept of "criminal offenses related to domestic violence" is being used by criminal law scientists: A.A. Voznyuk [15], O.O. Dudorov, M.I. Havronyuk [16], O.V. Kharitonova [17] and others. For the first time, the term "domestic violence crime" was used in criminal legislation in connection with the adoption of domestic violence legislation, when the Law of Ukraine "On the Amendments to the Criminal and Criminal Procedural Codes of Ukraine in order to implement the Provisions of the Council of Europe Convention on preventing and combating violence against women and domestic violence and the fight against these phenomena"[3] of 06.12.2017 No. 2227-VIII the general part of the Criminal Code of Ukraine was supplemented by section XIII-1 "Restrictive measures, applied to persons who have committed domestic violence". Despite the introduction of the concept of "domestic violence crime" in the Criminal Code of Ukraine, the Criminal Code does not contain its

[1]Law of Ukraine No. 2229-VIII "On Preventing and Combating Domestic Violence". (2017, December). Retrieved from https://zakon.rada.gov.ua/laws/show/2229-19#Text.
[2]Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.
[3]Law of Ukraine No. 2227-VIII "On the Amendments to the Criminal and Criminal Procedural Codes of Ukraine in order to implement the Provisions of the Council of Europe Convention on preventing and combating violence against women and domestic violence and the fight against these phenomena". Retrieved from https://zakon.rada.gov.ua/laws/show/2227-19#Text (accessed date: 17.10.2021).

formulation, which in fact brings this issue to the court's decision [18, p. 145].

The purpose of the article is to define the individual characteristics of the offender and the victim, as well as the interdependency of such characteristics, which are crucial for the selection of investigative tactics and directions of investigation of criminal offenses connected with domestic violence. To achieve the goal, it is necessary to solve the following *tasks*: to determine the causal links between the offender and the victim, stages and systematization of violence, to determine the circle of persons who suffer from domestic violence; conduct a criminalistics classification of criminal offenses of this category, choosing as a basis the identity of the offender and determining whether the perpetrator's identity is an offender or the victim's identity of domestic violence, taking into account the gender component and family status.

Materials and Methods

To achieve this goal, general scientific methods are used. There are method of analysis and synthesis, induction and deduction, analogy and modeling. Also for the description of legal phenomena, substantiation of legality of behavior of the subjects of violation and grouping of models of behavior of the offender and victim is a special-legal method. The specific sociological method is used to summarize available scientific research and results of the survey, questionnaire and interview of practical workers.

The analytical base of the survey is statistical data of the subdivisions of the National Police of Ukraine, data from the Single Report on Criminal offenses published by the Office of the Prosecutor General of Ukraine, data from the Single State Register of judicial decisions. Therefore, methods of analysis and synthesis of materials of criminal proceedings of this category of cases and results of questionnaires of practical workers were used to determine the individual characteristics of the offender and the victim in criminal cases related to domestic violence. The questionnaire was conducted in written form, giving out the way of 102 employees of the investigation units of the National Police of Ukraine, during the period from October 2021 to February 2022, during the last advanced training in the National Academy of Internal Affairs. To this end, in the forms of the questionnaire, open type, respondents were offered, based on their own practical experience, to indicate the characteristic features of the offender in criminal proceedings of the mentioned category, taking into account the gender component and family status.

The above mentioned allowed to separate the following scientific abstractions, namely:

1) interpretation of the statistical data obtained with a view to a deeper understanding of the essence of the violent actions carried out with the use of qualitative means;

2) the use of the method of qualitative analysis allowed to obtain data on the life experience, opinions, opinions, etc. of domestic violence participants, to reveal subjective experience of victims. The understanding of the mechanism of mutual relations between the offender and the victim allows the investigator to understand the mechanism of the event, determine the tactics of gathering evidence, tactics of investigation (search) actions, etc.;

3) the combination of quantitative and qualitative analysis allowed a criminal classification of criminal offenses related to domestic violence by the perpetrator and victim, gender and family status. Also define the cycle and stages (phases) of domestic violence, which as a result lead to the introduction of more serious crimes.

Results and Discussion

The problems of investigation of the victim's identity and the perpetrator's identity are now quite widely investigated in scientific developments of various branch directions. It is not an exception and criminalistics. This issue was investigated by such criminal students as V.P. Bakhin, P.V. Tymbal [19], V.Y. Shepitko [20] and N.P. Yablokov [21] and others. One of the key elements of the criminal characterization of any crime is the perpetrator's identity. It can be established by means of knowledge of certain properties and qualities, which are reflected in traces of crime. The acquired knowledge is used as means of influence on this personality during conducting investigative (search) actions [11, p. 66].

Note that the criminal investigation of a person is aimed at solving the main tasks: – identification of the person – properties and signs that appear in the criminal behavior; – identification of the character of the behavior of the person before the occurrence of the crime; – investigation of the behavior at the moment of socially dangerous actions; – forecasting of the behavior of a person in the process of investigation [22, p. 62]. On the basis of examination of materials of criminal proceedings, judicial practice and questioning of employees of the National Police of Ukraine it is possible to have a criminal substantiation of classification of criminal offenses connected with domestic violence, based on the specificity of such an element of criminal characteristic as the person of the offender. As has been noted before, criminal offenses related to domestic violence have a complex and inhomogeneous character, which is caused not only by the problem of the qualification of such acts, but also by their latency and long period, so to speak by accumulation and growth of tension, the force of their introduction. Such circumstances arise precisely because of the nature of the person who committed criminal acts.

Domestic violence is not only physical violence; it

can also be sexual, psychological, emotional, economic, spiritual or legal violence [23]. The Declaration on the Elimination of Violence against Women[1] is inspired by gender-based violence as "any form of violence that causes physical, sexual or psychological harm or suffering to women, including the threats of such acts, forced arbitrary deprivation of liberty, both in public and private life." Any form of violence in the family is illegal and unacceptable. Domestic violence can be physical or psychological and can affect anyone, regardless of age, sex, national affiliation or sexual orientation. It may include behavior intended for intimidation, physical harm or control of a partner. Although all relationships are different, domestic violence usually includes unequal dynamics of power, in which one partner tries to exercise control over other different ways [23].

V.Ye. Bondar [24, p. 26] notes that L. Walker [25] as a result of many years of psychotherapeutic work with victims and initiators of domestic violence defined three phases. *The first phase* is the phase of increase in tension. It is characterized by increasing tension in relations. At this time, the man can resort to minor threats. However, minor images eventually become more brutal, tension in relations increases up to the assault of anger in the man. *The second phase* is the explosion or beating phase. In the second phase, aggressive actions accumulate very quickly and cause chain reaction, which leads to explosion. At this stage, violence can be expressed in various forms: from shock or compass to beating and causing serious injuries. *The third phase* is the phase of the love remorse. The tension decreases and becomes calm. Describing the third cycle, L. Walker claims that abusers show more activity in the phase of increased tension and violent incident than in the phase of love remorse, in which the victim takes a major role [24, pp. 26–27; 25].

In a more modern interpretation, the following phases have names: the phase of the construction of tension; the phase of the violent episode; the phase of the sincere remorse ("honeymoon"). Unfortunately, the nature of violence is cyclical and as a rule violence is repeated again and again [26]. Such behavior of the offender, following the specified sequence of phases, is repeated. However, each time the second phase acquires an increasingly aggressive character. As a result, there is another, more serious crime, committed by either an offender who does not count on his strength and is unable to control behavior, or the victim does not withstand the abuse, murders or another serious crime against his offender.

Intimate partner violence (IPV) is a global problem and is important to public health, including the constriction of harmful behavior committed within intimate partnerships, including physical, sexual and/or psychological violence that is known to affect women disproportionately [27]. V.V. Nesterchuk notes that the facts of domestic violence against women are not isolated, repeated, in addition, have all signs of criminal offense. The process of clarifying the circumstances of violence against women is rather complicated, because the victim is forced to continue living with the offender in the same room, which causes recurrence [28, p. 68]. This is also the case for other victims of domestic violence, not just women.

Vulnerable groups are a category of people whose rights are a changing phenomenon in crisis situations in the country and the world [29]. Taking into account this circumstance V.Ye. Bondar [24] to this three-phase structure of domestic violence adds a fourth phase, which appears like the apogee of the ranks of violence. Namely, the use of force, on the one hand, increases the severity of the conflict, since the force influence becomes a decisive argument and often eliminates its solution peacefully, and on the other hand, it renders the conflict criminal. Having gained victory by force once, the person further reproduces negative experience in other similar situations. That is why after the third stage the conflict acquires a new quality. It becomes criminogenic, that is at any moment can break into a serious crime [30]. The fourth stage is the commission of a serious violent crime against a family member [24, p. 28].

Summing up the results of judicial and psychiatric examinations of women aged 17 to 53 years who have committed the murder of their men or domestic partner, V.Ye. Bondar found that almost all cases were related to chronic psycho-traumatic family situation (arguments, fights) against the background of economic difficulties and housing lack [24, p. 33]. In order to establish a methodology for investigating domestic violence-related criminal offenses, it will be appropriate to distribute such violent acts based on the results of the survey of practical workers, choosing as a basis the identity of the offender, determining whether the offender is a perpetrator or victim/victim of domestic violence. Understanding the behavior of perpetrators of domestic violence at different stages (mentioned above), it is possible to identify three groups of criminal offenses connected with domestic violence, taking as a basis the person of the offender:

- the first is criminal offenses and crimes committed by the perpetrator (68%);
- the second is criminal offenses and crimes committed by the victim of domestic violence, i.e. directed against the perpetrator (30%);
- the third is criminal offenses committed by a third party, which acts as a defense victim of domestic violence, as well as directed against the perpetrator (1.2%).

Also taking into account the gender component and family status, according to the results of the questionnaire of practical workers it is possible to classify

[1]General Assembly Resolution No. 48/104 "Declaration on the Elimination of Violence against Women". (1993, December). Retrieved from https://www.ohchr.org/en/professionalinterest/pages/violenceagainstwomen.aspx (accessed date: 19.10.2021).

the perpetrator as follows: men – 97% (99 persons have chosen such answer); women – 2% (2 persons have chosen such answer); children – 1% (1 person have chosen such answer); suggested variant of answer: grandmother or grandfather – 1%; conservator (married couple) – 1%. Domestic violence differs from violent crimes through the word "family" means the use of violence by close people and within. Traditionally, domestic violence was largely associated with physical violence. However, domestic violence and its forms are now widely defined to include all the existing forms of violence that a family member may commit [31, p. 206].

It should be noted separately that the identification of areas of investigation, planning, organization and selection of tactics of investigation (search) actions promotes understanding of the personal characteristics of the victim. Proceeding from the above, for a qualified investigation of criminal offenses related to domestic violence, the following classification of such offenses by the victim identity will be appropriate:

– minor person;
– women/men;
– elderly persons;
– persons with disabilities;
– persons with mental disorders;
– internally displaced persons.

Given that a criminal offense as domestic violence has a legally defined circle of actors, it will be appropriate to separate the classification according to the peculiarities of the relationship between the offender and the victim, i.e. between whom it occurs:

– violence between marries couple, between domestic partners, i.e. a couple without registration of marriage;
– violence between parents and minor children;
– violence between parents and adult children, and the victims of such violence can be both parents and children;
– violence between children of one family;
– violence between the conservators and the persons under care, and the persons under care can be both adults (elderly persons) and children;
– violence between relatives of different degrees of kinship.

Conclusions

Thus, summing up the above, it is possible to conclude that in criminal proceedings of this category not everything is as clear as it may seem at first sight and after the initial examination of the scene. Namely:

1. The latency of such violations is covered in the person of both the victim and the perpetrator, the choice of the method of committing the offense depends not only on the individual's ability and skills, but also on his age, family, psychological state, the length and systematization of the situation of violence, the degree of threat of such violence, etc. That is why the person of the victim and the offender is the fundamental element of the criminal characterization of the method of investigating criminal offenses connected with domestic violence.

2. In order to properly qualify a criminal offense related to domestic violence and to ensure the fair punishment of the guilty person, it is worth understanding that the offender in this category of crime may be: 1) the perpetrator, i.e. a person (may not be alone), who causes systematic violence against family members; 2) the victim of domestic violence, i.e., criminal acts directed against the perpetrator; 3) the third person who acts in this way, protecting the victim of domestic violence.

3. The relationship between the perpetrator and the victim is of a long cyclical nature, which is divided into four phases. The first phase is the phase of the increase in tension. The second phase is the phase of explosion or beating. The third phase is the phase of the love remorse. The fourth phase is the phase of the criminal nature.

4. The investigator must thoroughly study and investigate the specifics of the person who committed a criminal offense, which is the consequence of the systematic act of domestic violence, i.e. both the persons who commit it and the persons in respect of whom it is committed. The perpetrator's identity and the victim's identity are always connected and trying, because of psychological condition, to hide the degree of conflict between them.

It is the consideration of these circumstances that will facilitate the proper conduct of pre-trial investigation of criminal offenses related to domestic violence, proper preparation of materials for judicial review.

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Співвідношення особи потерпілого та злочинця в кримінальних правопорушеннях, пов'язаних із домашнім насильством

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Анотація
У статті досліджено співвідношення таких елементів криміналістичної характеристики, як особа злочинця та потерпілого. На підставі результатів вивчення особливостей взаємозв'язку кривдника й жертви, етапів насильства обґрунтовано класифікацію кримінальних правопорушень, пов'язаних із домашнім насильством. Мета дослідження – визначення окремих характеристик особи злочинця та потерпілого, а також їх взаємозалежності, що має вагоме значення для обрання слідчим тактики й напрямів розслідування кримінальних правопорушень, пов'язаних із домашнім насильством. Для досягнення зазначеної мети використано загальнонаукові методи, зокрема аналізу, синтезу, індукції, дедукції, аналогії та моделювання. У межах опису правових явищ, обґрунтування законності поведінки суб'єктів правопорушення та групування моделей поведінки кривдника й жертви застосовано спеціально-юридичний метод. Для узагальнення наявних наукових досліджень і результатів опитування, анкетування й інтерв'ювання практичних працівників застосовано конкретно-соціологічний метод. Наукова новизна дослідження полягає в тому, що завдяки науковим напрацюванням і даним діяльності підрозділів Національної поліції України досліджено індивідуальні особливості осіб, причетних до домашнього насильства, здійснено класифікацію таких осіб відповідно до їх становища в родині, статі, віку. Визначено особливості та стадії взаємозв'язку між кривдником і жертвою в кримінальних правопорушеннях, пов'язаних із домашнім насильством. На підставі узагальнення даних про особу злочинця та потерпілого запропоновано криміналістичну класифікацію кримінальних правопорушень, пов'язаних із домашнім насильством

Ключові слова:
домашнє насильство; криміналістична класифікація; особа потерпілого; особа злочинця; розслідування

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Liability for White-Collar Crimes in Ukraine: Theoretical and Enforcement Issues

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Abstract
This paper raises current theoretical and practical issues related to the implementation of a comprehensive mechanism of liability for economic criminal offences in Ukraine. The purpose of this study is to identify the main problem areas in the criminal law security of economic relations and to develop conceptual advice on their elimination. The paper uses a wide range of methodological tools (including comparative, historical, systemic, Aristotelian (dogmatic), modelling), which enabled a comprehensive and critical analysis of the current state and prospects for improving the criminal regulation of economic relations in the country. The results of the study are designed to promote the development of a unified conceptual model of protection of the national economy through criminal law. It is established that the prolonged economic crisis and distortions of market relations continue to adversely affect the state and dynamics of economic crime. The author's opinion is also argued that since criminal law measures cannot objectively have a positive effect on economic processes, they can be relied on only to eliminate certain adverse consequences of economic activity. The study substantiated that the term "criminal offences against the market economy" in the context denoting the crimes for which responsibility is prescribed by Section VII of the Special Part of the Criminal Code of Ukraine, successfully passes conditional verification for compliance with the name of this structural part of the Criminal Code. Over the past five years, Ukraine's criminal law policy on combating crimes in the sphere of economic activity has not undergone radical changes. Finally, there are hopes for the active development of legal research to become a reliable foundation for quality law-making to optimise the statutory framework in terms of criminal law response to economic and financial torts

Keywords:
white-collar crime; market economy; criminal liability; Criminal Code; decriminalisation; law-making

Introduction

Several reasons point to the relevance of the subject under study. First, due to the creation of a new law enforcement body in Ukraine (the Bureau of Economic Security) as a non-militarised "successor" of the Department of Economic Protection of the National Police as well as of the Tax Police, the issue of criminal liability for "economic crime" is once again on the agenda. For all the importance of organisational and procedural factors (including the issue of jurisdiction) and understanding

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the fact that the effectiveness of law-making is measured primarily by law enforcement, substantive criminal law provisions should remain the primary tool in fighting white-collar offences. It is the criminal law that determines which acts of conduct in the economic sphere are prohibited, and what criminal consequences should occur in case of violation of the respective prohibitions.

Second, today the repeatedly "reformed" Chapter VII of the Special Part of the Criminal Code of Ukraine[1] under the title "Criminal Offences in the Sphere of Economic Activity" is still an unbalanced, unsystematic set of insufficient quality prohibitions, which is unable to fulfil its main purpose – to provide effective criminal protection of economic activities. It is therefore unlikely to be reconstructed. This situation is, unfortunately, natural in the sense that criminal law policy in the field of economic protection in Ukraine constantly changes its vectors and legislative changes are made without proper theoretical justification, they often lack practical sense.

Third, the issue of liability for criminal offences in the field of economic activity is among the most difficult within the Special Part of the criminal law of Ukraine, not least due to the traditional formality of the relevant criminal law prohibitions and their connection with the regulatory legislation provisions (huge in volume, contradictory and extremely unstable). This creates significant difficulties in terms of both commenting on the relevant articles of the Criminal Code and identifying ways to improve criminal law prohibitions. It is worth reminding that crime is traditionally understood as an objectively dangerous behaviour of social actors in the system of social relations, which causes significant harm to human rights, social relations and vital interests of the individual, state, business, and society, thus creating a state of danger in society in general. Crime is manifested through the commission of criminal offences, which are different in social orientation, social danger, and consequences [1, p. 171].

Fourth, criminal law scholars are currently at the crossroads, since, on the one hand, there is the enforced Criminal Code and the routine practice of amending it (the situation here, in our opinion, is no longer manageable); on the other hand, our attention cannot pass the activities of the working group, which is currently drafting the new version of the Criminal Code. Within Book 6 of the new Criminal Code draft, it is proposed to single out sections 6.5-6.7, related to crimes and criminal offences against the financial system, against the order of business activities and against the interests of consumers, respectively. At the time of authoring this paper, the content of the proposed sections has been unknown.

Overall, crime in the sphere of economic activity is an urgent and complex socio-economic problem, which currently poses a real threat to the filling of state and local budgets through prompt payment of taxes, fees, and mandatory payments. At the current stage of the nation's development in the areas of law, democracy, and economy the state needs to combat economic criminal activity in its various forms [2, p. 28].

Materials and Methods

To achieve the purpose of this study, the authors employed methods of logic during the construction of the economic crime provisions, establishing trends in criminal policy against white-collar crimes; comparative-legal method – when comparing Ukrainian economic offences framework with those in the United States and some other countries; historical-legal – when establishing historical origins of white-collar crime in Ukraine, Great Britain and elsewhere. Employment of methods of analysis and synthesis, induction and deduction enabled the authors of this paper to construct the article logically by dividing it into several substantial blocks of material (including current issues, historical background, relevant foreign practices, draft law analyses, etc.), as well as to insert substance into relevant components of the article.

Based on the results of the study and using relevant research methodology the authors have formed a set of pragmatically construed conclusions aimed at improving both legal and enforcement parameters of fighting white-collar crime in Ukraine. An extensive body of academic literature as well as provisions of both enacted and draft Criminal Codes have been used while working on this paper. Works by foreign and domestic commentators have been used at length. This allowed to illustrate the current issues of white-collar crime in more depth and to elaborate solutions for strengthening the system of combating such crimes in Ukraine.

Results and Discussion

According to foreign researchers, the first documented mention of white-collar crime in the common law system dates to the 15th century in England. In 1473 a special law was passed to counteract the theft of property specifically entrusted to its carrier. This act was a reaction by the then-legislator to the theft of wool by persons, who transported it at the owners' request. Separately, the twelfth chapter of the fourth book "On Public Crimes" (1769) by famous English commentator W. Blackstone, whose works had a significant impact on American law development, is devoted to crimes against public trade – prototypes of modern economic offences. Within this section of former English law, the famous scientist carefully comments on the rules of such crimes against the economic interests of the Crown as smuggling (and the law punished not only the import of goods into England, but also the importation of goods by an armed group of at least three people, camouflage and smuggling

[1]Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.

whether shooting at revenue collectors was considered an aggravating circumstance), fraudulent bankruptcy (considered one of the low manifestations of *crimen falsi* and equated with forgery and forgery), usury (loan sharking, historically the interest rate on debts ranged from 5 to 10%), which was punishable by confiscation of three times the loan amount or imprisonment for six months), fraud in trade relations (was the central feature of a group of statutes aimed at preventing fraudulent practices in certain areas of production and bidding and included, in particular, deception in the quality of bread and other foodstuffs, deception in the weight and size of products) [3, p. 154-160].

When discussing white-collar crime as a complex, cross-border phenomenon, one should refer to the fact that crime arises, exists, and develops because of the interaction between members of society, as well as with the social environment and society as a common system. Thus, crime in general is primarily related to the living conditions of society, the state of public consciousness and the system of social relations. A specific feature of the relationship between various phenomena of social life and human activities is that they pass in the form of information through the public consciousness, are mediated by collective thinking and are expressed in goal-setting (choice of ways and means of realisation of group interests, achievement of common goals, intentions to act in a certain way) [4, p. 275].

Paying attention to the fact that there are three major approaches to the category of economic crimes in academic literature – in its broad, narrow, and intermediate meanings, the authors of one fundamental work on criminal law choose the third, compromise, doctrinal approach to understanding this concept. According to such approach, economic crimes encroach on the economy, rights, freedoms, needs of participants in economic relations, disrupt the normal functioning of the economic mechanism, harm (as a rule) these social values and benefits. During the period of advancing to a market economy and returning to its diversity, interests of not only the state but also of any other entity engaged in economic activity must remain unchanged. The concept of economic crime has not yet been accurately reflected in legal scholarship, and this issue, as well as the question of relationship between the categories of "economic crime" and "economic criminality", is yet to be resolved.

Meanwhile the economic crisis and the distorted nature of market relations continue having a negative impact on the state and dynamics of economic crime [5, p. 85]. Statistics on economic crimes illustrate that the number of economic crimes in different spheres of Ukrainian economy is highly increased, which leads to dramatic damages contravened upon the country [6, p. 380]. Earlier we have been expressing the opinion that before formulating drafts of specific criminal law regulations, it would be worth trying to develop a doctrinal model of the section of the Criminal Code designed to ensure proper protection of economic relations, and at the same time the complexity of this scientific task. Perhaps the main factor of such complexity is that the definition of goals and limits of criminal law in the economic sphere should be derived from the national socio-economic policy. Currently, its directions and parameters are undergoing permanent changes in Ukraine on the "election-to-election" basis.

However, the situation has somewhat improved recently: at least some clarity has been provided by "National Economic Strategy for the period up to 2030" – a Resolution of the Cabinet of Ministers of March 3, 2021, No. 179[1]. According to experts, this document contains a well-formed vision, mission, goals, principles and main tasks, which are important for attracting investment, simplifying business conditions and sustainable economic development of Ukraine. Therefore, the content of sections 6.5-6.7 of the draft Criminal Code, obviously, should first be correlated (politically) with the mentioned program document. Overall, the history of economic development of the state, determination of its economic policy priorities can be traced through the provisions on liability for economic crimes. However, such observation can be successful only when based on meaningful law-making, which is adequate to the socio-economic realities. This is because sound criminal policy on economic crimes depends on the needs of society, the state of the economy, the balance of state and business interests and more.

At the same time, as it follows from the legislative experience of countries with developed market economies, the issues of criminal law protection of economic activity should not be approached in a simplistic way. I.A. Klepitsky has proved the erroneousness of the widespread opinion about the insignificant role of criminal law in the protection of economic activity under market conditions; in fact, developed countries with market economies are clearly and significantly superior to post-Soviet states in the level of criminal liability prohibited under the threat of criminal liability [7, p. 477-480]. Therefore, "successor" provisions of Chapter VII of the Special Part of the Criminal Code must cover at least such components as the credit system (especially the institution of bankruptcy), investment, finance (including taxes and social security contributions, money circulation and non-cash payments), foreign economic activity and customs administration, entrepreneurship, principles of fair competition and consumer market relations.

When outlining the "white-collar" segment of criminal law studies, special attention should be drawn to the study of globalisation trends in modern world

[1]Resolution of the Cabinet of Ministers No. 179 "National Economic Strategy for the Period up to 2030". (2021, March). Retrieved from https://zakon.rada.gov.ua/laws/show/179-2021-%D0%BF#Text.

and, specifically, in interstate economic relations. Today one is able to follow the processes of digitalisation, communication, erasure of language barriers, migration of labour and capital, joint space exploration, implementation of international research projects in almost all areas, doing cross-border business and more. Such endeavours, while obviously gaining momentum, cannot but affect, at least indirectly, law in general and criminal law in particular. In modern societies, the emergence of new types of economic crimes, the growth of economic crime in general and its adaptation to various socio-economic changes are widely recognised [8, p. 627-628].

Since white-collar crimes are no longer contained within national borders and instead become an international illegal phenomenon, enforcement techniques should also become international in their substance and goals. Hence, international criminal policy is a type of criminal policy, which involves efforts of at least two states to strategically combat crime. Today, such activities include participation in the ratification and implementation of international conventions, practical application of rules through them. Equally important is participation in international governmental and non-governmental organisations that work to combat crime, detect, and investigate international crimes [9, p. 290].

Regarding current globalisation environment, successful development of any national economy largely depends on the degree of interaction with other economic systems. Such conclusion seems all the more relevant when considering modern types of globalisation, especially economic one. Against such background, the priority function of public authority in Ukraine should be in establishing a harmonious, productive relationship between the national economic system and similar systems of foreign countries, as well as with the regional economic systems, in particular with the European Union economy. As a relevant example, while remaining for a long period of time the world economy leader with the national GDP making up almost a quarter of the world GDP since the end of World War II, today the United States of America is the well-established leader in many areas of global economic development. This leadership starts with the highly developed and highly capitalised stock markets as well as enormous innovative technologies and ends with free competition laws and effective bankruptcy procedures. The U.S. shows significant achievements in the functioning of a liberal market economy model to the rest of the world.

American experience, always praised for the stability of the economic development vectors and particularly by the freedom of market relations as well as pragmatic limitations, set by the state, is even more useful for Ukraine, which has recently chosen the "market" direction for its economic development. At the same time, learning from the relevant American experience leads us to a conclusion that free market relations are not immune from illegal practices. The issue of counteracting economic crimes constantly stays on the radars of the US law enforcement agencies. Global markets make up yet another dimension for white-collar crime. Since there is a multi-faceted relationship between globalisation, economy, law, government, and democracy, each one influences on one another and affects it. The totality of such interactions changes the function and even the nature of the state. Globalisation includes emergence and expansion of multinational corporations and their increasing role in the global economy [10, p. 216]. Meanwhile corporations themselves increasingly often become criminal actors involved in cross-border tax evasion, money laundering and other schemes.

When covering the topic of Ukrainian economy's integration into the global markets, one should notice that over the past three decades, the history of stock market establishment and development in Ukraine has provided many examples of the global best practices' transfer with regards to stock exchanges' supervision and organisation, depository and clearing infrastructure, etc. However, in reality, though stock market is the driving force of the global economy, it poorly performs the functions of deployment, allocation and channelling financial resources in Ukraine with the goal of stimulating economic growth and attracting foreign investment. Despite a few positive examples of integration into global capital markets (in particular, the recent provision with the access to the Ukrainian state bonds for foreign investors via the Clearstream international depository and also admission of the U.S. Treasury Bonds and several companies' stocks, including Apple stock), Ukrainian stock market is plagued by significant distortions and imbalances, it remains underdeveloped and unattractive for both domestic and foreign investors. This is clearly evidenced by the economic data [11, p. 1680].

Among various "white-collar" models of illegal, fraudulent behaviour, money laundering as a yet another threat to economic security of global proportions has raised the issue for all countries about the need to strengthen international cooperation between law enforcement agencies in the field of countering laundering schemes. In this case, international cooperation will be successful if carried out at both national and international levels. The need for law enforcement cooperation is because without international cooperation it is impossible to ensure collection of evidence outside the country, criminal prosecution of perpetrators outside the country, as well as compensation for losses or return of lost income. Accordingly, proposal to develop a methodology for the interaction of law enforcement agencies of different countries to counteract money laundering will allow taking such interaction to a new level [12, p. 226].

Reflecting on the specific manifestations of legal nihilism, legal fetishism, and legal voluntarism in Ukrainian society on the feasibility of criminal law regulation of the national economy in general and the specific limits of such regulation in particular, non-criminal

behaviour in the economy should be regulated by other means, and in no way criminal ones. Conversely, the application of criminal law measures cannot be eliminated where and when they are needed. Since criminal law measures cannot objectively have a positive effect on economic processes, they can be counted on only in terms of eliminating certain negative consequences of economic activity. At present, it can be concluded that the term "crimes against the market economy" in the context of denoting crimes for which responsibility is provided by Section VII of the Special Part of the Criminal Code of Ukraine[1], quite successfully passes a conditional test for compliance with the name of this structural part of the criminal law. The proposed concept is considered as reasonable, given the well-founded criticism of its two main "competitors" – the statutory concept of crimes in the field of economic activity and the common concept, within the legal literature, of crimes in the economy (as another practical option – crimes against economic activity). We believe that in such way it will be possible, among other things, to avoid "blurring" of one of the key sections of the Special Part of the Criminal Code of Ukraine by separating the section on liability for financial crimes. At the same time, it is obvious that the proposed clarification of the title of Chapter VII of the Special Part of the Criminal Code of Ukraine does not remove the issue of qualified, scientifically sound and, most importantly, systematic legislative changes in liability framework for crimes against market economies, from the current agenda.

Thus, we believe that Chapter VII of the Special Part of the Criminal Code should be renamed into "Crimes against the market economy". Although, we admit, not all the rules set out in Section VII of the Special Part of the Criminal Code directly indicate the infliction (threat of infliction) of damage to market economy relations (for example, counterfeiting or misappropriation of budget funds), at the same time the term "market economy" should be inserted into the title of the relevant section of the Criminal Code. The thesis on the controversial nature of the researched issues, the complexity of reforming prohibitions currently concentrated in Section VII of the Special Part of the Criminal Code, and the definition of their prospects could be illustrated through the example of criminal law protection of the stock market of Ukraine (mentioned above). As a matter of first impression, there is no doubt about the need to ensure proper functioning of the domestic stock market, in particular, through high-quality criminal law tools, which include "immersion" into regulatory legislation, development of departmental documents and law enforcement practices of the National Securities and Stock Market Commission as a state regulator of the relevant segment of the economy, as well as attracting necessary means of criminal law and financial law regulation.

However, such time-consuming path, which requires considerable professional effort, no longer seems indisputable, given the fact that the stock market of Ukraine, the legal framework of which is satisfactorily spelled out in regulatory legislation, stagnates, and degrades for several reasons, since Ukraine has an oligarchic model of organisation and functioning of the economy. Thus, the question arises: whether, under such circumstances, the "economic" structural parts of the new Criminal Code should be clogged with numerous, difficult to understand and casuistic rules on liability for stock market abuse, and whether the criminal law response to stock market abuse should remain restricted, unclear and underdeveloped. The answers to the posed and similar (for example, on the means of criminal law support of de-offshoring the national economy) complicated questions may vary. It is important for them to be moderate and well-reasoned.

As a side but nevertheless important note here, it is worth stressing out the importance of emerging oneself into the economic studies in order to better draft criminal law provisions aimed at combatting white-collar criminality. Among other things, understanding the mechanics of financial regulation is crucial for providing adequate criminal law protection of state finances, national banking system. Protecting banking system from unlawful interference is an important task for entities involved in combating crime in the banking sector, whose activities are not always effective due to the lack of cooperation in certain areas, best algorithms for individual crime prevention entities and a unified classification of bank crimes, gaps in the legislation, etc. [13, p. 143].

Criminal law, as we know it, is not meant to be a panacea for all diseases of society, so introduction of criminal liability for the illegal act should be the "last resort" option and should apply only when the fight against certain phenomena by other (non-criminal) means is ineffective, insufficient, and the negative side effects of criminalisation does not outweigh positive ones. However, regarding economic torts, implementation of the idea of criminal law as an *ultimo ratio* instrument is a particularly difficult task, and therefore requires serious professional elaboration.

Today white-collar crimes are usually committed via conspiracy by multiple actors. It is thus no surprise, for example, that the United States have at some point started aggressively enforcing Racketeer Influenced and Corrupt Organisations Act provisions aimed not only at mobsters but at white-collar criminals as well. Organised crime always poses a serious threat to the world community. Its merging with other illegal activities (primarily corruption, terrorism, economic crimes, environmental offences, peace, and security of humankind, etc.) further exacerbates the adverse effect on the international community, individual states and nations, and for

[1]Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.

each member of society in particular [14, p. 177]. For the sake of academic fairness, it should be noted that scholars – authors of treatises on individual criminal offences in the field of economic activity, without going beyond the members of the working group, usually take proposed quantitative parameters randomly, "from the ceiling".

The issues of arbitrariness of quantitative indicators of criminal and qualifying features of criminal offences (in particular, in economic activities) inherent in the current Criminal Code should become the topic of a separate scientific study. Without effectively solving it, social conditionality of criminal legal prohibitions cannot be raised. The current situation with the development of reasonable cost criteria for criminal wrongdoing in the field of economic activity can be understood (but not justified): in order to develop these criteria, it is necessary to conduct special research – criminological and interdisciplinary (including participation of economists and sociologists) ones as well as research of law enforcement practice materials on certain categories of criminal proceedings. The "smart head" method in this part of the construction of criminal law prohibitions cannot be enough.

It is worth mentioning that clarified amounts of property damage appear in Article 1.3.3 of the new Criminal Code draft – insignificant, significant, serious, which are considered, in particular, in the elaborated classification of criminal offences. These parameters are determined using a unit of account: if in previous versions of the draft law such unit was equal to UAH 100, now it is UAH 200 (apparently, inflation has been taken into account). Such unification will be convenient for law enforcement application, and the proposed approach does not raise reservations in terms of compliance with legal requirements. However, it remains to be determined, to what extent these new indicators of property damage reflect the realities of life, which need adequate criminal response.

Overall, for the last five-year period, criminal law policy of the Ukrainian state in terms of combating crimes in the sphere of economic activity has not undergone radical changes. Two main trends of such policy, initiated by the Law of November 15, 2011 "On Amendments to Certain Legislative Acts of Ukraine on the Humanisation of Liability for Offences in the Sphere of Economic Activity"[1], remain: first, the preference for special (or casuistic) criminal law prohibitions, the use of which allows only to intuitively and fragmentarily respond to the presence of certain economic abuses; secondly, the hyperbolisation of the role of the repressive influence of criminal law prohibitions as a factor that worsens the business climate and hinders normal development of economic relations. As a result, there is a different and also unjustified humanisation of criminal liability for committing economic crimes. Yet another (third) trend is the quantitative increase in the volume of normative material with virtually unchanged criminalisation, when the appearance of new articles in the Criminal Code does not lead to the expected increase in prohibited behaviour and, most importantly, to the desired effect expected by the parliamentarians [15].

As a rational academic proposal, the Criminal Code of Ukraine[2] must be supplemented by a set of key provisions, which will provide for criminal liability for the most socially dangerous manifestations of violations of the established procedure for engaging in economic activity (doing business). But first relevant expert work will have to elaborate on a more or less specific list of licensed types of economic activity; extreme forms of their violation should be prosecuted based on criminal law provisions [16, p. 139].

Conclusions

Within the set of conclusive remarks, it is necessary to briefly address the scientific support of the legislative optimisation of criminal liability for criminal offences in the sphere of economic activity. There is no doubt that the development of legal science is designed to become a reliable foundation for high-quality law-making in terms of determining regulatory framework for criminal law response to economic and financial torts. It follows from the above that the situation with the improvement of the Criminal Code (in particular, regarding economic abuses) is currently not based on such components of quality law-making as scientific knowledge, legal culture and legislative technique. The era of legislative ignorance continues, and the gap between law-making and criminal law science, whose representatives are involved in the draft law projects, if sporadically and on a volunteer basis, is growing. From the point of view of ensuring the proper quality of criminal laws, the academic idea to entrust drafting relevant bills not to members of parliament, but to research institutions, universities and expert groups seems both pragmatic and promising.

Relevant ("economic") parts of the draft Criminal Code should ideally:

1) embody a compromise between public interests and interests of economic entities;

2) provide for liability for truly socially dangerous and more or less typical (widespread) torts (there is no point in reproducing provisions of the current Criminal Code within the new legislation, when there are solid zeros in judicial statistics);

3) contain optimal definition of the links between criminal law prohibitions and their relationship with administrative, financial and economic law prohibitions;

4) reflect socially justified crime-establishing elements.

[1]Law of Ukraine No. 4025-VI "On Amendments to Certain Legislative Acts of Ukraine on the Humanisation of Liability for Offences in the Sphere of Economic Activity". (2011, November). Retrieved from https://zakon.rada.gov.ua/laws/show/4025-17#Text.
[2]Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.

While working on this research paper, we tried to explore relevant criminal law research developments in Ukraine, even though most of the literature on relevant topics is devoted to criminal law characterisation of specific criminal offences in the field of economic activity. Meanwhile, there is a lack of universal works, which would provide for in-depth legal analysis of the system of such offences (their groups), reveal general laws of criminal law protection of economic and financial relations, which would highlight cross-cutting criminal law issues in the economic sphere. Therefore, such gap in criminal law research should be closed by gradually forming economic criminal law as a sub-branch of criminal law and academic discipline.

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Відповідальність за економічні кримінальні правопорушення в Україні: проблеми теорії та правозастосування

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Анотація
У статті висвітлено актуальні теоретичні та практичні питання, пов'язані з реалізацією комплексного механізму відповідальності за економічні кримінальні правопорушення в Україні. Метою дослідження є виявлення основних проблемних сфер у кримінально-правовій охороні економічних відносин і формулювання концептуальних порад щодо їх усунення. У роботі використано широкий методологічний інструментарій, зокрема такі методи, як порівняльний, історичний, системний, формально-логічний (догматичний) і метод моделювання, що дозволило всебічно та критично проаналізувати сучасний стан та перспективи вдосконалення механізму кримінально-правового регулювання економічних відносин у державі. Отримані результати дослідження спрямовані на вироблення єдиної концептуальної моделі захисту вітчизняної економіки за допомогою кримінально-правових засобів. Установлено, що наявна економічна криза та викривлення ринкових відносин продовжують негативно впливати на стан і динаміку економічної злочинності. Аргументовано авторську позицію про те, що оскільки кримінально-правові заходи об'єктивно не можуть позитивно впливати на економічні процеси, на них можна розраховувати лише в частині усунення певних негативних наслідків господарської діяльності. Обґрунтовано положення, згідно з яким поняття «кримінальні правопорушення проти ринкової економіки» в контексті позначення злочинів, відповідальність за які передбачено розділом VII Особливої частини КК України, успішно проходить умовну перевірку на відповідність назві цієї структурної частини Кримінального кодексу. Зауважено, що за останні п'ять років кримінально-правова політика України щодо протидії злочинам у сфері господарської діяльності не зазнала кардинальних змін. Висловлено сподівання стосовно того, що активний розвиток правових досліджень здатний слугувати надійним фундаментом якісної правотворчості з метою оптимізації нормативної бази в частині кримінально-правового реагування на господарські та фінансові делікти

Ключові слова:
економічне кримінальне правопорушення; ринкова економіка; кримінальна відповідальність; Кримінальний кодекс; декриміналізація; законотворчість

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Modern Means of Correction and Resocialization of Convicted Persons

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Abstract
The transition from penalty as the main purpose of punishment to correction of behavior and resocialization of convicted persons in the process of service of punishment requires updating and improvement of the criminal-executive system of Ukraine, further active development of the probation system in general, and especially penal system. The solution of the existing shortcomings in the sphere of criminal punishment and trial is possible only by means of a consistent system reform based on scientific principles, implemented in practical area, which should be based on the stage-by-stage updating of the existing system to the modern, as transparent and understandable for the public, one of the main tasks of which will be to ensure the observance of human and civil rights. The creation of a scientific foundation for the functioning of such a system is the purpose of this scientific research. According to the set goal, the study uses a combination of both general scientific and special methods and methods of scientific knowledge, the application of which allowed to analyze the range of issues related to the correction and resocialization of convicted persons in a comprehensive manner. The current state of the criminal-executive system of Ukraine now requires updating of theoretical and adapting the legislative base by introducing foreign experience into the Ukrainian system of criminal penalties. Active development requires the system of appointment and execution of alternative punishment. Improving the system should be organized in such a way as to apply punishment to the person who committed the crime, without prejudice to its personality, and on the contrary to promote its full resocialization, which will, as a result, reduce the level of crime. Introduction of modern technologies in the work of bodies and institutions of criminal punishment and probation execution should become one of the key directions of reform implementation

Keywords:
criminal punishment; amendment; resocialization; probation; penal system

Introduction

In order to effectively implement the latest methods of criminal punishment system, it is important to consider and understand historical age of evolution, changes in views and approaches to punishment not only in Ukraine, but also in the world as a whole [1]. The origin of the idea of imprisonment in order to influence the internal world of the offender for his ceasing of his roots is reached by early Christianity. The conceptual foundations of prison sentence as a fine punishment were formed in the XVIII century by the English, French and Italian rulers and thinkers. It was implemented in practice in the New World in the form of Pennsylvanian system, Auburn system and progressive penal system. In particular, the essence of the Auburn prison system is that prisoners are placed in separate ells only at night, and

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work all day together, but with the observance of strict silence [2]. Another type of prison system is a Philadelphia, or a Pennsylvanian, which is based on the principle of single content of the sentenced person in the cell [3]. Auburn prison later became a prototype of general detention, and the Philadelphia single. And different principles of detention in the above systems are conditioned by different understanding of what constitutes a means of correction of the sentenced person and under what conditions of detention the aim of correction of the offender can be achieved. The progressive system also turns out that the regime and conditions of punishment in the form of imprisonment during the term of punishment should change depending on the behavior of the defendant [4].

The latter, despite criticism and modification, were borrowed by European countries, where the concept of lawful influence under conditions of isolation has come a new look. It should be noted that the elements of the prison, namely, the division and classification of prisoners, labor, decent conditions of detention, the procedure of punishment (regime), training, moral and religious support, and still remain complex criminal-executive process. Most European countries, starting from the second half of the XIX century, have consistently introduced different models of legal influence. There are penal, therapeutic, resocialization, prison management, etc. Ukraine began this path only in the 90's XX century, since by that time Soviet justified labor doctrine, which was established in the post-war period and envisaged strengthening of educational influence on prisoners during the punishment. Work, professional training, teaching of the working profession were the main component of the legal-educational influence and further adaptation of offenders to social-useful life [5]. Later it was abandoned and began to search for new ideas and paradigms in view of international standards and foreign practices. Trying to revive the penal concept of the XIX century as the main purpose of punishment in the form of imprisonment, the group of Ukrainian scientists, mainly psychologists and teachers, spoke for renaming the criminal-executive system into a penitentiary system. The main task of the penal system was to resocialization of the prisoners. And its foundation is the educational influence and readiness of the most condemned to be dissolved in their criminal actions. It is the doctrine of resocialization, as seen by Ukrainian penitentiary teachers and psychologists, and has been enshrined in the Criminal-Executive Code of Ukraine in 2003[1] and is still preserved.

Article 6 of the Criminal-Executive Code of Ukraine[2] defines that "the correction of the convicted person is a process of positive changes that take place in his personality and create his readiness for self-governing law-enforcement behavior. Resocialization is the conscious restoration of a full-fledged member of society convicted in social status; its return to an independent, generally accepted social and normative life in society. The necessary condition of resocialization is the correction of the sentenced person. The main means of correction and resocialization of prisoners are established procedure of execution and execution of punishment (regime), probation, socially useful work, social-educational work, general educational and professional-technical training, public influence". The probation, as a means of correction of convicts, appeared not so long ago in the Criminal-Executive Code of Ukraine[3], only in 2016, after the adoption in 2015 of the Law of Ukraine "On Probation"[4]. However, probation is not the only modern remedy for convicts who appear in the modern world. We propose to consider the digitalization as one of the modern means of correction and resocialization of prisoners.

The purpose of the article is comprehensive scientific analysis of the current state of the newest means of correction and resocialization of the above-mentioned and development of proposals for further implementation of the updated system of measures of collection influence on the behavior of the convicted persons without harm to his person in accordance with the requirements of time and norms of international law. To achieve this goal we consider it expedient to perform *the following tasks*: to consider available technical means and methods of use of modern technologies in the process of execution of punishment, correction and resocialization of convicted persons; to carry out comparative-legal analysis on the basis of experience of foreign countries; to develop innovative methods of using innovative technologies during the appointment, execution and execution of punishment, preparation of prisoners for discharge, discharge and post adaptation of prisoners.

Materials and Methods

According to the set goal and tasks, the author used a combination of general scientific and special practices and methods of scientific knowledge, the application of which allowed to analyze the range of issues concerning modern means of correction and resocialization of convicted persons through the prism of modern technologies. Methods of comparative-legal and documentary analysis were used during the study of historical aspects of the system of punishment execution and their reflection in the modern system of criminal punishment execution. The historical periods of the legislative initiative and their implementation in modern realities were analyzed separately with the help of this method. In addition, the

[1]Criminal-Executive Code of Ukraine. (2003, July). Retrieved from https://zakon.rada.gov.ua/laws/show/1129-15#Text.
[2]*Ibidem*, 2003.
[3]*Ibidem*, 2003.
[4]Law of Ukraine No. 160-VIII "On Probation". (2015, Jaunary). Retrieved from https://zakon.rada.gov.ua/laws/show/160-19#Text.

State Criminal-Executive Service of Ukraine were compared with the local systems of foreign countries.

Due to the statistical method it was possible to carry out statistical data on the total number of prisoners and defendants, as well as the bodies and institutions of punishment execution and subdivisions of the authorized trial body. The method of statistical analysis allowed to compare data with the previous years, and the legal-comparative method allowed to compare them according to certain criteria of paid services, which were planned to be introduced earlier with available at the moment. The prognostic method was used to predict the legal regulation of the mentioned issue in the future. In addition, the method of legal forecasting is used, which forms an opportunity to continue the research of the topic on the basis of the results obtained earlier, and as a result, implementation in the legislation of international, and in the activity of bodies and institutions of punishment and probation service of modern technical means.

Results and Discussion

Every day we face the need to introduce changes in the existing directions of economic, political and social activity, caused by the transformation of the world and society. Thus, there is an additional factor necessary for the effective implementation of reforms, which is the adequacy, flexibility and conformity of political, economic and social elites of the impact of globalization changes. This leads to the creation of new priorities in all spheres of social, economic and political life in the country, their adaptation in accordance with the directions of development of the European Union and concrete programs of their implementation to the Ukrainian society. In addition, there is a need for a consistent and comprehensive analysis of the country's key indicators on the basis of these international ratings and indices, implementation of the processes of "digitalization" at the political level, and the virtualization of the economy and society. Research of mechanisms of realization of such programs is an important stage of forecasting of further European prospects of the Ukrainian society. The main direction of Ukrainian reform today should be active development and implementation of road maps of modern projects. Special attention should be paid to the issue of "aging of professions", which takes place directly in the process of preparing the professional staff members, and therefore causes the traditional university education, and as a result becomes the reason for the change of social structure of society. Today, the analysis of social changes is based on redistribution of the society from the positions of the middle class removal, and as a result of the society structuring into three main groups of the population from the point of view of social employment and activity: "creative class", "service class" and "unnecessary" class [6; 7].

A question arises: What class to bring the prisoners who are going to be released from punishment? On the one hand, there is a need to improve new electronic capabilities, and on the other hand, as noted by the Minister of Digital Affairs of the Republic of Poland, M. Zagursky: "Digitalization should not complicate people's lives – it should provide tangible benefits" [8]. For global understanding of the statistics of the structure of the system of execution of criminal penalties of Ukraine, it is worth pointing out that as of January 1, 2022, 148 institutions of the authorities and institutions of execution of sentences, 589 units of the authorized bodies on probation were assigned to the Ministry of Justice of Ukraine. In addition, 29 institutions are located in separate areas of Donetsk and Luhansk regions, on temporarily occupied territories.

As of 01.01.2022, the total number of persons who are in the bodies and institutions of execution of the punishment of Ukraine is 48 259. Of them: In 12 pretrial detention centers and 17 punishment institutions with the function of the pretrial detention center all remained – 17 352 persons (for comparison in 2021 16 673 persons were held); among them, 1 026 women (for comparison in 2021 there were 997 women), 116 minors (for comparison in 2021, 127 persons). Thus, the number of all persons who are kept in custody has decreased by 679 persons per year (the year before has decreased by 829 persons) [9].

Therefore, the importance of the issue of proper information and technical support for the activities of the State Criminal-Executive Service of Ukraine (hereinafter referred to as the State Criminal-Executive Service of Ukraine) in the day of technological progress, innovation development and achievements is indisputable. This is due to the fact that the current state of affairs of the State Council of Ukraine in this sphere is quite unsatisfactory. Therefore, in accordance with the order of the Cabinet of Ministers of Ukraine dated September 13, 2017 No. 654-r "On the Adoption of the Concept of Reforming (Development) of the Pension System of Ukraine for 2017-2020"[1] (hereinafter – the Concept), the ways of development and reform of the DHW of Ukraine were approved in accordance with modern realities. As a result, the Concept envisages the main tasks for solving existing technological problems: "To introduce modern information technologies into the activity of the authorities, institutions of punishment and pretrial detention centers, in particular to create a complex electronic register of convicted persons and persons taken under custody, as well as subjects of probation; to introduce modern and to modernize existing technical means of protection, including systems of video surveillance, in establishments of execution of punishment and pretrial detention centers; to replace outdated telecommunication equipment and means of communication"[2] .

[1]Resolution of the Cabinet of Ministers of Ukraine No. 654-p "On Adoption of the Concept of Reforming (Development) of the Penal System of Ukraine". (2017, September). Retrieved from https://zakon.rada.gov.ua/laws/show/654-2017-%D1%80#Text.
[2]*Ibidem*, 2017.

Such a direction of reforming the State Executive Service of Ukraine taking into account the current state of development of society and social relations and active process of digitalization of all areas of residential activity are insufficient, it would have to be expanded and divided into four blocks:

I. Tasks to solve existing technological problems (introduction of modern information technologies in the activity of bodies and institutions of punishment execution and investigation isolators).

II. Providing services to convicted and imprisoned prisoners through the prism of digitalization.

III. Involvement in the process of psycho-correction of behavior of convicted (correction) digital systems.

IV. Quality preparation of prisoners to return to society by full-fledged citizens (resocialization), who are able after their release from prison to self-managed behavior and ability to use modern means of life, so that they do not fall into the "class of unnecessary" [10].

If we consider **the first block**, a lot of programs have been prepared in this direction, but unfortunately, they are ineffective. This is due to the fact that today more than 90% of the available complexes of technical means of perimeter protection and 33% of other types of engineering and technical means of protection and supervision of penal institutions and pretrial detention centers of the State Executive Service of Ukraine are in unsatisfactory technical condition, as a result of repeated over travel of the boundary period of exploitation, moral and physical deterioration, therefore, the technical level of equipment of the penal institutions and investigators by means of protection can be assessed as unsatisfactory [11].

The main tasks to solve existing technological problems: Introduction of modern technologies, in work of bodies and institutions of execution of punishment and pretrial detention centers, for example, creation of complex electronic register of prisoners and persons taken under custody, as well as subjects of probation (now this project is already intimidated, Half a year the pilot versions of such registers on the basis of Holosiivsky District Probation Department of Kyiv and Kyiv Pretrial Detention Center) are in force; introduction of modern and modernization of available technical means for perimeter protection and ensuring observance of human rights, installation of the newest effective system of video surveillance, in the establishments of punishment and pretrial detention centers, including application of breast video monitors for employees; replacement of outdated equipment and means of communication. However, most of these projects cannot exist because not all punishment institutions have access to the broadband Internet.

Second block. It was proposed to provide and organize realization of several paid services, in particular services on sale of condemned and imprisoned food products and items of primary necessity through Internet resources. However, this practice has not taken place due to a number of technical and political reasons. In contrast to this, at the legislative level, changes have been made to a number of normative-legal acts, which is why today, in accordance with Ukrainian legislation, persons sentenced to imprisonment and persons detained can receive parcels and transfers without restriction in their number. According to the legislator, this should help to improve the operational situation, because the accused will receive high-quality and tasty food from relatives and friends, and thus, it will be possible to assume that the quality of food will become better. But is it really true? Measures to solve one problem cause a number of others. Now, the sending and delivery is the main way of delivering prohibited items to the institutions of punishment execution. Daily operational staff throughout Ukraine are checking hundreds of thousands of parcels, and most of them can find prohibited items or food. It is not always drugs or weapons. Often, these are products that cannot be transferred because they cannot be checked according to sanitary norms, or products whose quality is questionable. Effective verification of every banker, check-in or transfer across the country requires the involvement of a large number of employees in this process. In some institutions, the execution of punishment due to a large staff deficit (about 5000 thousand for the service in general) is difficult to implement. Separately, it is worth paying attention to the fact that many prisoners are being punished far from the place of residence. This is connected with the process of optimization (conservation and liquidation) of the penal institutions, which is currently taking place in the system of the State Criminal-Executive Service of Ukraine, due to the reduction of the number of prisoners, but, unfortunately, it is not ineffective. This problem can be solved in a way that has long been introduced in their prison systems by progressive world countries, in particular our closest neighbors: Czech Republic, Poland, Slovakia, etc.

For example, in the penal system of California long ago forgotten about the parcels and transfers, which relatives and friends of prisoners themselves buy in shops, form and bring or send to institutions, moreover – they are forbidden. If convicted persons need to buy something that they lack, they have huge catalogs, through which they can buy almost everything that is in supermarkets, except alcohol and perishable products or contain yeast and many sugar [11; 12]. In addition, it is appropriate to consider the possibility of a wider introduction of distance learning system, development of a system of administrative services rendered to convicted persons by means of Internet resources (passport registration, pension registration, etc.). This circle can be extended further. The introduction of these capabilities will, first of all, enable the convicted to use modern electronic resources, expand the range of services the accused will be able to use, as well as reduce the time to receive these

services and will reduce the number of employees involved in the provision of these services.

One of the innovations in the implementation of paid services for convicted persons in Ukraine is the possibility of using paid cameras of improved comfort for prisoners who are imprisoned. And since 07/24/2020, a new service has been launched – payment for use of paid cameras in advance. Under the terms of the service receipt – any person taken under detention, has the right to provide the pretrial detention center with confirmation of payment of "services in advance" and to use the corresponding paid service within six months from the date of the respective payment. Payment of the service may be made without specifying the specific time of the stay in custody. If during the specified term the person will not be taken under custody and not get into the investigator's detention facility, the funds for unused days will be credited to the special fund of the state budget of the investigator's detention facility as charitable aid [13].

The service can be used in nineteen punishment institutions, where the experimental project on rendering of paid services is launched. These are the state institutions: "Kyiv pretrial detention center", "Lviv pretrial detention center", "Chernihiv pretrial detention center", "Zaporizhzhya pretrial detention center", "Vilnyansky penitentiary facility (No. 11)", "Dnipro penitentiary facility (No. 4)", "Kharkiv pretrial detention center", "Poltava pretrial detention center", "Sumy pretrial detention center", "Zhytomyr penitentiary facility (№ 8)", "Khmelnytsky pretrial detention center", "Chernivtsi pretrial detention center", "Vinnytsia penitentiary facility (No. 1)", "Rivne pretrial detention center", "Lutsk pretrial detention center", "Chortkivska penitentiary facility (No. 26)", "Zakarpattya penitentiary facility (No. 9)", "Ivano-Frankivsk penitentiary facility (No. 12)" [13].

The application for "pre-service" can be submitted both in writing and in electronic form through the automated system "on-line house of justice". In the application it is necessary to specify: the place of rendering the service (the name of the pretrial detention center), the calendar period (day, week, month), for which it is planned to pay for the use of the paid camera, the consent of the payer on crediting of funds for unused days to the special fund of the state budget of the investigator as charitable aid. After payment the payer will receive confirmation with the payment ID (digital or QR code). At the same time, in case of absence of free places in cells with improved household conditions at arrival to the investigator of the person taken under custody, on which the "pre-service", administration of the pretrial detention center will return funds to the cashless account of the payer from which the payment or cashless account was made, indicated by the person taken under custody [13].

As of 01/01/2022, 44 certificates for the total amount of 130225 UAH were purchased, in particular:

– Kyiv –12 000 UAH (month);
– Kyiv – 500 UAH (3 days);
– Kyiv –3 123 UAH (30 days);
– Kyiv – 8 000 UAH (4 days*2000 UAH – separate payments);
– Kharkiv – 1 000 UAH (day);
– Zaporizhzhya – 200 (day);
– Ivano-Frankivsk – 295 UAH (day);
– Ivano-Frankivsk – 290 UAH (day) [9].

Third block. The most important thing is that this process was positive and the accused himself realized the need to acquire these skills, that it will be necessary for him, both during punishment and in future life. Today, social and psychological work with convicted people in Ukraine takes place in three forms. There are mass, group and individual. Scientists all over the world have recognized that individual work is effective, but taking into account the fact that professional employees are not enough for carrying out qualitative social and psychological work for different reasons, therefore their lack can be filled with modern means of electronic analysis and influence. For example, to the accused to understand the harmful consequences of his offense, the pain that the victim has inflicted, with the help of electronic devices it is possible to modulate the process and the course of the crime, only the accused acts as the victim, and the offender another subject [14]. By providing an opportunity to conduct electronic correspondence by the convicted with relatives and friends, administration and socio-psychological staff can control the psycho-emotional state of the accused and on their part influence the psycho-correction of the person behavior. In order to understand how much the accused has reviewed their views on life in the process of preparation for release, electronic programs of differentiation the behavior of the accused can be introduced. This is not a large list of the possibilities that can be achieved with electronic devices in the process of psycho-correction of person behavior [15].

Fourth block. Considering that persons who are punished in places of restriction of liberty are deprived of the possibility to move simultaneously with the rapid changes taking place in the world, and after a certain period of time being released and falling into the society, where their behavior is no longer controlled, this process of preparation for release should start from the moment of their imprisonment and getting into prison. Today the statistical data of the State Criminal-Executive Service of Ukraine show the following criminal state of the prisoners: 851 persons sentenced to imprisonment for more than 10 years; 6 091 persons for murder; 2 599 persons for serious bodily injury; 6 408 persons for robbery and robbery; 11 082 persons for theft; 582 persons for rape; 9 persons for crimes against the foundations of national security [9]. Therefore, after their return, after 5-10 years of imprisonment in civil society, if they are not prepared, they will feel themselves in a "class of unnecessary", which may push a new crime. The process of their training in the use of modern means of digital technologies is aimed at supporting the development of progressive digital skills and competencies should be close to secondary education and professional training.

Conclusions

Today, the State Criminal-Executive Service of Ukraine is already taking some steps toward updating and upgrading the criminal punishment system. For their further effective implementation we consider it expedient to constantly, consistent and thorough research of the possibilities of the system of carnival execution, by gradually integrating the theoretical postulates into practical activity first in pilot projects, and after their analysis and on a nationwide scale. The measures mentioned in this study, if implemented, should improve not only the quality of services rendered to convicted prisoners, who are punished, increase the impact of social and psychological workers on the psycho-correction behavior of prisoners, provide opportunities for proper approach to this process to return those citizens who violated the law to society, and as a result, it is possible to ensure a reduction of the rate of repeat crimes. To organize this process, it is necessary to include in the road map of Ukrainian reforms a separate direction, concerning realization of rights of prisoners, USI of digitalization and technical development. To provide financing and control over implementation by the Government, so that this is not a regular Concept that will not be implemented.

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Сучасні засоби виправлення та ресоціалізації засуджених

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Анотація
Перехід від кари як основної мети покарання до корекції поведінки та ресоціалізації засуджених у процесі відбування покарання потребує оновлення та вдосконалення кримінально-виконавчої системи України, подальшого активного розвитку системи пробації, зокрема пенітенціарної. Передумовою усунення наявних недоліків у сфері виконання кримінальних покарань і пробації є здійснення послідовного реформування систем, що ґрунтуватиметься на наукових засадах, упроваджених у практичну діяльність, поетапному наближенні наявної системи до сучасної, максимально прозорої та зрозумілої для громадськості, одним з основних завдань якої буде забезпечення дотримання прав людини та громадянина. Створення наукового фундаменту для забезпечення функціонування такої системи і є метою цього наукового дослідження. Відповідно до поставленої мети в дослідженні використано сукупність як загальнонаукових, так і спеціальних методів та способів наукового пізнання, застосування яких дозволило всебічно проаналізувати коло питань, що стосуються виправлення та ресоціалізації засуджених. Сучасний стан кримінально-виконавчої системи України нині потребує оновлення теоретичної бази та приведення у відповідність законодавства шляхом впровадження зарубіжного досвіду в українську систему виконання кримінальних покарань. Активного розвитку потребує система призначення та виконання альтернативних покарань. Удосконалення системи потрібно організувати в такий спосіб, щоб застосовувати покарання до особи, яка вчинила злочин, не завдаючи шкоди для її особистості, а навпаки – так, щоб сприяти її повноцінній ресоціалізації, що дасть змогу знизити рівень злочинності. Упровадження сучасних технологій у роботу органів та установ виконання кримінальних покарань і пробації має стати одним з ключових напрямів реформування

Ключові слова:
кримінальні покарання; виправлення; ресоціалізація; пробація; пенітенціарна система

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The Covert Cooperation in the Mechanism of Ensuring Human Rights

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Abstract

The urgency lies in the fact that uninformed cooperation is not effectively used to protect human rights from unlawful encroaching, and sometimes harms these rights. This is largely due to the unsystematic nature of legal regulation. Systematic regulation of covert cooperation should be based on an ideological basis that would ensure its focus on the fulfillment by the state of the basic obligation to ensure human rights. The development of such a system of legal regulation of the use of covert cooperation should be based on the proper theoretical foundation: the reasonable role and place of covert cooperation in the mechanism of human rights protection. Creation of such foundation is the purpose of this research. The study uses the general dialectical method of scientific knowledge of real phenomena, their relations with practical activity of law-enforcement agencies, as well as general scientific and special methods of legal science. The covert cooperation is subject to legal regulation at all stages included in the dynamic dimension of the mechanism of human rights protection, defendant and realization. At the stage of human rights protection, the covert cooperation is embodied in measures aimed at prevention of criminal offenses, clarification, prevention or elimination of the causes of them. At the stage of human rights protection, the covert cooperation is used to restore violated rights, ensure compensation for damages, and bring the guilty to justice. At the stage of realization of human rights, the covert cooperation is used for the purpose of hidden control over proper fulfillment of the duties of authorized subjects to create the necessary conditions for transformation of declared social benefits into a state of their possible and actual use by a specific person

Keywords:
covert actions; defense of rights; protection of rights; legal mechanics

Introduction

The Universal Declaration of Human Rights, proclaimed by the General Assembly of the United Nations and the European Convention for the Protection of Human Rights and fundamental freedoms, is an absolute guide for legislators in all civilized countries of the world. So, at Art. 3 the Constitution of Ukraine[1] stipulates that the main duty of the state is to promote and protect human rights and freedoms.

Law-enforcement agencies play an important role in this duty. Today, they perform their functions of preventing, detecting, stopping and investigating crimes under difficult conditions. The current situation in Ukraine is

[1]Constitution of Ukraine. (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text.

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characterized by the acute confrontation of different political forces, crisis phenomena in the economy and social sphere, which leads to the intensification of various manifestations of crime. For example, today a high level of criminal activity has a positive and violent character; the drug business is developing rapidly; criminal acts related to trafficking in persons are widespread; ways of illegal actions in the spheres of economic activity, computer systems and computer networks are improving; organized corruption crime is strengthening its positions. All of this has an extremely negative impact on the state of human rights, both directly (through the assumption of encroaching on life, health, will, honor and dignity of the person, sexual immunity, property, etc.) and indirectly (due to damage caused to society and the state by crimes against national security, environment, public security, public order and morality, criminal offenses in the sphere of work and professional activity, etc.). Such a state of affairs takes place not only in Ukraine, but also in many other countries of the world.

At the same time, representatives of all spheres and branches of the criminal world take active measures to ensure the safety of their illegal activities, using corrupt relations in the executive power and judicial administration, following the latest achievements of science and technology. A well-thought-out system of conspiracy measures, used by criminal groups and individuals, makes it necessary for law-enforcement agencies to use covert methods of work widely and actively. This is lead Ukrainian scientists to conduct research aimed at improving the organization [1] and legal regulation [2] of these methods, increasing their effectiveness in crime-fighting [3].

Scientists from Western Europe and the United States study of covert methods of prejudicial inquiry is carried out at the level of their legal regulation in general [4], regulation and organization of application of certain of them [5], and their application within the framework of counteraction of certain types of crimes [6]. Among these methods, special attention should be paid to the use of the services of persons who obtain and provide the necessary information to law enforcement agencies, create the conditions necessary for carrying out certain actions, measures, operations, etc., i.e. covert cooperation. This is one of the oldest method of obtaining the information needed to fight crime. Despite the rapid development of science and technology, the informatization of all spheres of common life, it does not lose its relevance today. Due to the covert cooperation in Ukraine in Soviet times and the first decades of independence of Ukraine, up to 93% of the total number of serious and especially serious crimes of latent nature were discovered and successfully investigated. As for serious and especially serious crimes, which do not have such a character, but are committed with the use of means of conflict of illegal activity, the secret cooperation was used in almost 81% of the investigations. Today, this percentage has decreased considerably, as well as the effectiveness of detection and investigation of crimes prepared and committed under the conditions of the death. Accordingly, human rights, interests of the individual, society and the state, to which the crimes are committed, often remain unprotected. The said stipulates the necessity to clarify the reasons for ineffective use of the institute of covert cooperation and search for ways of its improvement [7].

The urgency of the issues of covert cooperation is conditioned by the activity of scientific research in this direction. Scientists from Western Europe conduct fundamental research on the possibilities of using covert cooperation for detection, stopping and investigation of crimes in modern conditions [8], questions of professional training of police officers for silent work with informers [9]; problems of mutual perception, interaction and information exchange between law enforcement officials and their undercover employees [10-12], in particular, in the mode of telephone conversations [13]; involvement of representatives of different social groups and informal associations [14]; impact of the COVID-19 pandemic on the organization of work with undercover employees [15].

Ukrainian scientists (representatives of the theory of operative search activity, criminal process and criminalistics) also made a significant contribution to the development of organizational principles and applied methods of the use of covert cooperation in the fight against modern crime in Ukraine. However, today in practical application of the institute of uninformed cooperation there are a number of important unconnected practical problems, which require critical thinking and scientific solution. For example, today's tacit cooperation is not effectively used to protect human rights from unlawful encroaching, and sometimes harms those rights. The solution of these problems, among other things, should be found in the area of legal regulation and organization. In order to solve them effectively, it is necessary to rely on the proper theoretical foundation, the basis of which should be an understanding of the role and place of unannounced cooperation in effective implementation, provisions defined by Art. 3 of the Constitution of Ukraine[1]. But today there is no such understanding in science. The given statement makes it necessary to carry out the corresponding scientific research.

The purpose of the article is to define the role that covert cooperation in the promotion of human rights plays today, as well as to establish the place that such cooperation should take in the mechanism of ensuring these rights. To achieve this goal, we consider it necessary to fulfill the following tasks: to reveal the content of the mechanism of human rights protection; to formulate the

[1]Constitution of Ukraine. (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text.

concepts of covert cooperation; to define the directions of application of covert cooperation for human rights protection; to find out the problems that arise in the use of covert cooperation for the protection of human rights in modern times and to propose ways of solving these problems.

Materials and Methods

The methodological tools of the research are chosen taking into account the set goal, specificity of the object and subject of the research. It is based on the general dialectical method of scientific knowledge of real phenomena, as well as their relations with practical activity of law-enforcement agencies (their operative subdivisions and bodies of pre-trial investigation), as well as general scientific and special methods of legal science, in particular: ***system-structural*** – to define the content of the investigated categories and legal phenomena, in particular formation of the understandable-category apparatus, systematization of scientific knowledge of the chosen direction of research in general, complex analysis of the provisions of normative-legal acts and their application practice; ***comparative-legal and comparative*** – for the complex analysis of Ukrainian legislation and subordinate normative-legal acts, norms of international law, which constitute the legal basis of the mechanism of human rights protection and institute of covert cooperation; ***logical-legal (dogmatic)*** – at development of the understandable apparatus, formulation of proposals on introduction of changes and additions to legislative acts.

These methods were used at all stages of the study: identification of scientific problem, setting of the purpose and objectives of the study; detailed content of the mechanism of human rights protection; definition of essence of covert cooperation; definition of directions of covert cooperation for the protection of human rights, problems arising in this sphere and ways of their solution.

As a theoretical basis of the research the results of the latest fundamental researches of domestic and foreign scientists in the sphere of protection of human rights and fundamental freedoms, counteraction of crime, carrying out of secret investigative actions by law enforcement agencies, in particular, involving silent employees, legal regulation of the institute of covert cooperation were used.

The analytical base of the study is the data of official statistics, materials of criminal proceedings within which persons involved in confidential cooperation (covert employees): Firstly, actual data on preparation or committing crimes is gave, which in the future became grounds for the initiation of prejudicial inquiry – 33; secondly, provided information that was actually used by the prosecution party for tactical, organizational and procedural decisions – 57; thirdly, involved in controlling the crime in the form of prompt procurement – 27 (including 10 cases in which the court found the act of provocation); Fourthly, they were involved in the control of the crime in the form of a special investigative experiment – 15 (including 8 cases in which the court found the fact of the provocation of the crime); fifthly, they were involved in the control of the crime in the form of imitation of the criminal situation – 8; sixthly, they were involved in the execution of a special task to disclose the activities of an organized group or criminal organization – 3.

Results and Discussion

The content of the mechanism of ensuring human rights

The achievement of the above-mentioned objective, among other things, should be based on the definition of the content and general principles of the mechanism of protection of human rights. The theory of law has different approaches to understanding the mechanism of human rights protection: From broad, fundamental, based on the results of thorough scientific research [16; 17] to narrow, elementary, such, which are applied in connection with the solution of certain applied problems. We will consider some of them, moving according to the principle: from simple to complex.

Modern researchers often reveal the essence of this mechanism by determining the whole combination of individual elements that are part of its content. At the same time, only certain state and non-state institutions, such as the Prosecutor General's Office of Ukraine, the Committees of the Verkhovna Rada of Ukraine (on human rights, national minorities and inter-ethnic relations; on legislative support of law enforcement activities and others), the Commissioner of the Verkhovna Rada of Ukraine for Human Rights, the Prosecutor General of Ukraine; The National Police of Ukraine (in terms of formation and development of internal control over observance of human rights and prevention of torture); the Ministry of Justice of Ukraine; other central executive bodies (in terms of provision and protection of human rights); public human rights organizations; research institutions; mass media.

These institutions are undoubtedly an important static element in the structure of the mechanism for ensuring human rights. But this understanding of the content of this mechanism is considered narrow, purely institutional. It does not take into account the fact that state bodies and public organizations are created and realized their functions only on the basis of legal norms, which in itself are an integral component of the mechanism of human rights protection.

From these positions, the results of O.N. Grishko are quite logical. The mechanism of ensuring human rights in Ukraine is determined by the combination of its elements (normative and institutional) [18].

An even wider and more rational approach applies K.V. Stepanenko, he investigates the mechanism of ensuring human and civil rights in the European Union. It defined this mechanism as a structurally interconnected set of legal and organizational guarantees, implemented

by EU institutions and bodies, aimed at regulation of legal relations in this area [19]. Thus, in addition to the normative (legal) and institutional components of the mechanism of human rights protection, the researcher mentions organizational. These components are static in nature.

But the static elements themselves (or their aggregate) cannot be directed at achieving a certain goal. They can only be means used for a certain purpose by specific actors in their activities. The goal itself can be achieved by actors who have set it only through a set of actions they are taking. Such actions should be organized and directed at the fulfillment of certain tasks, the solution of which will lead to achievement of the goal. Actually, one of the specific actions of the specific subjects, which have a certain purpose and consists of the content of the activity. This conclusion is based on the analysis of the provisions of fundamental works, devoted to the content of activity, including legal. From our point of view, the protection of human rights should be placed in the category of activity.

Therefore, it is well-grounded that specialists in different fields of law, along with the definition of the static elements of the mechanism of human rights protection, separate the areas (sub-systems) of ensuring these rights. In these directions (subsystems) the dynamic component of the mentioned mechanism is implemented. The following areas (sub-systems) are usually: Implementation (promotion of realization, creation of conditions for realization, implementation); protection, defence, restoration, improvement of the national legislation of the country and bringing it to international standards in the field of human rights, etc.

For example, O.P. Kuchynska notes that the structure of the mechanism of ensuring the rights of participants in criminal proceedings includes: "1) the legal and regulatory grounds for ensuring the rights in criminal proceedings, which are obtained by certain persons the procedural status of participants in criminal proceedings and the appearance of procedural legal relations in this regard; 2) legal means of ensuring the rights of participants of criminal proceedings, which are legal guarantees of these rights; 3) general social conditions of ensuring the rights of participants of criminal proceedings, which are conditioned by various political, economic and social factors, and determine the effectiveness of the legal provision of the rights and freedoms of participants of criminal proceedings; 4) institutional or institutional guarantees, which are officials and bodies whose activities are aimed at ensuring the rights of participants in criminal proceedings".

At the same time, the researcher notes that the mechanism of protection of rights of participants of criminal proceedings consists of three main sub-systems: "1) mechanism of realization of means capable to create conditions for realization of rights and freedoms; 2) mechanism of protection of means for prevention of violations of rights and freedoms, and also confirmation of legal behavior; 3) mechanisms for the protection of means that promote the restoration of rights violated by unlawful acts, as well as the prosecution of persons who have committed violations of the law of protection" [20, p. 274]. In fact, these sub-systems reflect the dynamic components of the mechanism of ensuring the rights of participants in criminal proceedings.

Such an approach to the problem under investigation is fully consistent with the doctrinal provisions proposed by the leading experts in the field of state theory and law. It is and is quite acceptable for use within the framework of this study in order to determine the ratio of covert cooperation (as an institute) with specific static elements of the mechanism of human rights protection. However, we consider it necessary to reveal more detailed dynamic components of this mechanism in order to determine exactly the place of covert cooperation (as activity) in it.

A thorough study of the dynamic dimension of the mechanism of ensuring human rights and freedoms includes the work of N.M. Opolska, the position and conclusions of which are quite logical and grounded. Among other things, the researcher notes: "Due to the analysis of the dynamic dimension of the mechanism of ensuring human rights and freedoms due to the combination of processes that occur through the functioning of components, one can conclude that protection, realization and protection are procedural stages of the mechanism of ensuring human rights and freedoms".

The procedural stage of the mechanism of ensuring the rights and freedoms of the individual is a separate, relatively separated time and logically connected with a combination of actions of the subjects aimed at achieving the purpose of the mechanism of ensuring the rights and freedoms of the individual. The procedural stages of the mechanism of ensuring human rights and freedoms, protection, realization and protection have a certain consistency, can change from one to another depending on legal facts. The exception is the stage of protection of human rights and freedoms, which is continuous.

The stage of protection of rights and freedoms is a combination of legal measures carried out by international organizations, state bodies and public structures aimed at prevention of violations, prevention, elimination of causes, and promotion of the unimpeded realization of rights and freedoms of the person. The process of protection of the rights and freedoms of the individual in time is continuous.

The stage of realization of rights and freedoms is direct activity of authorized subjects, aimed at creation of necessary conditions for transformation of declared social benefits into the state of their possible and actual use by a specific person. It may be manifested in the use, performance and observance of rights and freedoms. The peculiarity of this stage is that its dynamics depends on the subjective will of the carrier of law.

The stage of protection in the mechanism of ensuring the rights and freedoms of the individual is a combination of actions of authorized subjects in the procedure established by law with the purpose of restoring violated rights, compensation of damages, bringing the guilty to justice. It occurs in case of threat of law, encroaching, non-recognition or as a result of its violation" [21]. It is the mentioned approach that we consider it expedient to use for research functions of non-covert cooperation in the mechanism of protection of the rights of the person in its dynamic aspect.

The essence of covert cooperation

Achieving the goal declared in this article is impossible without understanding the essence of unannounced cooperation. Since ancient times, law enforcement, reconnaissance agency and counter-reconnaissance agencies of all countries of the world have secretly used the services of persons who have agreed on the basis of the association to obtain and provide them with the necessary information, to create conditions necessary for carrying out certain actions, measures, operations, etc. Different countries use different names to indicate it. And even Ukrainian scientists and practices are served by different terms when drawing out exactly this type of activity: confidential cooperation, covert cooperation, confidential (covert) cooperation, agency work, agency-operative work, agent method, work with non-skilled workers, etc.

The authors of the departmental normative-legal acts have repeatedly made attempts to regulate the use of the mentioned terms, determine their correlation and formulate the deflation. But in each department it was done on its own discretion and, as a rule, without scientific substantiation. As a result, there are significant differences in their understanding, contradictions and ambiguity of the norms of legal acts. Ukrainian science has not yet developed clear approaches to understanding the content of the relevant concepts. Moreover, there is no unity among the theorists of operative search activity and criminal process regarding the removal of the mentioned phenomenon to a certain category. It is defined as an institute, as activity (work, a set of measures), as a method of HUMINT investigation, etc. Undoubtedly, this has a negative effect on the practice of legal creation and legal application.

On this occasion, the authors of the article conducted a special study, according to which the authors reached an unambiguous conclusion, under the covert cooperation should be understood the secret interaction between the authorized officials of law-enforcement agencies (agents, investigative bodies of pre-trial investigation, detectives of NABU) and persons involved in the fulfillment of tasks of operative investigation and criminal proceeding. The mentioned interaction is carried out on the basis of the conspiracy: not only its content but also the fact [22]. At that, the purpose of the covert cooperation is to prevent crimes, to detect and stop them, to establish the whereabouts and the fate of persons declared in search, to ensure the safety of persons participating in criminal proceedings, and to resolve the social and legal conflict that arose in connection with the purpose of the crime to the person, society and the state, on the basis of truth, persons.

The use of the term "confidential cooperation" is permissible in a different meaning: Interaction between the legally authorized officials of law enforcement bodies and persons involved in the fulfillment of the tasks of law enforcement activity, which is carried out with the secret content of the information exchange, but does not provide for the obligatory secret of the fact of such interaction [22].

Directions of application of covert cooperation for the protection of human rights

Modern Ukrainian scientists, mostly, are investigating the negative side of the interrelation of covert cooperation with the promotion of human rights. So, K.V. Antonov said: "Protection of human rights and freedoms, a citizen in the course of confidential cooperation during prejudicial inquiry should be considered from two sides: On the one hand it is necessary to care about the protection of the rights and freedoms of the person, on which are carried out such measures, including with the participation of the confessional; on the other hand, protection is needed by the persons themselves who participate in confidential cooperation with the bodies of pre-trial investigation" [23, p. 369]. The practical implementation of these provisions provides that: First, it is necessary to determine the harm that can be caused by the tacit cooperation of the rights of objects and subjects of the use by law enforcement bodies of secret methods of detection and investigation of crimes; second, to develop means of preventing the occurrence of such harm.

Of course, ensuring the rights of the undercover law enforcement officers and the persons they collect information is an important direction in the implementation of the provisions of the Universal Declaration of Human Rights, the Convention on the Protection of Human Rights and fundamental freedoms, and Art. 3 of the Constitution of Ukraine[1]. However, one cannot ignore the positive side of the relationship of covert cooperation with the promotion of human rights in order to protect and protect these rights from criminal encroaching.

Defining the directions and forms of application of covert cooperation for the protection of human rights will be guided by the static and dynamic components of the mechanism set above.

In the static aspect, first of all, it is expedient to consider the institutional component. Law-enforcement

[1]Constitution of Ukraine. (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text.

bodies, in particular their operational units, are an integral institutional component of the mechanism for ensuring human rights. Their activities play an important role at each stage of ensuring human rights, which were defined by N. Opolska [21].

The research conducted by the authors suggests that the activity of operative subdivisions is based on laws and subordinate normative-legal acts complex of actions of the subjects of operative-search activity, which includes operative-search measures and investigative (search) actions, silent investigative (search) actions, which are carried out with the purpose of prevention, detection, termination and investigation of criminal offenses [24, p. 49]. The operational units of law-enforcement bodies themselves may be placed in a static component of the human rights mechanism, and their activities may be dynamic.

One of the directions (means, instruments) of the mentioned activity is the tacit cooperation. In fact, it itself constitutes a separate activity, which is carried out through a static component of the institute of covert cooperation, based on the aggregate of legal norms regulating social relations in this sphere. Due to the covert cooperation, law enforcement bodies ensure the protection of the human right to life. Thus, timely receipt of information about the preparation of custom murders from the undercover employees, allows to prevent their actions [25]. Using such information, criminal police officers can make operative and search predictions of the murder [26] and prevent its occurrence.

Information obtained by means of uninformed cooperation about persons who plan to seize hostages allows to preserve life, health and personal immunity of potential victims of this crime [27]. Information on the structure and plans of terrorist groups' activities, obtained through covert cooperation, gives an opportunity to turn off terrorist acts, the threat of which does not become less [28-30] every year.

Without undisclosed cooperation, it is impossible to imagine operative and search service of critical infrastructure facilities, in particular, in nuclear power engineering [31], which can be attacked by terrorists. This service provides an opportunity to prevent encroaching on these objects and thus to ensure the protection of human rights to life, health and a safe environment. The human right to a safe environment can be violated not only by criminal encroaching on the objects of critical infrastructure, but also by a number of other criminal offenses, which are provided for in section VIII of the special part of the Criminal Code of Ukraine[1]. Criminal liability for crimes of this category is established in the countries of the European Union [32].

Such criminal offenses are mostly found and stopped without the use of investigative and prejudicial inquiry methods. Evidence in proceedings concerning this category of crimes is also, in most cases, based on the results of open investigations, among which experts' conclusions are of particular importance [33]. On the basis of such conclusions, not only is the fault of a particular subject established, but also the basis for restoration of the violated right is created by determining the extent of the harm caused.

At the same time, the detection, timely termination and investigation of certain environmental crimes is impossible without the use of undisclosed cooperation. First of all, it is about illegal extraction of amber [34]. Today in Ukraine, this type of criminal activity is carried out by organized criminal formations, which have a clear hierarchy, strict discipline and act in compliance with the conjointly. By establishing a covert cooperation with members of such groups, operational units receive information necessary to stop illegal activities and bring the guilty to criminal responsibility.

By using covert cooperation to reveal crimes related to the falsification of drugs [35], the operational units of law enforcement bodies promote the realization of the right to health [36]. By revealing crimes against political, labor and other personal rights and freedoms of a person and a citizen with the help of undercover employees, law enforcement officers promote the realization of these rights, in time stop their violations, protect and defense them. The Institute of Covert Cooperation traditionally provides law-enforcement bodies with information on the circumstances of theft, robbery, sexual crimes on a permanent basis. As a result, the right of ownership, the right of sexual freedom to immunity is protected.

Through covert cooperation, the state bodies and non-governmental organizations that provide public services for the legality of their officials' actions in relations with citizens are constantly monitored. This is how the facts of the crimes committed in the sphere of official activity, including corruption, which not only violate the rights of a particular person, but undermine the principle of the rule of law, weaken political stability and social unity, complicate economic development, and undermine the basic functioning of the state apparatus. In overcoming these phenomena plays a significant role by covert cooperation.

This applies not only to the protection, but also to the protection of the respective rights of citizens. After all, the secret officers not only provide the law-enforcement bodies with information about the facts of criminal corruption, but also are constantly engaged in operational departments and bodies of prejudicial inquiry into tactical operations on the disclosure of bribes.

The covert cooperation in the area of human rights protection has the opposite side, the necessity of studying which is well-demanded By K.V. Antonov [23]. After all, the activity of the undercover employees within the framework of operative search and criminal proceedings

[1]Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.

is itself connected with the limitation of constitutional rights of the individual. Thus, they can be involved in the control of the crime (and actually to social studies to study the behavior of certain persons), to the silent examination of housing or other possession of the person, visual observation of the person, as well as to the silent investigative (search) actions, which are interference in private communication. Acting outside their authority, the operative employees and investigators may use the undercover employees to provoke (instigate) persons to commit a crime, to interfere in private communication.

In such cases, the covert cooperation, as a component of operational search and criminal procedural activities, should be considered not as an instrument of guaranteeing rights, but as a means provided by law, because of the abuse of officials to be used with violation of the law on human rights harm. And today there are numerous examples of how law enforcement officers abuse the institution of covert cooperation, human rights do not protect, but violate, using agents to provoke crimes.

The resolution of the Supreme Court of Ukraine dated May 12, 2021 in case No. 166/1199/18[1] on the charge of the chief doctor of the regional center of primary medical and sanitary aid in obtaining illegal benefit for giving written permission to a private entrepreneur for carrying out computer diagnostics of the human organism according to the method of Electroacupuncture in the premises of rural midwife's assistant points of the area (p. 1 Art. 368 CC of Ukraine[2]). As established by the court, in this case there was a provocation of crime. It was implemented by a undercover law enforcement officer who was specially engaged for this purpose. The undercover employee acted actively, persistently, quickly, to leave in the office of the chief doctor in advance marked with special substance money, while ignoring the remarks of the latter about the registration of these money through the accounting as a charitable aid to the medical institution, which is provided by the Statute of the Regional Center for primary health care and does not prohibit. This undercover employee has changed his name several times and was a applicant in a large number of criminal proceedings related to corruption crimes. According to the results of the trial, the said accusation was not found its confirmation, and the chief doctor was declared innocent in the crime, provided for in p. 1 of Art. 368 CC[3], and justified in connection with the absence of criminal offense in its actions.

Such cases are not isolated (as an example, Supreme Court rulings of March 6, 2018 in case No. 727/6661/15-K[4]; November 19, 2019 in case No. 332/2723/15-K[5]; April 8, 2020 in case No. 164/104/18[6]; October 7, 2020 in case No. 628/3400/15[7]; on January 27, 2021 in case No. 369/13151/14-k[8]; on April 21, 2021 in case No. 522/9869/16-k[9]), which can indicate their system. Such cases are often related to violations of the rights of persons who are forced to cooperate without any kind of public cooperation and by blackmail to engage in provocations and other unlawful acts. The violation of the rights of the undercover employees is undoubtedly the inactivity of the persons who have engaged them in cooperation in the event of a threat to their life and health.

Conclusions

The mechanism for ensuring human rights includes a static and dynamic side (foundations). The static part includes: legal preconditions, legal means, general social conditions and institutional and organizational structures (accredited subjects). The dynamic parts includes: the action of accredited subject in the protection, defense and promotion of human rights. These entities include law enforcement bodies (including their operational units), and their actions to ensure human rights include actions that constitute the content of their powers, as provided for in the Criminal Procedural Code of Ukraine, the Law of Ukraine "On Operational and Search Activities".

The actions of operational units to protect the person, society and the state from criminal offenses, to ensure the rights of people within the framework of criminal process and operational search activities are the content of the category "Activity of operational units of law-enforcement bodies".

An important and integral part of this activity is the covert cooperation, which in its static aspect (as an institute) is the system of norms of operative, search and criminal procedural legislation, subordinate normative and legal acts, and in dynamic (co-operative) interaction

[1]Resolution of the Supreme Court of Ukraine in case No. 166/1199/18. (2021, May). Retrieved from http://iplex.com.ua/doc.php?regnum=96978130&red=100003d049233fc945ddb4eb9154b5d42a86e0&d=5.
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[3]*Ibidem*, 2001.
[4]Resolution of the Supreme Court of Ukraine in case No. 727/6661/15-K. (2018, March). Retrieved from https://verdictum.ligazakon.net/document/72670494.
[5]Resolution of the Supreme Court of Ukraine in case No. 332/2723/15-K. (2019, November). Retrieved from https://zakononline.com.ua/court-decisions/show/85836389.
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between the accredited officials of law-enforcement bodies and persons, the tasks of operational search and criminal proceedings.

At the stage of human rights protection, the covert cooperation is embodied in measures aimed at prevention of criminal offenses, prevention or elimination of the causes of them. At the stage of human rights protection, covert cooperation is used to restore violated rights, ensure compensation for damages, and bring the guilty to justice. At the stage of realization of human rights, covert cooperation is used for the purpose of hidden control over proper (without violation of the law on criminal responsibility) fulfillment of the duties of authorized entities to create necessary conditions for transformation of declared social benefits into a state of their possible and actual use by a specific person.

Reforming the legal regulation of covert cooperation should be based on the above provisions, taking into account the necessity of establishing legal levers to prevent violation of the rights of the developed, suspected, accused and the most undercover officers from the part of authorized law enforcement bodies.

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Негласне співробітництво в механізмі забезпечення прав людини

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Анотація
Актуальність дослідження полягає в тому, що нині використання негласного співробітництва для захисту прав людини від протиправних посягань є неефективним, а іноді навіть таким, що завдає шкоди цим правам. Це зумовлено передусім безсистемністю правового регулювання. Систематизувати правове регулювання негласного співробітництва варто спираючись на ідеологічну основу, яка б забезпечила його спрямування на виконання державою головного обов'язку – забезпечення прав людини. Розроблення відповідної системи правового регулювання має ґрунтуватися на належному теоретичному фундаменті – розумінні ролі й місця негласного співробітництва в механізмі забезпечення прав людини. Створення такого фундаменту і є метою статті. У дослідженні використано загальний діалектичний метод наукового пізнання реальних явищ, їх зв'язків з практичною діяльністю правоохоронних органів, а також загальнонаукові та спеціальні методи юридичної науки. Негласне співробітництво підлягає правовому врегулюванню на всіх стадіях, включених до динамічного виміру механізму забезпечення прав людини, якими є охорона, захист і реалізація. На стадії охорони прав людини негласне співробітництво втілюється в заходах, спрямованих на профілактику кримінальних правопорушень, з'ясування недопущення або усунення причин, що їх зумовлюють. На стадії захисту прав людини негласне співробітництво використовують з метою відновлення порушених прав, забезпечення відшкодування шкоди, притягнення винних до відповідальності. На стадії реалізації прав людини негласне співробітництво використовують у межах здійснення прихованого контролю за належним виконання уповноваженими суб'єктами обов'язків щодо створення необхідних умов для перетворення задекларованих соціальних благ на стан їх можливого та дійсного використання конкретною особою

Ключові слова:
негласні дії; захист прав; охорона прав; правовий механізм

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Some Aspects of Declaring Legal Acts Unconstitutional

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Abstract

The relevance of the study is conditioned by a number of problems of declaring legal acts unconstitutional and the specifics of the consequences of such decisions to guarantee the rights of the individual. This requires a review of approaches to the temporal effect of the relevant decisions of the Constitutional Court, to guarantee the right to review court decisions adopted based on an act that has been declared unconstitutional. At the same time, it is necessary to put forward new proposals for legal regulation of the analysed area, optimal for the rule of law and ensuring the right to a fair trial. The purpose of the study is to clarify certain features and consequences of declaring legal acts unconstitutional to further ensure the rights of citizens and make proposals for amendments to the legislation. The methodological basis of the study is the dialectical and materialist method, general and special methods of legal science, in particular, system and structural, comparative law, logical and legal (dogmatic). The scientific originality lies in a comprehensive clarification of the features of the legal consequences of declaring legal acts unconstitutional and making proposals for regulatory settlement of identified problems in the conditions of Ukrainian law enforcement. According to the findings, the importance of guaranteeing the normative and practical connection between the content of the act and its impact on the damage to anyone, the proportionality of ways to compensate, and the range of legal relations in which such damage can be compensated

Keywords:

constitutionality; unconstitutionality; unconformity with the Constitution; legal certainty; rule of law; restoration of rights

Introduction

The Strategy for the Development of the Justice and Constitutional Judiciary for 2021-2023 defines that independent and impartial justice is the key to sustainable development of society and the state, guarantee of human and civil rights and freedoms, rights and legitimate interests of legal entities, state interests, welfare and quality life, creating an attractive investment climate, timely, effective and fair resolution of legal disputes on the basis of the rule of law. At the same time, the improvement of the justice system would contribute to the establishment of law and order based on a high level of legal culture, the activities of all actors in public relations based on the rule of law and protection of human rights and freedoms[1]. The implementation of most of the declared provisions

[1]Decree of the President of Ukraine No. 231/2021 "On the Strategy for the Development of the Justice System and Constitutional Courts for 2021-2023". (2021, June). Retrieved from https://www.president.gov.ua/documents/2312021-39137.

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is impossible without rethinking the approaches to the ratio of certain norms of substantive and procedural law applied by the courts and the Constitution of Ukraine.

The purpose of the study is to clarify certain features and consequences of declaring legal acts unconstitutional to further ensure the rights of citizens, and to make proposals for changes in legislation. To achieve this goal the following tasks are identified: recognition of legal acts unconstitutional; to establish the types of consequences that may occur as a result of declaring legal acts unconstitutional; identify ways to protect violated rights of citizens.

Materials and Methods

The methodological basis of the study is the dialectical and materialist method of scientific knowledge, general and special methods of legal science, in particular, system and structural, comparative law, logical and legal (dogmatic). In addition, empirical (observation, description) and theoretical (analysis, deduction) methods were used. Such methods were applied at all stages of the study, including: identification of the scientific problem, setting goals and objectives of the study; specifying the content of the provisions concerning the mechanism and consequences of declaring legal acts unconstitutional, and making proposals to eliminate identified problems in this area.

The theoretical basis of the study are the results of studies by Ukrainian (I. Borodin [1], M. Bilak [2], H. Bukanov [3], O. Spinchevska [4], O. Kovalchuk [5], O. Shylo [6] et al.) and foreign (V. Grabowska-Moroz [7], R. Williams and A. Chergosky [8], M. Hazelton, R. Hinkle, and J. Spriggs [9] et al.) researchers and practitioners, whose area of professional interest is the issues addressed in this paper. The empirical basis of the study is the data obtained from a survey of judges and lawyers, and representatives of the legislative and executive branches of government on the implementation of human and civil rights in the context of declaring legal acts unconstitutional.

Along with the above, the subject of analysis in the course of the study were the current regulations, as national, foreign and international sources of law, which influence the establishment of current approaches to law enforcement.

Results and Discussion

Regulatory aspects

Article 8 of the Constitution of Ukraine establishes the direct effect of its norms and guarantees access to court to protect the constitutional rights and freedoms of man and citizen directly on the basis of the Basic Law. At the same time, this provision is aimed at ensuring the full implementation of Article 3 of the Constitution of Ukraine, according to which a person, their life and health, honour and dignity, inviolability and security are recognised in Ukraine as the highest social value. Human rights and freedoms and their guarantees determine the content and direction of the state. The state is accountable to the people for its activities. The establishment and protection of human rights and freedoms is the main duty of the state[1]. In pursuance of these norms, the Basic Law provides for Article 56, which establishes the possibility of compensation at the expense of the state or local governments for material and moral damage caused by illegal decisions, actions or inaction of public authorities, local governments, their officials and powers[2].

On the one hand, given the direct nature of constitutional norms, this provision (and, apparently, this is the ideology established by the legislator), should be an effective means of implementing and ensuring full compliance with the full range of constitutional and other rights of citizens. However, today the law enforcement practice shows a somewhat opposite situation, in which in the vast majority of cases, the complex procedure of proving and lack of special effective, transparent and clear procedures, and a special system of compensation for unconstitutionality of legal acts is a significant barrier to de facto and real guarantee of the constitutional rights of citizens. As a rule, the doctrinal vision of this concept is mainly reduced to its disclosure through the prism of providing subjective interest. For example, I. Borodin reveals the essence of administrative and legal regulation of the implementation of the constitutional right to appeal, as the satisfaction of subjective interests through personal actions and actions of state institutions and their officials [1, p. 9].

Both constitutional and civil science are of the opinion that the value of the constitutional right to appeal as subjective lies in the fact that it provides every citizen with the use of the social good and allows them to satisfy the relevant interests. At the same time, the content of the constitutional right of citizens to appeal as an administrative and legal way to protect the rights and freedoms of man and citizen includes social and legal elements. Its social content is characterised by the fact that it expresses the degree of possible behaviour of the citizen to satisfy their subjective interests, and hence social interests) [1, p. 16]. Thus, it can be stated that these features and benefits for the citizen will be fully disclosed at the level of state decision on compensation for damage caused by legal acts declared unconstitutional, in the case of creating appropriate organisational and legal conditions for the exercise of relevant rights.

According to Art. 7 of the Law "On the Constitutional Court of Ukraine"[3], the powers of the Constitutional Court include, inter alia, resolving issues of compliance with the Constitution of Ukraine (constitutionality) of laws of Ukraine and other legal acts of the

[1]Constitution of Ukraine. (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text.
[2]*Ibidem*, 1996.
[3]Law of Ukraine No. 2136-VIII "On the Constitutional Court of Ukraine". (2017, July). Retrieved from https://zakon.rada.gov.ua/laws/show/2136-19#Text.

Verkhovna Rada of Ukraine, acts of the Cabinet of Ministers of Ukraine, legal acts of the Verkhovna Rada of the Autonomous Republic of Crimea; resolving issues of compliance of the Constitution of Ukraine and laws of Ukraine with legal acts of the Verkhovna Rada of the Autonomous Republic of Crimea at the request of the President of Ukraine in accordance with part two of Article 137 of the Constitution of Ukraine, and resolving issues of constitutionality considers that the law of Ukraine applied in the final court decision in her case contradicts the Constitution of Ukraine. At the same time, Art. 97 of the same law determines the procedure for execution of decisions and conclusions of the Court. Thus, the Court in the decision, the conclusion can establish the order and terms of their execution, and also to oblige the corresponding state bodies to provide control over execution of the decision, observance of the conclusion. At the same time, the Court may require the relevant authorities to confirm the execution of the decision in writing and to comply with the opinion. In order to ensure compliance with these provisions, Art. 98 established that non-compliance with the decisions and non-compliance with the conclusions of the Court is liable under the law[1].

Meanwhile, as was noted earlier, modern provisions on the implementation of the decisions of the Constitutional Court of Ukraine do not create tools for the real restoration of violated rights and interests, including the review of administrative applications submitted by administrative courts grounds for unconstitutionality (constitutionality) of a law, other legal act or their separate provision established by the Constitutional Court of Ukraine, applied (not applied) by the court in resolving the case.

Thus, the relevant acts of the Constitutional Court of Ukraine do not have reverse temporal effect, which neutralises the very existence of the institution of declaring legal acts unconstitutional in the context of protecting the rights of a particular citizen in specific circumstances. Instead, according to a recognised doctrinal position, the jurisdictional activity of the Constitutional Court of Ukraine, which is an important institutional component of the human rights mechanism, may have very specific legally significant consequences to ensure the restoration of violated rights and freedoms of an individual.

Law enforcement and doctrinal aspects

The unconstitutionality of the law applied by the court to decide the case, established by the Constitutional Court of Ukraine, indicates that this or that court decision was made in conditions of contradiction of the Constitution of Ukraine. Regulatory support of the administrative process of Ukraine at the level of paragraph 1 part 5 of Art. 361 CAS determines one of the grounds for review established by the Constitutional Court of Ukraine unconstitutionality (constitutionality) of the law, other legal act or their separate provision, applied (not applied) by the court in deciding the case, if the court decision is not yet executed[2]. However, from a law enforcement standpoint, the process of such a review is quite complex.

The Constitutional Court of Ukraine in its Decision of December 2, 2019 No. 11-r/2019[3] expressed the legal position: "with such decisions (acts) does not allow any public authority to question their content" (paragraphs 2, 4 of subparagraph 2.2 of paragraph 2 of the motivating part). At the same time, for example, the Supreme Court in its judgment in case No. 808/2492/18 of 17 December 2019 pointed out that in view of the provisions of paragraph 1 of part five of Article 361 of the CAS, a decision that has entered into force cannot be considered unenforced, which denied the claim, because it does not provide for enforcement[4]. Thus, such an approach to the interpretation of the rule of law essentially undermines constitutional and procedural guarantees, as a person is deprived of the right to review a decision on the grounds of declaring unconstitutional the law applied in the case.

Thus, it can be concluded that this approach not only undermines the right of access to justice, but also generally undermines the importance and jeopardises the exercise of the right to a fair trial guaranteed by Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms. As scholars and practitioners rightly note, analysing the relevant issues, it will apply in the course of application to the plaintiff, who defends own right in all courts, starting with the first and ending with the Constitutional Court of Ukraine, according to which the unconstitutionality of the provisions of the law, due to which the rights of the person were violated, was established. Nevertheless, according to the Supreme Court, such a person will not have the right to review in exceptional circumstances, and therefore, the need to maintain the current legal regulation of the analysed institution is questionable, given the conditions of its rather limited application to account the need to remove any regulatory obstacles.

The following conclusions are confirmed by the content of the Supreme Court ruling in case No. 804/3790/17 of 25 July 2019[5], according to which

[1]Law of Ukraine No. 2136-VIII "On the Constitutional Court of Ukraine". (2017, July). Retrieved from https://zakon.rada.gov.ua/laws/show/2136-19#Text.
[2]Code of administrative judiciary of Ukraine No. 2747-IV. (2005, July). Retrieved from https://zakon.rada.gov.ua/laws/show/2747-15#Text.
[3]Decision of the Constitutional Court of Ukraine No. 11-p/2019 on the Right for the Constitutional Taxes of 49 People's Deputies of Ukraine Regarding the Official Clouding of the Provisions of Article 151-2 of the Constitution of Ukraine. (2019, December). Retrieved from https://zakon.rada.gov.ua/laws/show/v011p710-19#Text.
[4]Resolution of the Supreme Court at the Right No. 808/2492/18. (2019, December). Retrieved from https://reyestr.court.gov.ua/Review/86387767.
[5]Resolution of the Supreme Court at the right No. 804/3790/17. (2019, July). Retrieved from https://reyestr.court.gov.ua/Review.

disputed legal relations cannot be affected by a decision of the Constitutional Court of Ukraine, given their occurrence before the Constitutional Court given the fact that the decision would extend the provisions that would extend its effect to legal relations that arose before its entry into force. From the above it can be seen that in general, the Supreme Court denies the possibility of exercising the right to review court decisions in exceptional circumstances, including, in view of the fact that such review violates the principle of legal certainty and the rule declared unconstitutional was in force at the moment of occurrence of the disputed legal relationship.

Thus, to neutralise such an ill-considered approach, it is advisable to directly regulate the possibility of such a review with its extension to all cases without exception. In other words, it is the current approach that not only contradicts the principle of legal certainty, but also calls into question the generally accepted legal nature of declaring a law unconstitutional. This is explained, among other things, by the fact that the fact of declaring a law or a separate norm of it unconstitutional will make their further application impossible. However, during the period of validity of the relevant provisions such norms have already violated the rights of a significant number of persons, and therefore, given that the state in one way or another allowed the adoption and long-term unconstitutional act and it should be responsible for it would be logical to ensure the creation of conditions for fair satisfaction for the violation of the rights of the persons concerned. Such an approach, in the context of guaranteeing the rule of law and the Basic Law, would be quite logical and balanced.

According to M. Smokovych, the legislator did not establish, and the doctrine of law did not offer a universal approach in terms of determining the limits of restoration of violated rights, freedoms and interests of the individual and their scope. The expert focuses on the main legal positions on this issue: 1) the first legal position: the establishment by the Constitutional Court of Ukraine of the unconstitutionality of the law as a whole or its separate provision applied by the court in resolving a case gives only the right to review such a court decision in exceptional circumstances. 2) the second legal position: the decision of the body of constitutional jurisdiction obliges in connection with exceptional circumstances to make a court decision in favour of the person applying for review of the court decision in exceptional circumstances, while the restoration of violated human rights must be determined from the date of the Constitutional Court of Ukraine, i.e., it is exclusively about the prospective effect of the decision of the body of constitutional jurisdiction. 3) the third legal position: the restoration of violated human rights due to exceptional circumstances should be determined not from the date of the relevant decision of the Constitutional Court of Ukraine, but earlier, in particular from the date of legal violation of constitutional rights, freedoms and interests of the person. An act later recognised as inconsistent with the Constitution of Ukraine (unconstitutional) [10, p. 12-13].

In turn, the above confirms the above conclusions on the need and rationality of establishing the possibility of extending the relevant decision of the Constitutional Court of Ukraine in retrospect. However, the study partially agrees with M. Smokovych, who emphasises the need to differentiate the spheres of legal relations to which the possibility of such retrospective action will apply. Thus, M. Smokovych notes that the rights arising from the results of the revision of a decision on unconstitutionality cannot be absolute, in particular, in terms of retrospectiveness of such a decision. For example, it is proposed that the legislator establish some filters based on the criteria of specific individual rights (natural rights, social rights, etc.) [10, p. 14-15].

At the same time, in the context of determining the range of rights to which such a retrospective action may apply, it is necessary to proceed from giving the widest possible range of persons the right to appeal. This position is related to the need to implement in law enforcement practice the declared constitutional rights of the person, which were analysed above. L. Brocker's view that the decisions of the Constitutional Court are subject to unconditional execution and observance also supports this conclusion. This is especially true in cases where laws are found to be unconstitutional. Insignificance means "general invalidity of a legal norm" from the very beginning (ex tunc). Therefore, as a rule, the law is unconstitutional from the moment of its promulgation. But the Federal Constitutional Court is also empowered to determine the nullity of a law with its effect on the future (pro futuro) or from the moment it is declared null and void (ex nunc). This is mainly done so that an ex tunc decision does not create an "even worse unconstitutional situation" or if other persons may be deprived of the necessary protection of their legal position (for example in the field of social services). Under this approach, the legislator also gets the opportunity to independently and in compliance with the provisions of the relevant decision of the Federal Constitutional Court to correct violations of the constitution by adopting a new law. That is, if the recognition of the nullity of the law is pro futuro or ex nunc, the relevant decision of the FCC will not conflict with the decisions of professional courts that have used the relevant law and have already entered into force [11, p. 22].

The execution of decisions of the constitutional court must be guaranteed. Thanks to them, the constitutional position is established (restored) and the real effect of the fundamental rights of citizens is ensured. In view of the above, the annulment of decisions of administrative courts that have entered into force contributes to the establishment of material justice. According to L. Brocker, the legislator should take into account that the subsequent repeal of decisions of administrative courts, which have already entered into force, will gradually form a kind of "legal ordinary case", which can significantly

damage the credibility of administrative proceedings [11, p. 25]. According to E. Wendler, in Austria the Court also decides on the unconstitutionality of legal provisions on the application of an individual who claims that his rights were directly violated if the law came into force for this person in the absence of a court decision or administrative decision (individual application). In addition, since January 1, 2015, any person who claims that their rights as a party to a case decided (by a civil or criminal court of first instance) has been violated has the right to challenge the constitutionality of the law in judicial protection of this decision by court [12].

It is also difficult to agree with the reservations of M. Bilak, who concludes that a change in law enforcement interpretation does not justify the annulment of a court decision or standard decisions in such matters. Otherwise, the review of previous decisions by administrative courts may be massive and destabilise the existing justice system, weakening its legitimacy in the eyes of society [2, p. 74]. However, considering the derivative nature of declaring an act unconstitutional, the primary consideration of which is its adoption initially contrary to constitutional norms, should be given sufficient attention to increasing the authority of the state as a whole and, in particular, the judiciary not by artificially operating the "permissible" number of constitutionally reviewed or reviewed judgments. Moreover, it is the timeliness of the state's recognition of previously made mistakes in the form of the adoption of unconstitutional norms in circulation, and the revision of relevant court decisions that will help strengthen the authority of the judiciary and trust in the state. A similar caveat applies to M. Bilak's position on the possibility of appealing final decisions, without being based on indisputable grounds of public interest, signs of incompatibility with the principle of legal certainty [2, p. 74].

However, given the above provisions, depriving a person of the opportunity to appeal a court decision on the basis of recognising the unconstitutionality of a legislative act, in contrast to guaranteeing such an appeal, is a violation of the principle of legal certainty. Moreover, according to the conclusions of the Venice Commission, legal certainty is not in itself formalised, but may have some flexibility. The study suggests that it is in the cases analysed above that such flexibility should be manifested to the highest degree, including the laws that, in accordance with constitutional requirements, may have retroactive effect if the situation improves. In the same context, I. Venediktova's vision of the category of public interest, which is revealed on two levels: as a common generalised interest of a certain social community, as public interests, without which it is impossible to ensure the integrity and stability of state and society, including the implementation of certain private interests that were supported by the state [13, p. 88-89].

Analysis of the legal literature and legislation of foreign countries allows identifying the most common types of legal consequences of the application of decisions of constitutional courts on the unconstitutionality of regulations. First, it is about ex nunc. Under this approach, the act is declared unconstitutional from the moment the decision of the constitutional court is announced and acts in advance. Secondly, pro futuro – is a form in which the constitutional court postpones the entry into force for the future. And finally, thirdly ex tunc – since the adoption of the act, which is associated with the so-called retroactivity (note that this method is considered the least common to the most controversial, which is not in every case can be called rational, given that it is perhaps most aimed at restoring individual rights).

Interestingly, the first two approaches are the most common, which probably explains the exceptional commitment of some Ukrainian scholars and practitioners. However, such an algorithm is not unconditional, and therefore, the legislation of many countries does not contain provisions that would imperatively establish the course of action of the court in appropriate cases. Instead, in most cases, the law determines the right of the court to independently determine the mode of action in time. Ukraine is no exception, as Article 152 of the Basic Law establishes the power of the Court to directly determine the period of invalidity.

One of the problems, as stated above, arises in the context of ensuring the right of a person to a fair trial in the case of the need to consider the review of a court decision made on the basis of unconstitutional law. First of all, there is a lack of a clear and consistent vision of the state to establish certain procedures and criteria according to which citizens can expect to expect the restoration of violated rights, and the courts – to strictly adhere to the established procedure. In such circumstances, today, unfortunately, it is premature to say that the institution of review of court decisions is now fully operational.

In this context, V. Shapoval [14, p. 78] and H. Bukanov [3, p. 105] emphasise that the practice of constitutional justice bodies of foreign countries allows tracing a much higher level of activity of citizens in the context of their use of constitutional justice instruments to protect human and civil rights and freedoms. Moreover, in Spain, for example, compared to legal entities that appeal to the Constitutional Court in about two percent of cases, the rest of the appeals are from individuals. This indicates, among other things, the extremely low level of realisation of the potential of constitutional justice in Ukraine. In view of this, further practical implementation of institutional and functional capacity would be facilitated by a well-defined mechanism, the application of which would allow an approach from formal, normative protection of rights "on paper" in favour of ensuring comprehensive state responsibility for unconstitutional steps.

According to A. Vozniuk, the improper substantiation of the court decision causes a violation of the principle of presumption of constitutionality of the law [15, p. 23]. In the same context, O. Spinchevska notes that the legal

position of the Constitutional Court of Ukraine can be considered as a specific source of law, along with the Constitution of Ukraine [4, p. 62]. Together, both provisions allow stating the exceptional nature of the significance of the actions of the body of constitutional jurisdiction in the establishment of high-quality, meaningful, and practically capable legal field of the state.

That is why it is seen that the decisions of the Constitutional Court can be considered safeguards through which the state realises its own potential in the face of minimal regulatory threats. However, in compliance with the provisions of international treaties, in this way the state takes measures to guarantee human rights [5, p. 33]. Finally, the decision of the Court, which establishes the unconstitutionality of certain laws, serves to form a permanent and unified law enforcement practice based on the principle of legal certainty and ensures the transition of both courts and the state as a whole from quantitative to qualitative indicators [6, p. 138].

The results of the analysed researches of foreign experts deserve special attention. Thus, it can be seen that in foreign doctrine and practice there is a lot of the greatest relationship between the nature of new legal relations, which focuses on a particular area, and the work and conclusions of higher courts – Supreme and Constitutional, which creates new approaches to law enforcement [9]. At the same time, scholars point out that procedural mechanisms for overcoming differences in previously established legal approaches allow the creation of new case law [8].

The study suggests that it is fair to extend the relevant provision to the organic influence of constitutional proceedings on overcoming certain differences in law enforcement, to form optimal normative conditions for compliance with the requirements of the Constitution of Ukraine. Thus, it is quite objective the need to establish on the basis of the case law of the Constitutional Court sound rule-making and law enforcement practices. In addition, international experts are of the opinion that the highest branches of the judiciary, within their powers, should ensure the enforcement of laws [16]. Thus, while the general rule in the Ukrainian judicial system in this context is to eliminate errors of law by the court of cassation, in terms of constitutional proceedings, it may instead be to identify and eliminate global regulatory and law enforcement issues in terms of constitutional rights of human and citizen.

In this case, it is possible to model the level of influence of the constitutional judiciary not only on the justice system and the establishment of good practice of rule-making, but also on the behaviour of state bodies and their officials. Thus, it will be possible to trace such influence by analogy with the approach of foreign experts to establish the motives for judicial decisions by lower courts in the practice of the Supreme Court [17]. This is confirmed by the position of Spanish lawyers, who note the importance of reasonable criteria for evaluating court decisions and law enforcement in general [18].

In addition to the above, it is rational for the national practice of constitutional justice and rule-making to take into account in each case not only the facts but also the risks and conditions of interference with human rights for various reasons [19]. Ultimately, the interpretation of the Constitution must take into account the inadmissibility of politicising the Basic Law [7] and, despite the dynamism of law enforcement and the needs of society, the need for the most stable state of constitutional norms, proper interpretation of which can be one way to guarantee human and civil rights.

Conclusions

In the context of the above, there is an inevitable need for rule-making doctrine and practice to: a) clarify the relationship between the content of the act and its direct impact on harm to a particular person or group of persons; b) estimate the amount of damage caused and finding out the ways proportional to the violation of compensation for damage; c) establishm a range of legal relations, the occurrence of violations in which may entail compensation due to the unconstitutionality of the legal act.

Due to the lack of clarity and unambiguity of the state position in this area, the potential of constitutional justice in Ukraine is currently underused. It seems that among the basic priorities of the state and, consequently, the legislator, first of all – ensuring a clear standardisation of ways to restore the rights of citizens violated by unconstitutional legal acts, and establishment of a transparent, clear, and effective algorithm for implementing appropriate mechanisms. It is expected that this will contribute, inter alia, to bringing the national legal system closer to the best world standards of guaranteeing the rule of law and, consequently, the primacy of human and civil rights.

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Окремі аспекти визнання правових актів неконституційними

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Анотація
Актуальність дослідження зумовлена наявністю низки проблем щодо визнання правових актів неконституційними, а також специфікою наслідків ухвалення таких рішень для гарантування прав особи. Наведене потребує перегляду підходів до темпоральної дії відповідних рішень Конституційного Суду, а також до гарантування права на перегляд судових рішень, ухвалених на підставі акта, який визнано неконституційним. Водночас необхідним є висунення нових пропозицій щодо правового регулювання аналізованої сфери, оптимального для дотримання принципу верховенства права й забезпечення права на справедливий суд. Мета дослідження полягає в тому, щоб з'ясувати окремі особливості й наслідки визнання правових актів неконституційними для подальшого забезпечення прав громадян, а також обґрунтувати пропозиції щодо внесення відповідних змін до законодавства. Методологічною основою дослідження є діалектико-матеріалістичний метод наукового пізнання соціально-правових явищ, а також загальнонаукові та спеціальні методи юридичної науки, зокрема системно-структурний, порівняльно-правовий, логіко-юридичний (догматичний). Наукова новизна здійсненого дослідження полягає в комплексному з'ясуванні особливостей правових наслідків визнання правових актів неконституційними, а також формулюванні пропозицій щодо нормативного врегулювання виявлених проблем в умовах українського правозастосування. За результатами дослідження з'ясовано важливість гарантування нормативного та практичного зв'язку між змістом акта і його впливом на завдавання будь-кому шкоди, пропорційністю способів її відшкодування, а також кола правовідносин, у частині яких цю шкоду може бути відшкодовано

Ключові слова:
конституційність; неконституційність; невідповідність Конституції; правова визначеність; верховенство права; поновлення прав

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Interpretation of Euthanasia in Conditions of Conflict of Bioethical Principles

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Abstract

The purpose of the research article is a theoretical and legal analysis of the issue of interpretation of euthanasia in a conflict of bioethical principles, considering philosophical, medical, biological, and legal positions. The novelty of the article is a comparative analysis of the legal regulation of euthanasia in the face of differences in bioethical principles to find optimal ways to interpret the law and apply forms of control of processes related to euthanasia. The author examines the existence of ethical grounds for the legalisation of euthanasia and interprets this phenomenon from the standpoint of the universal and objective value of human life. The ambiguity of the concept of euthanasia naturally contains a set of interrelated bioethical, medical, legal, religious aspects that cannot be considered separately. Each of them is filled with polar thoughts. Moral differences between "death with mercy" and "permission to die" are based on the principles of respect for freedom and non-harm. At the regulatory level, there are differences between the categories of "murder" and "permission to die". From a bioethical point of view, euthanasia is focused on the principle of "do not kill", which conflicts with the principles of charity, non-harm, respect for human freedom. The conflict of bioethical principles can be resolved by distinguishing between categories such as "murder" and "permission to die"; "refusal of maintenance treatment" and "discontinuation of maintenance treatment"; "direct and indirect termination of life"; "the patient's right to euthanasia" and "the right to refuse treatment and other medical intervention", etc. In Ukraine, euthanasia is prohibited by law. To legalise euthanasia in Ukraine, it is necessary to make appropriate amendments to the Constitution of Ukraine and create an appropriate regulatory framework. A recommendation is made on the expediency of forming substantive and procedural criteria at the UN and WHO levels for permitting euthanasia

Keywords:

interpretation of legal norms; the principle of law; euthanasia; criminal law; international law; bioethical principles; right to die

Introduction

Technological advances in biomedical science have opened up unprecedented opportunities, which are realised with good intentions in the mystery of human existence, life, and death. Against this background, there is a tendency to devalue human life. The higher the technology, the lower the ethical values. On February 26, 2020, the Second Senate of the Constitutional Court of Germany ruled on euthanasia. This was the reason for the resumption of professional discussion on the scope of human exercise of the right to life guaranteed by article 2 of the European Convention on Human Rights [1].

At this stage, the issue of euthanasia occupies

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a special place among the medical, legal, and religious problems of modern society. There is no ethical reason for "deadly tourism" and euthanasia to become the rule of law. After all, there is a universal belief that human life is the main value of modern civilisation. Euthanasia is not just a painless death, but a death that corresponds to the will of the dying person. Modern legislators are looking for the best ways to regulate and control the processes related to euthanasia.

Ethical norms regarding euthanasia have evolved from a ban to its recognition in exceptional circumstances as a patient's right to refuse medical care and the right to a dignified death. The urgency of this issue has led to two opposing views. On the one hand, euthanasia is unacceptable in terms of morality and law. On the other hand, it is simply necessary to save a person from long-lasting, unbearable moral and physical suffering. There is a conflict between the value of life and its quality, between the "best" human interests and the interests of family and society. In addition, the issue of euthanasia in medicine requires an urgent legal solution. The legalisation of euthanasia at the legislative level will deprive the state of an incentive to fund research to find effective treatments.

At the same time, the legislation of Ukraine on this issue is not being improved, the real picture is not shown against the background of changes in public opinion, considering the experience of foreign countries in legalising euthanasia. The main problem is that, even though euthanasia is prohibited by law, the Criminal Code of Ukraine[1] does not contain a special rule that provides for punishment for euthanasia. The established judicial practice of convicting persons who have committed euthanasia as a simple murder does not consider the specifics of this act and violates the fundamental principles of law – humanism, and justice.

At the present stage of development of Ukrainian legislation on fundamental human rights and freedoms, the issue of legal consolidation of the right to die and the adoption of a special law, the content of which will regulate the concept, tasks, principles, and procedures of euthanasia, is not considered at the state level. However, this issue is increasingly attracting the attention of scholars and is being studied at the doctrinal level [1, p. 18].

In international documents that contain moral and ethical norms, there is a noticeable evolution from a complete ban to the recognition of euthanasia in exceptional cases. International medical organisations (WHO, MMA), established in the 1940s in response to the inhumane medical practices of Nazi doctors and following the decisions of the Nuremberg tribunal, enshrined in their documents the requirements for the protection of human life.

In many countries, bills on the right to die are considered rather frequently, for example, the British Parliament has rejected it more than twenty times. There has long been a real "war" in the West between supporters and opponents of euthanasia. Lying in the middle, more moderate points of view suggest clarifying and limiting each of the extremes, as well as working out the details related to the control and safety of patients.

In 2019, the leaders of monotheistic religions declared the protection of life in its final stage. The Vatican Joint Declaration states that no health worker can be coerced or pressured to directly or indirectly contribute to the intentional death of a patient through suicide or any form of euthanasia, especially if it is contrary to religious beliefs. The signatories of the document stressed the need to respect conscientious objection against actions that are contrary to human ethical values. This also applies to those actions that have been recognised as legal by the local legal system or by certain groups of citizens. Personal beliefs about life and death, of course, belong to the category of conscientious objection, which everyone should respect [2].

Some aspects of legal and bioethical regulation of euthanasia were covered in the publications of E. Lukash and A. Mernik [1], O. Drozdov and O. Drozdova [2], V. Aryadoust [3], I. Onyshchuk [4; 5], S. Dierickx, L. Deliens, and J. Cohen [6], K. Koyan [7], M. Aryaev, V. Zaporozhyan [8], V. Morozov and A. Popova [9], M. Antonenko [10], and others.

The problem of euthanasia is one of the few studied, as evidenced by the lack of special monographic studies that would fully and objectively cover the legal aspect of euthanasia. The available legal literature to some extent touches on this issue, but quite fragmentary because only some areas of the issue are revealed. That is why it is difficult to use the findings in the legal field. Thus, *the purpose of the study* is a theoretical and legal analysis of the issue of legal regulation in combination with bioethical principles of euthanasia, moral norms, and considering philosophical, moral and ethical, and medical and biological positions. The development of this issue is important for the further development of medical law.

Materials and Methods

The empirical basis of the study was the results of the analysis of the Constitution of Ukraine and current legislation on health care, international legal acts, a handbook on the application of article 2 of the European Convention on Human Rights, the Declaration on Euthanasia, the Lisbon Declaration on Patient Rights, legal literature and research, comments, etc. To rethink the unique combination of legal and bioethical aspects for the legal protection of life, as well as the interpretation of euthanasia, several research methods were used. The research methodology covers general scientific means: analysis and synthesis, induction and deduction, analogy,

[1]Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.

comparisons, which are developed by logic and used to solve clearly defined cognitive problems.

To clarify the content of certain scientific concepts of understanding euthanasia, the formal-logical method is used as a set of means and methods of logical study of law. It is based on the concepts, categories, rules, and laws of formal logic. Here, the law is not associated with other social phenomena (culture, religion, morality, etc.) and economics. In this situation, the researcher abstracts, for example, from the issues of the subjects of law enforcement, its effectiveness, and so on. The methodological basis for the study of legal regulations and bioethical principles of euthanasia was the method of legal science as a system of means of knowledge of the law, which consists of the following subsystems: philosophical means; general scientific means; special legal means; research methods and techniques.

The study of theoretical and practical principles of euthanasia was accompanied by the application of several leading approaches. The main methodological approach, combining various aspects of the issue, is activity (to reveal the dependencies of research on the subjects, means, forms, and conditions of their implementation), with its focus on the organic unity of ideal and material factors, subjective and active components of euthanasia.

The principles of complexity and interdisciplinary consider the complex social phenomenon of euthanasia and the functional relationship of legal regulation of euthanasia with bioethical principles that conflict with each other. An inseparable approach to the study of this issue has become scientific, which is characterised by a scientific statement of the purpose of the study and the use of scientific apparatus in its conduct. The scientific approach ensures the implementation of such requirements as objectivity, provability, accuracy, criticality, focus on adequate assessment of the law, and so on. If everyday knowledge is mostly a statement of phenomena, external relations, and relations, then the science is focused on the study of patterns, the search for new, hence its high explanatory and predictive ability, as well as its systematic organisation of one of the innovative fundamental approaches – system and its method. Systems analysis, which is considered an effective method of studying legal objects and processes.

A positivist approach to the study, aimed at identifying, measuring, and evaluating the phenomenon of euthanasia from a legal perspective and providing a rational explanation, was implemented. It was used to try to establish causal links and relationships between different elements of the subject of study (detection of multiple interpretations, contradictions between bioethical principles, and legal norms of different regulations). Using a compressive (comprehensive) approach, they search for an understanding of the relationship between rational and irrational components, in particular the perception of the studied issues using lexical mechanisms and phonological elements [3, p. 3].

The research methodology also uses a phenomenological approach. This is a research approach from the standpoint that human behavior is not as easy to measure as a phenomenon in the natural sciences. A person's motivation for euthanasia, as well as the legal regulation of the final phase of human life, are formed by factors that are not always noticeable, at least the internal mental processes. In addition, people invest their meanings, which do not always coincide with how others interpret them.

According to the sociological approach, the legal regulation of euthanasia is interpreted as an endowed element of the social system, rather than as a phenomenon. This approach allows considering modern social influences on the formation of legal norms and at the same time to abstract from non-social causal influences of transcendental, cosmic, anthropological nature. The synergetic approach involves the study of the processes of organisation of the assessment of the legal regulation of euthanasia and the development of forecasts on the consequences of the adoption of regulations in the field of biomedicine.

Results and Discussion

The idea of euthanasia originated a long time ago and has undergone a complex process of formation from ancient society to the present day. From the time of Hippocrates to the present day, traditional medical ethics have prohibited anyone, even those who ask from doing so, from giving death-giving drugs or advising them to do so.

The term *"euthanasia"* comes from the Greek words: "*ev"* – good, good, and *"Thanatos"*, which means death. Hence, euthanasia means good death. This term was introduced into scientific usage by the English philosopher Francis Bacon in the XVI century. In his work "On the dignity and multiplication of sciences" F. Bacon wrote: "I am convinced that the duty of the doctor is not only to alleviate the suffering and torment caused by disease, and not only when such pain relief as a dangerous symptom of the disease can lead to recovery, but even in the case when there is absolutely no hope of salvation, and you can only make death easier and calmer ... ". At present, there are different approaches in the legal literature to the definition of the term "euthanasia". Speaking of euthanasia as a criminal act, it is essential to distinguish the definition of euthanasia between medical, philosophical, and legal approaches [1, p. 142].

Doctors are willing to resort to this practice, especially when the patient himself asks for death. How should we treat this trend? How about liberation from outdated prohibitions or about some permissiveness, which is both morally incorrect and dangerous in practice? At the beginning of the last century, lawyer Binding and psychiatrist Grohe proposed to call euthanasia the destruction of so-called "*inferior"* lives.

This interpretation of the term "*euthanasia"* later

became widespread in the countries occupied by Nazi Germany. Newborns with "*abnormal development*", the mentally ill, patients with tuberculosis or malignant neoplasms, the disabled, and the elderly were killed. A special killing industry in the form of gas chambers, killers, crematoria, etc. was created. The International Military Tribunal in Nuremberg described these actions as crimes against humanity, which marked the beginning of codification in the field of crimes against humanism. One of the most important documents in international law was the Declaration on Euthanasia, adopted by the 39th World Medical Assembly *(Madrid, October 1987)*, which states: "At the request of his loved ones, unethical. This does not exclude the need for a respectful attitude of the doctor to the patient's desire not to interfere with the natural process of dying in the terminal phase of the disease" [2, p. 81].

Legislative regulation of the right to dispose of the right to life is directly related to the problem of euthanasia. For two or even three decades, disputes between lawyers, physicians, sociologists, and philosophers have not subsided about euthanasia, that is, the cause of a person's death at his or her request. Now the interest in this concern has grown significantly. It is also advisable to evaluate the legal regulation of euthanasia, which is closely linked to examinations and monitoring. In some projects, evaluation integrates legal control, monitoring, and expertise. In others, legal control and monitoring may use legal regulation assessment as a tool or form. Thus, evaluation procedures are added: public consultations and independent examinations [4, p. 442].

For example, in Belgium, euthanasia became legal in 2002. In the same year, a law on palliative care was adopted, which regulated the basic rights of the patient and formulated measures to improve the provision and access to palliative care services. In Belgium, the possibility of euthanasia can be used not only by people with a terminal condition, but also people with a chronic non-terminal disorder who are also entitled to euthanasia, but these requests must meet additional legal requirements. A 1-month waiting period between the request for euthanasia and the performance of euthanasia. For people who request euthanasia due to a terminal disorder, there is no waiting period [6, p. 115].

At the level of current Ukrainian legislation, euthanasia is prohibited: article 3; 27 of the Constitution of Ukraine[1] (a person, his life and health, honor and dignity, inviolability and security are the highest social value; everyone has the inalienable right to life; no one can be arbitrarily deprived of life); item 8 of article 52 Fundamentals of the legislation of Ukraine on health care (medical workers are prohibited from intentionally accelerating the death or killing of a terminally ill patient to end his suffering)[2]; item 2 of article 52 Fundamentals of the legislation of Ukraine on health care (medical workers are obliged to provide full medical care to a patient who is in an emergency); item 4 of article 28 of the Civil Code of Ukraine (prohibition to satisfy the request of an individual to terminate his life)[3]; part 1 of article 115 of the Criminal Code of Ukraine (commission of euthanasia is considered premeditated murder).

During the preparation of the Civil Code of Ukraine in 2003, there were attempts to legalise voluntary passive euthanasia, but such a rule did not fall into the current Civil Code of Ukraine [1, p. 17]. It is important to distinguish between euthanasia and concepts such as suicide with medical assistance, patient refusal of treatment as a form of passive euthanasia, killing disabled children by not helping them, and turning off the equipment when cerebral death is recorded [7]. In post-war Europe, euthanasia (active) was first legalised in the Netherlands in 2001. The list of countries in which euthanasia is legally allowed at this stage is quite large: Belgium, Luxembourg, Switzerland, Austria, France, Sweden, Germany, some US states (Montana, Washington). There is a tendency for it to grow. The most famous Dignitas clinic was opened in Switzerland in 1998 and today has offices in other countries. Today there is such a kind of medical tourism as "*euthanasia tourism*" [11, p. 4].

However, revolutionary changes in medical practice and science in the last third of the XX century, combined with powerful social movements to protect the rights of various social groups, stimulated the adjustment of ethical documents, and in the direction of recognising the patient's right to a dignified death. The Lisbon Declaration on the Rights of the Patient (1981)[4] recognises in exceptional cases, per the will of the patient, his right to a dignified death in the form of refusal of treatment. The Declaration on Euthanasia (1987) [12] treats euthanasia as unethical, but at the same time requires the doctor to "*respect the patient's desire not to interfere with the process of natural death".* The "Statement of Assistance to Physicians in Suicide" (1992) [11, p. 417] highlights this phenomenon as unethical and condemns suicide with the assistance of a physician, however, the physician must respect the patient's right to refuse medical care, even if the refusal leads to the death of the patient [11, p. 5].

[1]Constitution of Ukraine. (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text.
[2]Law of Ukraine No. 2801-XII "Fundamentals of Ukrainian Legislation on Health Care". (1992, November). Retrieved from https://zakon.rada.gov.ua/laws/show/2801-12#Text.
[3]Civil Code of Ukraine. (2003, January). Retrieved from https://zakon.rada.gov.ua/laws/show/435-15/ru/ed20131011#Text.
[4]WMA Declaration of Lisbon Declaration on the Rights of the Patient. (October, 1981). Retrieved from https://www.wma.net/wp-content/uploads/2005/09/Declaration-of-Lisbon-2005.pdf.

Particular attention should be paid to the differences in the legislative definition of the way patients express their demands or consent to the application of the act of euthanasia. Thus, the Polish Criminal Code[1] refers to a "*requirement*"; in the German Criminal Code[2] – on the "*categorical and persistent request of the victim*"; in the Swiss Criminal Code[3] – on the "serious and persistent requirement"; The Spanish Penal Code[4] describes the request as "*persistent, serious and clear*"; the Peruvian Penal Code[5] emphasises that the request must be "*explicit*"; the Criminal Code of Georgia[6] emphasises the need to meet the requirements of the patient "*his true will*" [9, p. 54].

The authors believe that such careful wording is designed to exclude the possibility of both falsifications of the will of the victim and the use of the perpetrator's ill-considered, hasty statement made by the victim in a state of frustration. The criminal law of the vast majority of foreign countries in the rules on liability for euthanasia does not consider its form, which occurs, although for reasons of sympathy, but without the request or consent of the victim. The only exception is the Criminal Code of Colombia[7], wherein article 326 "Murder out of compassion" does not mention the need for a request from the victim.

Meanwhile, in our time, the manifestation of this form of euthanasia is not uncommon. It is possible to maintain the patient's life for years in modern clinics, even with complete attenuation of brain functions. Because of this, doctors on their initiative or at the request of close relatives of such patients are sometimes forced to turn off the means of supporting the patient's life, to carry out passive euthanasia.

In some countries, the responsibility for the passive form of euthanasia is much stricter than for its active form. Thus, for assisting in suicide (passive euthanasia) the perpetrator faces: in Peru – up to four years in prison; in Italy – up to twelve years; in Portugal – up to three years; in Spain – up to five years; in Colombia and Brazil – up to six years; in Venezuela and the Republic of Korea – up to ten years; in Canada, up to fourteen years in prison.

The exception is the Polish legislation, which in some cases leaves the question of the punishment for euthanasia to the discretion of the law enforcer. Yes, according to article 150 of the Polish Criminal Code, "a person who kills a person at his request and under the influence of compassion for him shall be punishable by imprisonment for a term of three months to five years, but in exceptional cases, the court may apply extraordinary mitigation and even to refuse its execution". This brief analysis of the legislative experience of foreign countries in establishing responsibility for euthanasia shows that in the vast majority of them any form of euthanasia qualifies as a crime. However, unlike Ukraine, the legislators of the vast majority of countries have included in their criminal codes special privileged rules on liability for the analysed act [9, p. 54-55].

Such a ban has made the right to life an obligation for many terminally ill people to live or, moreover, to be "*human in general*". However, a person must have a choice, and this choice can become a legalised euthanasia procedure for him. Regarding the legalisation of euthanasia, the main problem is the need to develop a legal procedure for its implementation. In addition, it should be borne in mind that a serious alternative to euthanasia is a network of medical institutions that specialise in providing care to dying patients, the so-called "*hospices*", which also require special attention and a certain legal framework [7].

M. Antonenko singled out the features of euthanasia as a kind of compassion murder, which are as follows: a) the object of encroachment are social relations directly related to the life of a terminally ill person; b) the objective side of euthanasia is expressed in non-violent action (inaction), the consequence of which is the death of a terminally ill person and the causal link between them; c)the subject of this crime is a person aware of the disease, a family member of the patient or a medical worker; d) the subjective side of euthanasia is expressed in the direct intent to take the life of a terminally ill person at his voluntary request; e) the main motive is compassion; e) the goal is to rid a terminally ill person of unbearable physical suffering caused by an existing disease [10, p. 199].

There are differences in the current legislation of Ukraine regarding euthanasia. Thus, according to Article 34 of the Law of Ukraine "Fundamentals of the Legislation of Ukraine on Health Care"[8], the doctor is not responsible for the health of the patient in case of refusal of the latter from medical prescriptions or violation by the patient of the established regime. According to Article 43 of the Law of Ukraine "Fundamentals of the legislation of Ukraine on health care"[9] a patient who has

[1]Criminal Procedure Code of the Republic of Poland. (1997, June). Retrieved from https://www.legislationline.org/download/id/4172/file/Polish%20CPC%201997_am%202003_en.pdf.
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[9]*Ibidem*, 1992.

acquired full civil capacity and is aware of the importance of their actions and can manage them, has the right to refuse treatment. These articles contain signs of passive euthanasia. The doctor is not responsible because no one can force a person to be treated if he or she does not want to. The question arises about a patient who is in a "*chronic autonomic state*" and is usually considered alive only from a biological standpoint. How to treat a person who has ceased to be a person, permanently lost consciousness? Is it necessary to continue to make every effort to save lives? Maybe it is advisable to limit the care, that is, "allow" to die?

According to C. Culver and B. Gert, an organism that has ceased to be a person should not "require" treatment as a person. This means that persistent, sustained efforts should not be made to sustain life in such patients, as such efforts are not justified from an economic or humanitarian perspective. On the other hand, one cannot expect anyone to actively take the life of such a patient. An acceptable way out of this situation is to stop providing care, which includes both medical care and routine care, which "allows" the patient to die. It should be noted that such a patient does not suffer from failure to provide care because he is no longer a person, irreversibly lost consciousness [8, p. 238].

On October 28, 2019, in the Vatican, representatives of the monotheistic Abrahamic religions signed a joint declaration on the end of life. The document states that euthanasia and suicide during medical care are morally and religiously erroneous and should be prohibited without exception. No healthcare worker should be coerced or pressured to participate directly or indirectly in the voluntary and intentional death of a patient [13].

The European Court of Human Rights conditionally divides the issues related to the termination of life into 2 groups: euthanasia itself and cessation of treatment that supports vital functions. The Court considers that it is not possible to deduce from article 2 of the European Convention on Human Rights the right to die both at the hands of a third party and with the assistance of a public authority. In all the cases before it, the Court emphasised the State's obligation to protect life *(Pretty v. The United Kingdom, § 39*).

The ECHR considers that in matters concerning the end of life as well as the beginning of life, States should be allowed to consider not only the authorisation or prohibition of discontinuation of life-sustaining treatment and related formalities but also how the protection of the patient's right to life is balanced. And the right to respect for his private life and personal autonomy. At the same time, the Court emphasised that this discretion was not unlimited and that it reserved the possibility of monitoring the State's compliance with its obligations under Article 2 (§§ 147-148) [14, p. 17].

The ECHR considers that it is impossible to deduce from Article 2 of the Convention the right to die both at the hands of a third party and with the assistance of a public authority. In all the cases before it, the Court emphasised the State's obligation to protect life *(Pretty v. The United Kingdom, § 39)*. In a recent case concerning a refusal by the authorities to grant access to drugs that would allow a mentally ill patient to commit suicide, the Court, recalling that the Convention should be read as a whole, decided to consider an application under Article 8 referring to Article 2. The Court has ruled that the latter legal provision obliges the public authorities to prevent a person from shortening his or her life if the decision was not taken voluntarily and with full knowledge of the case *(Haas v. Switzerland, § 54)* [14, p. 17].

When the ECHR is to investigate the provision or termination of medical care, it shall consider the following factors: the existence in domestic law and practice of a regulatory framework following article 2; taking into account the wishes previously expressed by the applicant and his relatives, as well as the opinions of other health professionals; and the possibility of a judicial appeal in case of doubt as to the optimal decision to be taken in the interests of the patient *(Gard and others v. the United Kingdom (dec.), § 83)* [14, p. 17].

According to I. Onyshchuk, to clarify the problems that have arisen today in the field of biomedicine, "it is necessary to use moral criteria and a correct understanding of the nature of the human person in his bodily dimension. Only in harmony with his true nature can the human person achieve self-realisation as a "whole": and this nature is both corporeal and spiritual. Given the substantial unity with the intangible soul, the human body cannot be interpreted as a simple set of tissues, organs, and functions, or regarded at the same level as the body of animals. Rather, it is a part of the person through which it manifests and expresses itself" [5, p. 70].

Deprivation of life (murder, suicide) is a criminal offense and any discussion on the legalisation of euthanasia has no legal basis. Life is not subject to legal regulation. This is an object that needs to be protected by both the law and the media [15].

The issue of multiple interpretations of euthanasia and the conflict of bioethical principles can be resolved by distinguishing between categories such as "*murder"* and *"permission to die*"; "*refusal of maintenance treatment"* and "*termination of maintenance treatment"*; "*direct and indirect termination of life"*; "*the patient's right to euthanasia"* and "*the right to refuse treatment and other medical intervention*", etc. The stability of the legal positions of the highest judicial body is of great importance for the elimination of the phenomenon of multiple interpretations (misinterpretation). Often the highest judicial body of the state causes legal uncertainty due to the formation of contradictory positions and different interpretations.

To legalise euthanasia in Ukraine, it is necessary to amend the Constitution of Ukraine[1] and create an appropriate legal framework in which the basic definitions

[1]Constitution of Ukraine. (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text.

of the terms of the institution of euthanasia will be formed, the legal status of subjects, and the procedure for its implementation. Particular attention should be paid to the development of substantive and procedural criteria for authorising euthanasia, as well as to the study and use of experience, for example, in the Netherlands and Belgium, which have already legalised it. It also seems appropriate to develop a unified legal model on euthanasia at the UN and WHO levels to implement it in national legal systems.

Conclusions

In Ukraine, euthanasia is prohibited by law. Before allowing it, there is a need to have a high moral society in which the laws are enforced. Due to neutral public opinion, Christian traditions, and the moral principles of doctors, the problem of euthanasia in Ukraine is not as acute as in the West. At this stage, it can be noted that Ukraine today is not ready for any step in this direction. The main reason for the multiple interpretations of euthanasia is the ambiguity of this concept, which naturally contains a set of interrelated bioethical, medical, legal, religious aspects that cannot be considered separately. Each of them is filled with contradictory thoughts. Probably, all this affects the impossibility to make an unambiguous decision on euthanasia. Moral differences between "*death by mercy"* and "*permission to die"* are based on the principles of respect for autonomy and non-harm. The legal consciousness of the patient, who defends the right to a dignified death, contradicts the right of the doctor not only to adhere to the professional principle of *"non-harm"* but also to fulfill the commandment – "*do not kill"*. However, the involvement of medical workers in active murder will harm their moral status. In addition, at the regulatory level, there are differences between the categories of "*murder"* and "*permission to die"*.

From a bioethical perspective, euthanasia is focused on the principle of "*do not kill"*, which conflicts with the principles of charity, non-harm, respect for human freedom. The main ethical conflict is the development of a treatment procedure for a patient who is in a critical or terminal condition, however, according to the legal definition of death, he is still alive. In addition, the existence of the institution of euthanasia will not be able to guarantee the integrity of this specific procedure. A specially created body should supervise, and this will be accompanied by significant financial costs.

The ECHR interprets the issue of termination of life in such a way that it is impossible to derive the right to die both at the hands of a third party and with the help of a state body. Emphasis is placed on the obligation of the state to protect life and, if necessary, to prevent a person from shortening his or her life if this decision has not been taken voluntarily and with full awareness of the case. Concerning the provision or termination of medical care, the ECHR examines the existence in Ukrainian law and practice of the legal framework by article 2 of the European Convention on Human Rights, as well as whether the previous wishes of the applicant and his relatives have been considered. The views of health professionals are also taken into account.

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Тлумачення евтаназії в умовах конфлікту біоетичних принципів

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Анотація
Метою статті є теоретико-правовий аналіз питання про тлумачення евтаназії в контексті конфлікту біоетичних принципів з урахуванням філософських, медико-біологічних і правових позицій. Новизна статті полягає в порівняльному аналізі нормативно-правового регулювання евтаназії в умовах розбіжностей біоетичних принципів з метою віднайдення оптимальних способів тлумачення норм права та застосування форм контролю процесів, пов'язаних з евтаназією. Досліджено питання щодо етичних підстав для легалізації евтаназії, розкрито її сутність з позиції універсальної та об'єктивної цінності людського життя. Неоднозначність поняття евтаназії закономірно містить комплекс взаємопов'язаних біоетичних, медичних, правових, релігійних аспектів, які неможливо розглядати окремо. Кожен з них означений полярними думками. Моральні розбіжності між «смертю з милосердя» й «дозволом умерти» аргументовано з огляду на принципи незаподіяння шкоди та поваги до свободи. На рівні нормативно-правового регулювання наявні розбіжності між категоріями «вбивство» та «дозвіл на смерть». З біоетичної точки зору евтаназія орієнтована на принцип «не убий», який суперечить принципам доброчинності, незаподіяння шкоди, поваги до свободи людини. Конфлікт біоетичних принципів можна усунути шляхом розмежування таких категорій, як «вбивство» та «дозвіл на смерть»; «відмова від підтримувального лікування» та «припинення підтримувального лікування»; «пряме припинення життя» та «непряме припинення життя»; «право пацієнта на евтаназію» і «право на відмову від лікування та іншого медичного втручання» тощо. Закріплення евтаназії на законодавчому рівні передбачає внесення відповідних змін до Конституції України та створення відповідної нормативно-правової бази. Доведено доцільність формування матеріальних і процесуальних критеріїв на рівні ООН і ВООЗ для дозволу на здійснення евтаназії

Ключові слова:
тлумачення норм права; принцип права; евтаназія; кримінальне законодавство; міжнародне право; біоетичні принципи; право на смерть

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The Essence of Polygraph Test Formats and Requirements for Their Application

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Abstract
The quality of the work of the polygraph examiner and the results of the performed psychophysiological studies with the use of polygraph depends largely on the correctness of the used test formats, the purpose of which is to serve as indicators in checking the information data from the investigated persons for their authenticity. They identify the mechanism of implementation of the relevant methods, which, due to their proper application by a polygraph examiner, provide verified results. Different schools for the preparation of future polygraph examiner provide different and even outdated educational methodological tools, which do not always reflect modern approaches in the technologies of application of test formats, which causes unusual understanding and perception. Introduction of innovations in use of test formats and is the purpose of this research. The study uses the general dialectic method of scientific knowledge of real phenomena, as well as general scientific and special methods of polygraphology. The scientific opinion on modern possibilities of introduction of new test formats, which form the basis of polygraph methods for their use in law-enforcement activities of polygraph examiner in the process of psychophysiological researches with application of polygraph, is substantiated. The classification of these methods and their characteristics is given depending on the direction of the polygraph procedure by the polygraph examiner. It has been established that the most famous, recognized and applied in scientific and practical circles of polygraph examiners tests on cognition and detection of deception. In the first group of test formats only polygraph method of CIT, which according to Meta-analysis can be applied as research, not proof, is considered to be a qualified one. In the second group of test formats the "Evidence-based methods", "Methods for pair testing" and "Research methods" are the most valid. Each of them has the appropriate content and target direction and is recommended for use in a specific category of carrying out psychophysiological researches using polygraph

Keywords:
polygraph; polygraphology; polygraph examiner; polygraph examination; polygraph tests; test formats

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Introduction

The further development of polygraph activity in Ukraine is aimed at all of us who are reasonable to this process, bringing it into compliance with international standards in the field of quality, clarity, expediency and the order of practical polygraph. That is, the standards developed, approved and used in polygraph practice of the leading countries of the world. One of the key aspects of this activity is the introduction of qualitative test formats, developed in the method for target orientation, which have passed testing time and practice and have demonstrated their high indicators in the question of their application. The relevance of the research topic is seen in the fact that in Ukraine, the required polygraph in practice is becoming more and more popular in solving key issues in different spheres and directions of law-enforcement activity. The quality of the work of the polygraph examiner and the results of the performed psychophysiological researches with the use of polygraph depends on his professionalism, which is achieved not only by sufficient knowledge from a number of fundamental sciences, and especially polygraph, and their ability to apply them professionally in practice, as well as introduction of innovations in the technology of polygraph process, they serve as a guarantee of its effectiveness. One of these are the test formats, which are constantly updated, which guarantee the quality of work of the polygraph examiner.

However, not always innovations are welcomed in the circle of theorists and practitioners of polygraph research and reasons for this there are several: a) not possession of polygraph information concerning proposed changes in the technology of polygraph process; b) not a desire to change something to new, because there is a well-developed practice, and innovations need time to study, learn and approbate them; c) no one agency requires updating of the polygraph techniques and does not control the process of its activity, and therefore the innovation for the polygraph specialist has a more informative character, rather than obligatory, etc. At the same time, it is necessary to understand that the introduction of new developments in polygraph activity implies the quality of performance of tasks, because in many cases the result of special tests plays an important role in the life of the person who as fate, the case or the committed incident appeals to the polygraph examiner and relies on his professionalism and the quality of the research procedure. This is why it is necessary to raise the issue as one of the most topical for Ukrainian polygraph.

The purpose of the article is to reflect theoretical and methodological bases and applied principles in the formation of polygraph test formats. The basic content of the material is given by the scientific positions of foreign and Ukrainian polygraph researchers with the purpose of their selection for further development of the polygraph process and innovations concerning its quality. To achieve this goal the following *tasks* are set: to provide a general characteristic of polygraph tests, their content and to follow the rules of construction; to show different historical forms of polygraph test formats and their direction; to lay down the scientific tendencies in the direction of introduction of new test formats (methods) according to the international standards of ASTM; to analyze the key methods of the polygraph process, which according to the Meta-analysis report of APA are recognized as valid and received the most recognition in the circle of foreign polygraph practitioners and recommended to their widespread implementation by all polygraph specialists.

Materials and Methods

The methodological tools of the research are chosen taking into account the set goal, specificity of the object and subject of the research. It is a general dialectical method of scientific knowledge of real phenomena, as well as its connection with the theory and practice of reflection of the content of tests in conducting psychophysiological researches with the use of polygraph. General scientific methods, in particular ***analysis*** – for the development of available test formats, which at the time played a certain role in the development of methods of practical polygraph; ***synthesis*** – to present an idea of the processes of polygraph activity, as an integral system formed from separate parts of it, the focus of which was different polygraph methods and their component tests, built in special formats; ***generalization*** – for systematization and evaluation of available polygraph test formats, their further expediency of use, taking into account new international requirements on improvement of practice of conducting psychophysiological researches with application of polygraph. Also, special methods of research aimed at detection of deception and counteraction in carrying out of the procedure of research, which often apply indicators with the purpose to distort the obtained results and achieve the set goal, in particularly: to mislead the polygraph examiner.

The above methods were used at all stages of the research. There are identification of scientific problem, setting of the purpose and objectives of the research; detailed content of the given information; analysis of innovations in the provision of proposals in the application of modern polygraph test formats. The theoretical basis of the research was the results of the study of international standards ASTM, as well as leading methods of polygraph process, which according to the report of Meta-analysis APA were recognized as valid and received the most recognition in the circle of foreign practitioner's polygraph and recommended to their widespread implementation by all specialists of polygraph. Modern scientific developments of foreign and Ukrainian scientists and polygraph researchers, which have proved the necessity of introduction of new polygraph test formats into development of polygraph science. The empirical base of the study is made up of

international data published in official documents of the American Polygraph Association as a key developer in the development of the polygraph process, which has established the obligatory requirement of the use of the relevant methods, the results of which are confirmed by published scientific researches of scientists and polygraph researchers in corresponding professional editions and are reflected in published report Meta-analysis of this public organization.

Results and Discussion

Special polygraph tests play a key role in the organization and conduct of psychophysiological research using polygraph. They are formed by a polygraph examiner on questions that serve as stimulus for checking specific information in the investigating person. In the scientific and special polygraph literature they are also called incentives or indicators, since such questions will inspire the higher nervous system of the investigating person in the process of their formulation by the polygraph scientist during the psychophysiological research with the use of polygraph. The use of available stimulus causes the appearance of psychophysiological reactions of the human body. Different "stimulus indicator" have different effects on the investigator, which allows the polygraph specialist to track and establish the cause-effect connections of such occurrence, and also to determine the correlation of information hiding [1].

Polygraph examiner N. Gordon emphasizes that polygraph testing allows to objectively reflect the subjective significance of a stimulus for the investigating person [2]. The increase in emotional tension is closely connected with the increase of neurophysiological activity of the cortex and deep structures of the brain, which control the lower part of this organ and regulate physiological functions of the body. They are particularly important for the category of persons who try to hide information from the polygraph examiner, known to him for a specific purpose, namely:

– to take an important position for her;

– to have access to the production process of a specific institution, including not the best intentions;

– acquire confidential information both for own needs and for sale to its competitors;

– to avoid punishment in an act of misconduct or crime, etc.

A test question (stimulus) is built in a special order with the location of the words that are important for the validation of the text or sentence that is examined when the test is written in order to reveal the information traces of the display and their authenticity, that could have been formed and complained about in the person's memory as a result of her participation in a specific situation, a certain condition, events of crime, other circumstances and facts, the content of which is subject to investigation, analysis and evaluation by a specialist or polygraph expert on the basis of appropriate methods of analysis of signals during detection of fraud [3].

That is, tests and their formats are a certain set of specially formulated questions for their verification from the investigating person using polygraph. The ability of a polygraph examiner to correctly transform available information, reported by the initiator of the study in the form of a thematic order, into a test question, testifies to his/her high skill as a specialist in the field of polygraph. According to the Ukrainian polygraph researchers V.M. Malyuga, S.P. Grishina, M.D. Kuzmenko, during their construction of a polygraph specialist it is important to have as much information as possible, which he should receive from the initiator of a polygraph research or examination [4].

Drawings, graphic images, drawing figures and can be used simultaneously with the tests. For example, in criminal proceedings, a polygraph specialist presents the photo coverage used previously by pre-trial investigation, showing them several times and, among other questions, forms a new one: "Do you know this person?", randomly mentions names, surnames and nicknames or shows photos, among which there should be information about the offender. If the studied person possesses such information data (photo, name, nickname), then it causes the expressed stress psychophysiological reaction, which, among other things, differs depending on psychopathological tendencies [5]. The polygraph records the steady reaction of the investigating person, and the number of repetitions of the same question will reduce the probability of signs of a random coincidence of his acquaintance with the participants of the investigated event or information known to him, which is concealed. On the basis of the emotions shown by the person, the specialist makes a conclusion about the non-accidental nature of their occurrence. For example, if there were several versions of the pre-trial investigation of a specific event and circumstances of a criminal offense before the beginning of the polygraph investigation, then it will almost be left alone – potential. Such a method of combining verbal tests with verbal support gives an opportunity to better knowledge of the investigating person, which considerably facilitates the work of law-enforcement bodies in the decision of urgent questions of pre-trial investigation.

The preparation of tests is usually carried out by a polygraph examiner on its own, and in some cases, in particular in criminal cases, when it comes not to research, but to the examination, together with its initiator (investigator, prosecutor) on the basis of the data of the pre-trial investigation. In order to properly prepare the test questions, the polygraph examiner should be aware of the main issues of criminal proceedings, the investigation of which is carried out through the initiator of the forensic psychophysiological examination with the use of polygraph. As to the essence of the tests, they reflect one or another proven methodology, which is effective for the polygraph process and has corresponding

recognition in scientific and practical circles of polygraph scientists [6]. The key in this process is to select the appropriate questions for each area of activity that will be applied in the test block. With a list of questions prepared by a polygraph specialist, and there may be a dozen, only two or three will be checked (significant), the rest will perform the function of balance (neutral) and questions of comparison (insignificant). As the leading Ukrainian polygraph scientist I.P. Usikov rightly emphasizes, that consists in this is a basic principle of the populating of special polygraph tests, which determines that the complex and generalized meaning of the column has the same meaning, with which it as a peal smart polygraph influences the point of the higher body with the application of polygraph [7].

The highest level of human nervous activity is the social-deterministic, so the join operations between first and second signaling are reflected social environment. At the same time, the activity of the first signal system is the social-deterministic as well as the activity of the second signal system. Both of them in join operations determine not only external, but also internal vegetative activities of human body to ensure the dynamic integrity. Due to this historically formed speech system can provoke a variety of reactions in the human body, which should be fixed by a polygraph. Therefore, it is so important to use this knowledge correctly in its practical activities, because the wrong question will not lead to physiological reaction in the person under investigation. There will be no reaction to the words-irritants in her body, and accordingly the polygraph will not detect them and they will not appear on the computer polygraph, and thus the polygraph scientist has assumed mistakes in his work. That is why the international and Ukrainian empirical practice of conducting psychophysiological research with the use of polygraph gives grounds to assert that the effectiveness of this activity depends largely on the skillful construction of the test by a polygraph.

Polygraph scientists I.P. Usikov and R.V. Chernenko points out that the corresponding test is designed in such a way that changes in the dynamics of psychophysiological indicators of the investigated person occur through stimulus (irritants), which are decisive for the polygraph process [8]. Their construction takes place on the basis of the appropriate methods developed and implemented in the practice of polygraph activity. Long historical period of polygraph development since 20's of the 20th century the following basic methods were used: "Relevant / Irrelevant Technique (RI)", as well as "Peak of Tension Technique (POT)". Their developer is L. Kiler. The peak of popularity of the above-mentioned tests falls, in particular in the USA at the beginning and middle of the XX century, and later they became an integral component of polygraph methodology and in other countries where polygraph began to be applied in different spheres and directions of activity [9].

Also, according to international assessment of available methods of polygraph activity, the most recognized tests, which found at the time practical application in conducting psychophysiological researches with application of polygraph, were: 1955 – "The Concealed Questions Test" B. Biurak; 1959 – "The accused's knowledge test" proposed by D. Lickenom. Later this test was named "The Concealed Information Test"; 1967 – "Modified General Questions Test" R. Decker; 1970 – "Peak of Tension Test" a well-known solution with a fake key R. Arter; 1977 – "Assessment of suspicion of knowing the accused" J.A. Matte; 70-th year of XX century – named "Known Solution Test" and combined "Stimulatively-adaptive Test"; 1980 – modified "Irrelevant and Relevant Test" P. Mainor; 1981 – "Counter-intelligence Test. Department of Special Investigation of the Air Forces of the USA"; 1984 – analytical search "Peak of Tension Test" B. Kuns; the beginning of 90-s of the XX century – modified "Test on knowing the accused" V. Varlamov and I. Nikolaeva and others. The methods of control questions of the second half of the 20th century have become significant for the practice of polygraph process in different spheres of human activity, including in the specific sphere of criminal proceedings by the beginning of the 21st century, namely: 1952 – the D.G. Elloson test (possibility to study the physiological features of lie provided that the person answered the test questions positively, negatively or kept silence); 1960 – "Test of the method of control questions" – "Bakster Zone Comparison Test", who was subsequently modified several times. In 1961 K. Bakster brought from this modified test a group of questions SKY into a separate test with the same name; 1965 – "Control Test" M. Synks, also called "Yes-No" test", and in 1969 the mentioned method was described by R. Golden in the report at the annual seminar of the American Polygraph Association; 1973 – S. Rili developed a "Positive Control Test"; 1977 – J.E. Rid and F.E. Inbau as part of the method of control questions developed "Test of silent answers and "yes-test". In the same year 1977 – "The Matte Quadri Track Zone Comparison Technique"; at the end of 70th – "Mixed Type Test" of the Soviet Union KGB; 1980 – "Utah Zone Comparison Test" of Raskin and J. Kircher; 1987 – "The Integrated Zone Comparison Technique" N. Gordon, U. Weida and F. Kochetti and etc. In fact, the development of polygraph examiners V.K. Noskova (80-th years of XX century. – "Version significance assessment test"); L.H. Alekseeva (90-th years of the XX century. – "Psychological assessment test"); S.U. Oglobulin and A.U. Molchanova (2002 – "Test of complex estimation of the involvement") and others [9].

However, the number of polygraph tests offered by scientists has not always shown their full support. There were also those who did not share the views of the developers of the corresponding tests, which formed the basis of some methods, and also those who questioned their effectiveness. In particular, the American psychologist D. Likken was the developer of the "Test of knowledge of the accused", confirmed, as a rule, psychophysiological

reaction is similar despite different emotions, so the polygraph can not distinguish anxiety, irritation and guilt. These emotions come as excitement. Therefore, the psychologist concluded that the psychophysiological research using polygraph in a third of cases gives false results [10]. As a result, this test was taken away from a polygraph technique. Also, over time, some of the above mentioned have lost their relevance, although they have made their important contribution to evolution and development of modern methodology of polygraph researches. In fact, each of the above-mentioned methods demonstrated its significance in achieving specific objectives in the issues that the polygraph examiner was asked to initiate.

Now, given that polygraph is developing dynamically as it becomes more and more complicated in public legal relations, the process of finding new effective methods and methods of this science remains continuous. Other, more thought-out, modern, scientifically grounded and practically worked out have been developed to change one method. The results of their application are reflected in scientific and special polygraph literature, in which they are discussed and professional assessment is given. They are constantly the subject of discussion in professional communication of polygraph specialists, in particular concerning their terminology name, because polygraph techniques are synonymous with technique or tests. There is no fundamental difference between them, because the basis of any method is test formats with their respective content, specific techniques of their application and the technology of polygraph procedure. In fact, tests reflect the content of a particular method, which is thoroughly tested by practice and only the best of them are fixed for a longer time of their application.

Despite the fact that each of the tests has its own internal content and its own specificity, all of them are united by a common system of rules to which they must meet. As for the modern vision of the tests and their formats, which form the basis of appropriate polygraph techniques, they look like the following. According to the international standard ASTM E2035-12 (2017) technique, it is an algorithm of research, which covers the pre-test conversation, format, requirements to testing procedure, analysis of research results and may contain post-test communication [11]. The format of the test is defined by the sequence and rules of questions (test stimulus) presenting at the stage of registration (recording) of physiological indicators. Hence, it follows that under the method (technique, test) it is understood not only the special sequence of different types of questions, but also other integral elements of the procedure of polygraph research. In modern foreign scientific literature polygraph tests are divided into two categories (groups) – recognition test and deception test.

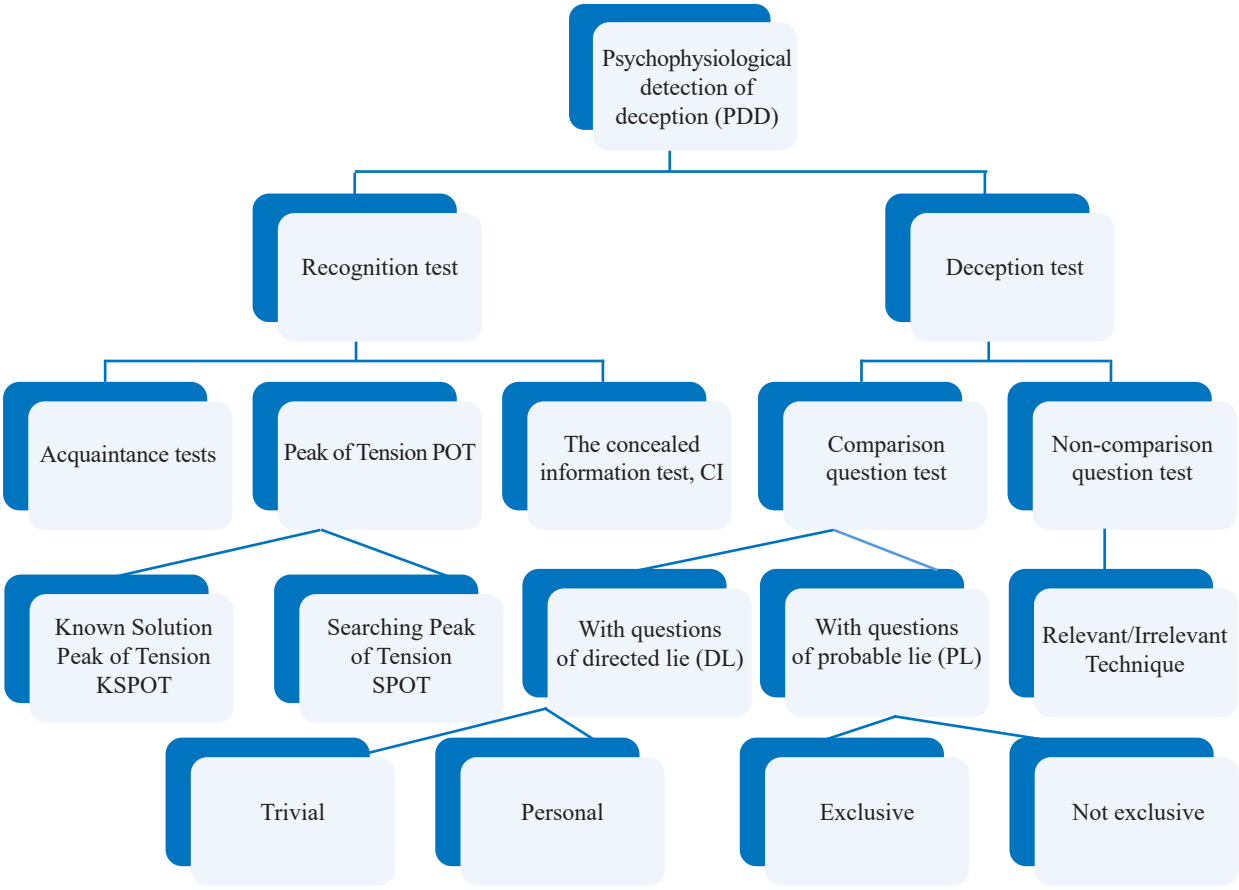

Figure 1. Classification of basic polygraph tests

In Table 1, the most famous and recognized in the scientific and practical circles of polygraph examiners tests according to the above classification.

Since 2012, the key principle for improving the practice of psychophysiological research with the use of polygraph APA has established the mandatory requirement of applying valid methods, which are confirmed by published scientific researches of scientists and polygraph researchers in the corresponding professional editions. These proven methods are published in the Meta-analysis report of the APA (2011). Among the recognition tests, only the CIT is recognized as valid, which according to Meta-analysis can be applied only as *a research*, but not *a proof* test [12]. The valid tests are now largely recognized as separate modern tests with comparison questions, which according to the above classification in Figure 1 and Table 1 belong to the fraud detection tests.

Table 1. Methods of polygraph activity

Recognition test	Deception test

• Acquaintance tests (ACQT)
• Peak of tension technique (POT)
  ○ Known solution peak of tension (KSPOT)
  ○ Searching peak of tension (SPOT)
 	
• The concealed information test (CIT)
	• Federal you phase
	• Event-specific ZCT
	• The integrated zone comparison technique (IZCT)
	• The matte quadri-track zone comparison technique (MQTZCT)
	• Utah zone comparison test
	• Utah ZCT combined;
	• Utah ZCT CPC-RCMP series A.
	• Air force modified general question test (AFMGQT);
	• Backster you-phase;
	• Federal ZCT
	• Directed lie screening test (DLST)
	• Relevant/irrelevant technique (RI)

Source: [9]

The Relevant/Irrelevant (RI) Techniques includes: *Specific Issue Relevant/Irrelevant Test* and *Relevant/Irrelevant Screening Test*. The Specific Issue Relevant/Irrelevant Test is not recommended for use in Meta-analysis and does not meet the modern international requirements of the standards of practice of conducting polygraph researches and is considered obsolete. The Relevant/Irrelevant Screening Test was also not included as recommended for use in Meta-analysis, but was included in the Meta-analysis (Appendix I-8), since at that time was published article D. Krapohl, S. Senter and B. Stern on Relevant/Irrelevant Screening Test with declared imbalanced accuracy of applied method in 73%. In it leading foreign researchers of polygraph have found that screening test of relevant/neutral questions does not meet requirements of ASTM because of insufficient quantity of polygraph researches, and accordingly the average accuracy of the method tested in it [13].

Much earlier, however, in co-published work with other researchers of polygraph J. McCloughan, S. Senter, D. Krapohl stressed that polygraph techniques that do not meet modern standards of disability practice (experimental methods) can be applied, but should not be used separately for diagnosis or screening conclusions [14]. At the same time, the APA undertakes to inform the investigated person with the use of a polygraph and initiator of such a procedure (p. 1.7.3. Professional Practice standards of APA) [15]. At the same time D. Krapohl ta P. Shaw warns that the international standards ASTM contain and justified limitations in the issue of applied not valid methods, and their implementation requires understanding of advantages and disadvantages, including correct conduct of polygraph research and careful evaluation of the obtained result [16].

Currently, the Meta-analysis tests are considered to be invalid and recommended for use in practice of polygraph activity, and are divided into three categories, namely:

– "Evidence techniques";
– "Paired Testing techniques";
– "Investigative techniques".

Each of these test categories sets out the appropriate requirements for their average accuracy, which can be applied specifically to the needs of the "Evidence techniques", "Paired Testing techniques" or "Investigative techniques". The first, "Evidence techniques" is a polygraph study that should meet minimum standards such as admissibility in court proceedings or administrative hearings. During the trial, the necessary components are:

– digital recording of its fixation;
– the application of the valid polygraph tests, on which the overwhelming number of published peer-reviewed studies demonstrated an imbalanced average accuracy of 90% or more, except for uncertain results, which should not exceed 20%;
– the rules of calculating the scores of the obtained results of the polygraph research and the optimized decision-making rules have been confirmed.

The second, "Paired Testing techniques", represents the process of conducting a psychophysiological research

with the use of polygraph simultaneously two or more persons by different polygraph examiners who have no access to the obtained results with one another regarding the investigated fact, information about which should be known to the persons in respect of which the research is conducted, the conclusions of which are given to the court. Polygraph examiner D. Kushnir states that it is about double testing according to the protocol of Marin [17]. This type of study is now quite popular in the US. According to international standards, there should be no less than two published empirical studies for methods that can be applied as a pair of studies, showing an imbalanced average accuracy of 86% or more. The effectiveness of such polygraph testing is confirmed by international practice and proven studies. Compliance with the rules of its conduct allows during the consideration of a certain category of criminal proceedings in courts or at the same time conducting an examination of two or more previously experienced witnesses, to determine the party whose testimony is true, and to save much time in court proceedings [18]. At present, the pair of psychophysiological studies with polygraph application are not conducted in Ukraine, just within the framework of the judicial examination.

The third, "Investigative techniques" are polygraph studies in which several separate topics or a number of aspects of one incident (violation, event, fact) are to be checked and the results of which cannot be presented as evidence in court. Examples of research methods include testing candidates for appropriate positions, as well as applying multi-dimensional diagnostic studies that can complement and/or assist law enforcement in the procedure of conducting a specific investigation of a criminal offense. According to international standards, there should be at least two published empirical studies that demonstrated an imbalanced average accuracy of 80% or more. In the following Table 2 are the valid polygraph tests recommended for carrying out a specific category of psychophysiological research using polygraph.

Table 2. Valid polygraph tests for carrying out a specific category of psychophysiological researches

Evidentiary techniques	Paired testing techniques	Investigative techniques
• Federal you phase; • Event-specific ZCT; • The integrated zone comparison technique (IZCT); • The matte quadri-track zone comparison technique (MQTZCT); • Utah zone comparison test (Utan ZCT DLT); • Utah zone comparison test (Utan ZCT PLT); • Utah ZCT combined; • Utah ZCT CPC-RCMP series A	• Air force modified general question test (AFMGQT); • Backster you-phase; • Federal you phase; • Federal ZCT	• Air force modified general question test (AFMGQT); • Concealed information test (CIT); • Directed lie screening test (DLST)

In addition to the above classification, polygraph studies are divided into: *diagnostic and screening.* The difference between them is that diagnostic studies provide for the existence of known problem, in the form of signs, evidence, statements or random circumstances, which show that the person could participate in a certain illegal event, and the results of the study are intended to confirm positive (deception detected) or negative (deception not detected) diagnostic conclusion. Usually, during diagnostic studies, special methods are used with questions of comparison (single-issue polygraph test and multiple-facet polygraph test). The "Concealed Information Test (CIT)" can also be applied. Polygraph examiner D. Zubovskyi defends the position that the screening psychophysiological research with the use of polygraph is carried out in the absence of a report on the event (incident) or accusation [19].

Also stresses that it is still used during the investigation of criminal cases, after the court ruling. In carrying out of screening research, valid multiple-issue polygraph test with questions of comparison are applied. Depending on the number of topics that can be investigated by a polygraph examiner with the help of a single test, polygraph has developed a distribution according to typology for:

– *single-issue polygraph test;*
– *multiple-facet polygraph test;*
– *multiple-issue polygraph test.*

The first, single-issue polygraph test is a test in which relevant questions cover one topic. In order for the polygraph test to be considered one-dark, relevant questions must be constructed in such a way that the person investigated with the use of polygraph answers them either truthfully or untruthfully. Using a single-issue polygraph test, it is selected by a polygraph examiner according to the relevant system of assessment and made a decision by him on the amount of the obtained points, which allows to achieve the greatest accuracy of results during determination of truthfulness or untruthfulness of the person's answer to the relevant questions.

The second, multi-facet polygraph test is a test in which relevant questions cover the same event (topic,

fact), but may touch different aspects of it. That is, all relevant questions relate to one event, and the investigated can be true or false in the answers to both all questions and some of them. When applying a multi-aspect test, which is selected in order according to the developed system of assessment, the polygraph examiner can make decisions both on the amount of the obtained points and on the individual score on the separately applied relevant question.

The third, multi-issue polygraph test is a test in which relevant questions cover two or more topics that are partially or completely independent of each other. Forms of multi-national polygraph research, as mentioned above, include testing of candidates when they are hired or transferred to another position, as well as persons who have committed crimes after the court ruling. When applying a multi-capacity test, which is selected by a polygraph examiner in the order of the developed special system of assessment, the decision is made by him on a separate applied relevant question. The multi-issue polygraph tests are less accurate than single-issue polygraph test, but they will allow to cover several problems (topics) at once, and in case of necessity to determine in which of several directions it is necessary to continue further polygraph research. The introduction of new test formats used by foreign polygraph examiners into Ukrainian polygraph practice will significantly improve the quality of psychophysiological research using polygraph and the verified results of information data important for decision-making by the initiator of this procedure.

Conclusions

Polygraph test formats are represented by a certain set of specially formulated questions by the polygraph examiner for their verification from the investigating person using polygraph. Their proper construction testifies to the high skill of the polygraph specialist as a specialist in the polygraph field of activity. It is well-founded that at different stages of formation and development of polygraph science various test formats were used by practical polygraph specialists, on the basis of which appropriate methods were built, which ensured fulfillment of specific tasks within the subjects of the investigated questions. Also there was their constant rotation, that is to change one method other, more scientifically grounded and effective, which were fixed in polygraph for longer time before the appearance of the next progressive from the previous test formats.

It has been proved that the dynamic process of replacing some test formats with another is a normal practice for polygraph activity, since its development requires the removal of proven innovative methods to improve the quality of polygraph work and avoid errors, or to minimize them, during psychophysiological research with the use of polygraph and receiving verification results with its help. At present, there is a need to improve the polygraph practice, the mechanism of which is developed, evaluated and proposed by the American Polygraph Association. It has established a mandatory requirement for the use of appropriate methods, the results of which are confirmed by published scientific researches of scientists and polygraph researchers in corresponding professional publications and are reflected in the published Meta-analysis report of this public organization. The introduction of the relevant and necessary innovations offered by foreign polygraph specialists will ensure the quality of the work of polygraph examiners and raise the prestige of this profession in society.

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Сутність поліграфологічних тестових форматів і вимоги щодо їх застосування

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Анотація
Якість роботи поліграфолога та отриманих ним результатів психофізіологічних досліджень із застосуванням поліграфа залежить передусім від правильності використаних тестових форматів, що слугують індикаторами в перевірці інформаційних даних, отриманих від досліджуваних осіб, стосовно їх достовірності. Вони уособлюють механізм упровадження відповідних методик, які за умови належного їх застосування дають верифіковані результати. Різні школи з підготовки поліграфологів надають розрізнений і навіть застарілий навчальний методико-методологічний інструментарій, який не завжди відображає сучасні підходи в технологіях застосування тестових форматів, що спричиняє неоднозначне їх розуміння і сприйняття. Запровадження новацій використання тестових форматів і є метою цього дослідження. У дослідженні використано загальний діалектичний метод наукового пізнання реальних явищ, а також загальнонаукові та спеціальні методи поліграфології. Обґрунтовано наукову позицію щодо можливості впровадження нових тестових форматів, що становлять основу поліграфологічних методик для їх використання в правозастосовній діяльності поліграфолога під час проведення ним психофізіологічних досліджень із застосуванням поліграфа. Запропоновано класифікацію цих методик залежно від спрямованості поліграфологічної процедури. Встановлено, що наразі найбільш популярними в наукових і практичних колах є тести на впізнання та виявлення обману. У першій групі тестових форматів валідною вважають лише поліграфологічну методику CIT, яку відповідно до метааналізу може бути застосовано як дослідницьку, а не доказову. У другій групі тестових форматів валідними є доказові методики, методики для парного тестування та дослідницькі методики. Кожна з них має відповідне наповнення, цільове спрямування та рекомендована для використання в конкретній категорії проведення психофізіологічних досліджень із застосуванням поліграфа

Ключові слова:
поліграф; поліграфологія; спеціаліст-поліграфолог; поліграфологічні дослідження; поліграфологічні тести; тестові формати

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Typical Investigators of the Situation and Versions of the Priority Stage of Investigation of Illegal Manufacture, Processing or Repair of Firefighters

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Abstract
Modern illegal activity is becoming more and more organized, there is professionalism and specialization of these crimes. Wide practice has received use in affordable purposes of self-made explosive devices, grenades, grenade dispenser, mines and rounds. In view of the given, there is no doubt the relevance of optimization of the first stage of investigation of illegal manufacture, processing or repair of firefighters or falsification, illegal removal or change of its marking, or illegal manufacture of ammunition, explosives or explosive devices, separate typical investigation situations and versions. The purpose of the article is to separate the most typical investigative situations that arise at the initial stage of investigation of crimes envisaged by the Art. 263-1 CC of Ukraine, and elaboration of an algorithm of actions of authorized subjects concerning their solution. The combination of methods and methods of scientific knowledge is used to allocate typical investigative situations at the initial stage of investigation of the defined crimes, provided by Art. 263-1 CC of Ukraine, and the allocation of corresponding versions. On the basis of separate typical investigative situations of the initial stage of investigation of these crimes, typical investigative versions are proposed, which should be proposed and tested with regard to: the way of committing the crime; the person of the offender; the community; the introduction of other crimes, in particular those committed by means of the application of detected weapons, etc., is emphasized on the special urgency of the comprehensive application of appropriate unspoken investigative (search) actions and separate measures to ensure criminal proceedings – temporary access to property and documents, temporary removal of property, and arrest of property

Keywords:
evidences; armament supplies; investigative leads; information; investigative (search) actions; measures to ensure criminal proceedings

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Introduction

Of the whole group of crimes connected with violation of the established rules of handling of common dangerous objects, defined Art. 263-1 the Criminal Code of Ukraine "Illegal manufacture, processing or repair of firefighters or falsification, unlawful removal or change of their marking, or illegal manufacture of ammunition, explosives"[1], meets less often than others. However, this does not mean that their investigation and disclosure does not require the development of adequate response capabilities.

Recommendations for identifying the main fields and methods of investigation largely depend on the investigation situations at the initial stage of the investigation. The meaning of the identification of typical investigative situations at the beginning of the investigation is that they point to the content and direction of criminal proceedings [1, p. 176]. Application of the situational approach during the investigation of crimes envisaged by the Art. 263-1 of the Criminal Code of Ukraine[2], has also an important methodological value, because the allocation of typical investigative situations allows to formulate adequate tactical objectives of the program of activities of the investigator and other subjects [2, p. 964] in order to establish the circumstances of both a specific criminal offense and the whole criminal activity.

Many Ukrainian [3-5] and foreign [6-8] criminalists paid attention to study of investigation situations and development of algorithms on their basis, search of information about criminal offense and criminal, as well as recommendations on conducting investigative (search) actions and operational-investigative measures at various stages of investigation. Some conclusions made by these researchers. Among them A.A. Abdulmuslimov, Sh.R. Radzhabov "Methodology for investigating crimes related to illegal arms trafficking" [9]. E. Kleemans "Organised crime, transit crime and racketeering" [10], M. Klymchuk. et al. "Evaluation of forensic computer and technical expertise in criminal proceedings" [11], V.V. Bychkov "Arms and ammunition as the aspect that forms criminal trafficking of weapons" [12], K.V. Sharov "Ways to counter the investigation of crimes related to illegal arms trafficking" [13] have theoretical and practical meaning and can be used to separate the typical investigative situations of the initial stage of the investigation of crimes envisaged by Art. 263-1 of the Criminal Code of Ukraine[3], the release of versions and the development of a corresponding algorithm of actions concerning their confirmation or denial.

The desire to describe the concept of the investigation situation in a comprehensive way, its content, has caused the existence in literature of a large number of different definitions and relevant classifications, including those related to crimes related to the arms traffic. The classifications are based on different criteria, such as the amount of initial information; the source of the received information about the crime committed; the degree of information about the person of the offender; depending on the investigation mechanism and methods of crime; depending on the desire to cooperate with the investigative bodies; the location of the weapon detection; according to the number of possible perpetrators of crime, etc. [14–17].

At the same time, the crimes are envisaged by Art. 263-1 of the Criminal Code of Ukraine[4] have its specificity, which is caused by both the content and volume of the initial information and the sources from which it is received. It is also worth noting that their investigation is complicated by a number of factors. In particular, it is difficult to investigate cases when illegal manufacture, processing, repair of arms objects is accompanied by their storage, explosion, use during the execution of other crimes (the threat of murder or destruction of property, the use of physical violence, destruction or damage of property, etc.), and, if the reasons are, requires additional qualification on Art. 15, 115, 129, 187, 194, 195, 263 of the Criminal Code of Ukraine[5].

The purpose of the article is to find out typical investigative situations of the initial stage of investigation of the crimes envisaged by Article. 263-1 the CC of Ukraine, and elaboration of an action program on their solution on this basis.

Materials and Methods

The leading method of research is dialectical, with the help of laws and categories of which the essence of the first stage of investigation of illegal manufacture, processing or repair of firefighters, its typical investigative situations and versions, and peculiarities of the procedural actions, which are carried out during investigation of crimes of this kind is determined. The use of laws of formal logic and its methods, such as induction and deduction, analysis and synthesis, made it possible to define the structural-logical scheme of the article, to reveal properties and signs of the investigated criminal categories, to create a general idea about their contents during the investigation of the criminal offense. Also the following methods are used: dogmatic – for interpretation of certain concepts used in the article; typological and functional – for the purpose of drawing out investigation situations and versions of unlawful actions; methods of modeling and forecasting – for formation of proposals aimed at improvement of individual criminal

[1]Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.
[2]*Ibidem*, 2001.
[3]*Ibidem*, 2001.
[4]*Ibidem*, 2001.
[5]*Ibidem*, 2001.

recommendations; sociological and statistical methods – during analysis and generalization of the analytical base (judicial practice, questionnaire results).

The empirical base is the results of the study of materials of criminal proceedings initiated on the facts of the crime envisaged by the Article. 263-1 Criminal Code of Ukraine[1], considered by courts in 2016–2020 in different regions of Ukraine:

No. 12016160000000204 of 04/05/2016;
No. 12016220780000217 of 11/02/2016;
No. 12017040440002016 of 11/02/2017;
No. 12019100100010917 of 11/13/2019;
No. 12020000000000138 of 02/17/2020, etc.) [18]; summary of questionnaires of 185 investigators and operations staff of the National Police concerning the peculiarities of investigation of illegal manufacture, processing or repair of firefighters; review of judicial practice.

Results and Discussion

The study of investigation situations plays an extremely important role, since, as the doctrine notes, the basic provisions of this category contribute to the concretization and improvement of the investigation methodology "the crime at both the initial and subsequent stages of investigation, development of the system of investigative (search) actions and tactical operations, the advancement, evaluation and verification of investigative versions, which contributes to the increase of its practical significance during use in direct activity of the investigator" [19, p. 87].

Opening up the contents of possible investigation situations in criminal proceedings on committing crimes envisaged by the Art. 263-1 of the Criminal Code of Ukraine[2], it is worth noting that the story of such investigative situations is conditional. After all, as A.A. Matsola notes that a specific investigative situation, is always exclusively individual and can be traced only by one element of its numerous components. It characterizes a certain state of criminal proceedings, solved and unsolved tasks, results and difficulties of investigation, prospects of successful establishment of circumstances of crime [20, p. 88].

We will cite some typical investigation situations of the initial stage of the investigation of crimes envisaged by the Art. 263-1 of the Criminal Code of Ukraine[3], similar to a number of fairly common characteristics, and differ in degree of information uncertainty, we will select the versions, the most characteristic of the corresponding situation and determine the algorithm of procedural actions,

1) The fact of unauthorized traffic, use of arms, and doubts arise as to their origin.

In investigative practice, there are cases where the fact of "illegal carrying, storage, acquisition, transfer or sale of firearms, ammunition, explosives or explosive devices is revealed without the permission provided by law (Art. 263 Criminal Code of Ukraine"[4]) (42% of criminal proceedings), other crime (58%), and the fact of illegal manufacture, processing, repair of firefighters becomes known during the pretrial proceedings.

Typical versions in the above situation will be: a) the witnesses suspected in the criminal proceeding have illegally manufactured, processed, repaired the objects of arms; b) the perpetrators of the crime envisaged in the Art. 263-1 Criminal Code of Ukraine[5]; c) persons who committed crimes have information on illegal manufacture, introduction of constructive changes in the weapons used by them. In such cases, items of arms discovered during the examination of the event are removed and included in criminal proceedings as material evidences. Criminal proceedings are initiated and appropriate examinations are prescribed (usually complex molecular-genetic, dactyloscopic and ballistic (explosion-technical) examinations). "Upon receipt of the conclusion of the examination: in case of the determination that is not the subject of the arms removal, the criminal proceeding allocated from the main proceeding shall be closed on the basis of p. 2 p. 1 Art. 284 of the Criminal Procedural Code of Ukraine"[6]; "in case of the establishment, that it is the weapons, including self-defense, or reworked, in this case, investigative (search) actions and covert investigative (search) actions are carried out" [21, p. 68].

For the purpose of checking the presented versions, the investigator must ask witnesses who observed the fact of detection and removal of objects of arms; receive eye-witness testimony from residents, or employees of enterprises, institutions, organizations located near the place where actions on illegal circulation of arms, ammunition, explosives and devices for the purpose of establishing involved in the committed crime; according to Art. 167, 168 CPC of Ukraine[7] to carry out an overview of the storage media of recorded information from video cameras, registrars etc.

2) There is no reliable information about who specifically committed the crime, provided by the Art. 263-1 CC of Ukraine[8], but there are traces from which information about it can be obtained;

For example, during operational measures, a place (room, basement, garage, manufactory, specially equipped storage with the appropriate devices, tools) can be found,

[1]Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.
[2]*Ibidem*, 2001.
[3]*Ibidem*, 2001.
[4]*Ibidem*, 2001.
[5]*Ibidem*, 2001.
[6]Criminal Procedure Code of Ukraine. (2012, April). Retrieved from http://zakon.rada.gov.ua/go/4651-17.
[7]*Ibidem*, 2012.
[8]Criminal Code of Ukraine, op. cit.

which can testify to the illegal manufacture, processing, repair of arms objects. Thus, in 01/14/2021, during the search in the garage near the apartment building of the city of Toretsk, Donetsk region, 30 grenades of the RGD-5, five rocket-propelled grenade launcher (four RPG-22 and one RPG-26), grenade to the rifle-attached grenade launcher more than 5,5 thousand rounds for various weapons and other ammunition [17] were found.

The following versions may be proposed: a) detected at the scene indicates only the illicit manufacture, processing, repair of arms; b) traces at the scene of the crime testify not only the crime envisaged by the Art. 263-1 of the Criminal Code of Ukraine[1], as well as other crimes related to their use; c) objects and things related to firearms, belong to persons who are person involved in other criminal proceedings, are on a criminal record.

In this case, the investigator is recommended to organize the examination of the event scene, the identified traces, objects and subjects of arms, the establishment of the owner of the building, the vehicle, and after registration of the event in the Unified Register of pre-trial investigations – for the detection and fixing of evidence of the person's involvement in the crime envisaged by Article. 263-1 Criminal Code of Ukraine[2], or other crimes. In this case, it is necessary to inspect the crime scene, to carry out witnesses, searches, to check the persons on criminal records, to appoint the appropriate judicial expertise. It is also necessary to analyze and evaluate available operative reference materials; to collect and check information about persons who committed similar crimes; to check all available traces on the respective accounts; to organize audio-, video control of the location of the hide and adjacent territory, etc.

In this situation, other versions may be suspended. For example, "a possible version of the suspect, on whom information has been received, or any of his family's members, or someone related to his family, is engaged in the manufacture of weapons. Such a version may arise in case of identification of special literature in the person of manufacture of fire weapon, drawing of separate units and parts of weapon, etc." [22, p. 31]. The difference between the two investigation situations mentioned above is the situation where the offender is unknown, is the detection of the movement of illegally manufactured, recycled arms, their components using the Internet, mailing.

The actions of the investigator for such circumstances should be directed at the establishment of the involved. For this purpose, in particular, it is necessary to order the employees of the cybersecurity departments to monitor the Internet for the purpose of establishing information about the appropriate Internet resource, which provided a channel of sale (purchase) of arms, their accessories, possible contacts, etc.; to ask witnesses and persons who have found the fact of illegal arms traffic; to ask questions; conduct a check of documents and questioning of all persons on the scene with the purpose of further checking for involvement in the crime.

In the presence of sufficient grounds, for example, the operative information about the fact that the person is selling the processed objects of arms in the Internet, the investigator, the prosecutor can initiate the conduct of such covert investigative (search) activities as control over the crime in the form of controlled and prompt purchase (Art. 271 Criminal Procedural Code of Ukraine[3]). Here, however, it should be made clear that such a possibility can be caused by the presence of criminal proceedings, initiated on the grounds of a serious or especially serious crime committed on the sum of the crime envisaged by the Art. 263-1 of the Criminal Code of Ukraine[4], or without such. The above actions are aimed, first of all, at the establishment of both the person involved in the illegal manufacture, processing, repair of arms objects, and the persons who sold them, including Internet, couriers, etc.

Describing the initial actions of the investigator in such an investigation situation, caused by the place of movement of illegally manufactured, processed items of arms, for the purpose of checking certain versions, it should be taken into account that the traditional inspection of the place of the event as an immediate investigator (search) the action here may be inappropriate, since it is not always possible to reveal direct evidence of individual guilt (for example, instruments and devices for making constructive changes in the weapon in order to gain its functions of fire). At the same time, witnesses, search, presentation of a person for identification, appointment and examination, or simultaneous carrying out of the indicated and other procedural actions and operational measures, may be more relevant. For example, S.P. Melnychenko at the hearing points to the possibility of making a decision on the necessity of organization of the foundation or holding one or more investigators (search) and covert investigative (search) activities simultaneously: controlled delivery; special investigative experiment; imitation of the crime situation; prompt procurement [23, p. 226].

If there is a criminal proceeding, which has been initiated on the grounds of a serious or especially serious crime committed on the basis of the sum of the crime envisaged by the Art. 263 1 the Criminal Code of Ukraine[5], or without such, to check the above versions, it is necessary to involve the subdivisions of struggle against cybercrime, experts of other law-enforcement

[1]Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.
[2]*Ibidem*, 2001.
[3]Criminal Procedure Code of Ukraine. (2012, April). Retrieved from http://zakon.rada.gov.ua/go/4651-17.
[4]Criminal Code of Ukraine, op. cit.
[5]*Ibidem*, 2001.

bodies, in particular the Security Service of Ukraine, the State Revenue Service of Ukraine etc. in order to carry out a complex of investigative (search) actions and undisclosed investigative (search) actions envisaged by the Art. 263, 264 and 269 CPC of Ukraine[1].

In addition, taking into account the available initial criminal information, the investigator should take the following measures: to determine the possibility and expediency of prompt purchase and controlled delivery, special investigative experiment or imitation of the crime situation in the order of Art. 271 CPC of Ukraine[2]; if the tactical necessity in carrying out of the above actions is absent, or it is impossible to carry out them, it is expedient to conduct interrogation of witnesses and police officers; to conduct searches; to delete audio-video recordings; to appoint complex judicial molecular-genetic, dactyloscopic and explosion (ballistic) and other kinds of experts; to provide necessary written instructions.

3) Known person of the offender who denies his involvement in the crime envisaged by the Article. 263-1 CC of Ukraine [1], is hidden from the bodies of pre-trial investigation.

At that there are data received as a result of the conducted investigative (search), procedural and/or operative-search measures that the given person has carried out illegal manufacture, processing, repair of objects of arms. However, this information has no evidence available at the initial stage of the investigation. The suspect himself refuses to point out his involvement in the indicated activity, but the evidence that gives grounds to suspect a particular person in committing the crime provided for in Article 2. 263-1 CC of Ukraine[3], enough. This may indicate certain trace information at the scene, showing witnesses. Such an investigative situation may be accompanied by an action to counter the investigation.

It is worth noting that the crime envisaged by the Art. 263 1 Criminal Code of Ukraine[4], may also "become involved" in a number of other criminal acts, be a means of achieving other goals, a way of preparing for other crimes. Analysis of investigation and judicial practice shows that in 28% of cases such crimes were qualified by the sum with other crimes, provided by Art. 27, p. 2, Art. 29, 143, 149, 209, 314, 332-1, 358, 365 of the Criminal Code of Ukraine[5]. In such cases, the investigator has some difficulties in the investigation of criminal relations.

For example, the seller (buyer) was detained "red-handed" during sale of firefighters with signs of forgery, the courier with explosives and devices on the way of navigation, which gives a typical example for such situations of indication. They said, they bought weapons from strangers, about whom it is illegally made, I do not know. In such cases, the investigator's actions should be directed at the collection of additional evidences of the detention or other persons' unlawful manufacture, processing, repair of arms objects by means of examination of witnesses and witnesses, examination of the scene, magnetic media of information, searches, appointment and carrying out of the relevant molecular-genetic, dactyloscopic and ballistic, molecular-genetic, trace examinations as well as other investigative (search) and covert investigative (search) actions (in t. by giving instructions to operational workers).

In order to reveal and fix evidence about illegal activity of criminal organization O.S. Tarasenko points to the expediency of conducting covert investigative (search) actions aimed at monitoring of figures of a criminal organization, forbidden in commerce item of property (fire weapon) or place (Art. 269 CPC of Ukraine)[6]; withdrawal of information from transport telecommunication networks (Art. 263 CPC of Ukraine)[7]; removal of information from electronic information systems (Art. 264 CPC of Ukraine)[8]. In the future it is necessary to determine the necessity and expediency of conducting control over the crime (Art. 271 CPC of Ukraine)[9] in the form of prompt purchase or controlled delivery, imitation of crime [24, p. 117]. In the above-mentioned investigation situation, the following version can be confirmed/disposed: a) the arrested person crime connected with the illegal circulation of arms without knowing that they are recycled; the arrested person crime connected with the illegal circulation of arms objects, knowing that they are illegally produced, processed; b) the arrested person is a courier who has moved illegally manufactured, processed weapons and gives false testimony.

4) Known person who pleaded guilty to criminal offense.

There is enough evidence to reveal a particular person in involvement in the act. For example, an illegally manufactured weapon has been detected, and the person acknowledges his involvement in making constructive changes to it, at the place of residence of the suspect. In such cases, the main task of the investigator will be to conduct investigative (search) and procedural actions aimed at fixing evidence, clarifying the motives for committing the crime, the direction of the crime and the purpose, the check on involvement in other crimes, and the version of the self-defense. In any of the typical investigative situations we have identified, it is not necessary to

[1]Criminal Procedure Code of Ukraine. (2012, April). Retrieved from http://zakon.rada.gov.ua/go/4651-17.
[2]*Ibidem*, 2012.
[3]Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.
[4]*Ibidem*, 2001.
[5]*Ibidem*, 2001.
[6]Criminal Procedure Code of Ukraine, op. cit.
[7]*Ibidem*, 2012.
[8]*Ibidem*, 2012.
[9]*Ibidem*, 2012.

exclude the version of the ownership of the person who produced, interrupted the items of arms, to the organized criminal group, its involvement in other crimes. The complicity in this category of crimes is observed much more often than it is reflected in statistical data.

Such actions on arms subjects can be a chain of activities for their illegal use, and it is a component of organized group criminal activity of a general criminal nature (robbery, banditry, blackmail, etc.). Sometimes, it is knowledge of the next stage of illicit arms trafficking, for example, establishing the circumstances for the acquisition of weapons, identifying the role of each member of the group in a specific stage of illicit trafficking, that allows to consistently withdraw some of the following versions. it helps to establish a person who was engaged in illegal manufacture, processing, repair of objects of arms.

If there is information about the crime envisaged by the Article. 263-1 of the Criminal Code of Ukraine[1], as a part of the organized criminal group, as a rule, personal evidence is used for the aggregate of evidence, in connection with the fact that the members of the organized criminal group in the absolute majority of cases act actively counteracting, without giving true evidence as to the circumstances of committing crimes, without making any of the bars of such a group, in t. the number of persons involved in the illegal manufacture and processing of arms.

The typical list of urgent investigative (search) actions and other measures at the same time includes: 1) the detention of a person, procedural execution of detention in order of Art. 207-208 of the Criminal Procedural Code of Ukraine[2], and further movement of the person to the body of the pre-trial investigation; 2) personal search and review of the suspect's items. Immediately after the arrest of a person, it is necessary to review the personal items, and to temporarily remove those items that are important for criminal proceedings. First of all, it concerns arms, instruments and devices, other things removed from circulation; 3) examination of the scene of the accident, places of detention of the person, examination of the removed arms, documents, items, material values and other objects. At the same time, it is possible to organize the prosecution and detention of other perpetrators of the crime without delay by means of inspection and inspection of vehicles, the protection of the surrounding territory, etc.; 4) interrogation of the detained person; 5) identification and interrogation of witnesses of the crime; 6) the appointment and conduct of necessary judicial examinations (ballistic, molecular-genetic, etc.), evidence of crime, other material evidence; 7) search for the place of residence of the person, in other places; 8) as necessary – conduct adjudication, investigative experiment, presentation for the identification simultaneous interrogation of two or more already interviewed persons; 9) take measures to check the origin of detected weapons, ammunition, explosives and explosive devices; 10) check the detained person for other crimes with the use of firearms, explosives and establish its criminal links, possible sales places of illegally manufactured, processed weapons.

The order of conducting investigative (search) actions and other measures is determined by the investigator depending on the situation, and may differ from the above. In addition, depending on the specifics of the specific investigation situation, the application of the recommendations may not be sufficient. Then it is necessary to carry out other investigative (search) actions and measures chosen by the investigator depending on the specific situation based on his own experience and intuition. In any case, further investigation should be organized in such a way as to ensure compliance with the requirements of the full, full and impartiality of the pre-trial investigation. It is worth emphasizing the perspective of such a direction in the investigation of crimes envisaged by the Art. 263-1 of the Criminal Code of Ukraine[3], how to use modern information technologies, in particular social networks. The possibilities of social networks during the investigation of crimes of the investigated category (for example, the review of the Internet-site "Youtube" and other Internet-content, social networks) allow to get a variety of help information, information about the person, its connections, hobbies, attitude to something and similar, and also to determine their location [25, p. 426].

The stated allows to summarize that depending on the investigation situation and the proposed investigative versions, the basis of planning the investigation of crimes, provided by Art. 263-1 the Criminal Code of Ukraine[4], will constitute an approximate set of procedural actions, effective conduct of which will allow to identify, study and check the information about the circumstances of the crime, other criminal acts connected with it, to create their typical information model. Taking into account the initial investigation of the information received will help to supplement the criminalistics important information important for the nomination and verification of the versions during the pre-trial investigation.

Conclusions

Analysis of investigation practice of investigation of illegal manufacture, processing or repair of fire weapons or falsification, illegal removal or alteration of its marking, or illegal manufacture of ammunition, explosives or explosive devices has allowed to allocate the following typical investigation situations: 1) the fact of illegal traffic arms, use of weapons, and there are doubts about their

[1]Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.
[2]Criminal Procedure Code of Ukraine. (2012, April). Retrieved from http://zakon.rada.gov.ua/go/4651-17.
[3]Criminal Code of Ukraine, op. cit.
[4]*Ibidem*, 2001.

origin; 2) there is no reliable information about who specifically committed the crime, but there are traces from which information about it can be obtained; 3) a known individual of the offender who denies his involvement in the crime is being investigated; 4) a known individual of the offender who recognizes his or her fault in the criminal offense.

At the initial stage of the investigation of crimes envisaged by the Art. 263-1 the Criminal Code of Ukraine, on the basis of separate typical investigative situations, should be put forward and tested by the typical investigative versions: the way of committing the crime; the person of the offender; the conspirator of crime; the act of other crimes committed by means of the use of detected weapons and etc. In order to solve these investigative situations at the initial stage of the investigation, the necessary algorithm of actions of the investigator and operational staff is needed, where, apart from the mutually determined complex of investigative (search) actions and operational-investigative measures, appropriate covert investigative (search) actions, measures of criminal proceedings are especially relevant. Effective conduct of the above procedural measures will allow to identify, study and check the information about circumstances of the crime, other criminal acts connected with it, to create their typical information model.

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Типові слідчі ситуації та версії першочергового етапу розслідування незаконного виготовлення, переробки чи ремонту вогнепальної зброї

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Анотація
Сучасна протиправна діяльність дедалі більше набуває організованого характеру, спостерігається професіоналізація та спеціалізація зазначених злочинів, зокрема активне використання саморобних вибухових пристроїв, гранат, гранатометів, мін і снарядів. Зазначене підтверджує актуальність оптимізації першочергового етапу розслідування незаконного виготовлення, переробки чи ремонту вогнепальної зброї або фальсифікації, незаконного видалення чи зміни її маркування або незаконного виготовлення бойових припасів, вибухових речовин чи вибухових пристроїв, виокремлення типових слідчих ситуацій і версій. Метою статті є виокремлення найбільш характерних слідчих ситуацій, які виникають на початковому етапі розслідування злочинів, передбачених ст. 263-1 КК України, та вироблення алгоритму дій уповноважених суб'єктів щодо їх вирішення. Сукупність методів і прийомів наукового пізнання використано з метою виділення типових слідчих ситуацій на початковому етапі розслідування окреслених злочинів та висунення відповідних версій. На підставі виокремлених типових слідчих ситуацій початкового етапу розслідування цих злочинів запропоновано типові слідчі версії, які мають бути висунуті й перевірені щодо: способу вчинення злочину; особи злочинця; спільників; учинення інших злочинів, зокрема шляхом застосування виявлених предметів озброєння. Доведено необхідність усебічного застосування відповідних негласних слідчих (розшукових) дій та окремих заходів забезпечення кримінального провадження – тимчасового доступу до речей і документів, тимчасового вилучення майна, арешту майна

Ключові слова:
докази; предмети озброєння; слідчі версії; інформація; слідчі (розшукові) дії; заходи забезпечення кримінального провадження

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