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Interdependence of Marginality and Anomie

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■ **Abstract**. The causes, characteristics, and consequences of marginality and anomie, their mutual influence and connection are considered. Anomie is essentially a complex of social and cultural pathologies that affect society. Legal anomie has distinctive features. Marginality can be considered as a state of the individual, which implies its exclusion from social structures and generates uncertainty of social positions, which affects the consciousness of the person, their lifestyle and actions. Marginality underlies disorganisation and reorganisation processes in the life of society, it contributes to the emergence of anomie, the grounds of which generally consist in the discrepancy between the dominant ideology of priority of law and limited legal means and ways of satisfying life's needs. The consequence of anomie may be a sharp increase in the crime rate. Therefore, the study of marginality as a prerequisite for anomie is justified and relevant. The purpose of the study is to identify factors of marginal behaviour that have a destructive, even criminogenic potential; focusing on the fact that marginality destabilises social relations, leads to conflicts, offences, and anomie. The methodological basis of the study is a system of philosophical and ideological, general scientific and special scientific principles and methods, in particular: the principles of objectivity, concreteness, complexity; dialectical, formal and logical, systemic, structural and functional methods. The conclusions indicate that marginality is one of the causes of anomie, which, in turn, contributes to the further marginalisation of society. The scientific originality of the study is determined by the totality of the formulated conclusions and consists in explaining the interdependence of marginality and anomie, identifying ways to neutralise anomie processes through the practical implementation of the principles of the rule of law, legal equality, and eliminating the causes of marginal behaviour. The study results contribute to identifying ways to influence people who are prone to marginal behaviour, improving the means and methods of overcoming anomie in society, and reducing the manifestations of illegal behaviour. This indicates their practical significance

■ **Keywords**: conflict; offences; criminalisation; society; crisis

■ Introduction

In modern society, anomie manifests itself in the deepening of conflicts between different groups of the population, undermining the moral foundations of society, and increasing crime rates. There are many prerequisites for anomie. One of these prerequisites is marginality. The phenomenon of marginality significantly affects social processes, contributes to the disorganisation of public life, and creates a complex of problems which require their own understanding and solution by modern science, including legal science. It is particularly important in societies that are in the process of transformation, in a globalised world [1]. Now the process of globalisation provokes the strengthening of ethnic, cultural, and religious relationships of different levels and content of social systems, leads to the mutual dependence of the countries of the world, the aggravation of contradictions between them, the establishment of a new balance of power on continents, the enrichment of some countries and the accumulation of social problems in others, an increase in the flow of migrants to developed countries, a corresponding increase in the number of people who have lost their social status, are forced to adapt to changes and find their place in society anew. At the same time, the state's obligations in the field of human rights protection, unfortunately, are not always fulfilled [2]. This state of affairs contributes to the deformation of legal consciousness.

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The war, in particular the war unleashed by Russia against Ukraine on February 24, 2022, also adds serious problems. This war brings not only destruction and death to Ukrainians and Russians, but also an acute food crisis to the world's poorest countries, which means an even greater spread of poverty. Before the war, Ukraine was a major food seller. Now Ukrainian chernozems are littered with mines and damaged Russian tanks, and Russia is preventing the export of Ukrainian grain in every possible way. A huge number of people have been forced to become refugees and migrants since the beginning of hostilities. As a result, new marginal strata appear that are prone to deviant behaviour. This stimulates anomie. Anomie, as is known, is a violation in the axiological and normative system of society, in which the influence of social norms, including legal norms, on the behaviour of members of society decreases, and the scope of legal regulation sharply narrows. Anomie is a threat to public safety. Accordingly, the study of marginality as a prerequisite for anomie is justified and relevant.

The purpose of the study is to identify factors of marginal behaviour that have a destructive, even criminogenic potential; focusing on the fact that marginality destabilises social relations, leads to conflicts, offences, and anomie.

The scientific originality of the study is determined by the totality of the formulated conclusions and consists in explaining the interdependence of marginality and anomie, identifying ways to neutralise anomie processes through the practical implementation of the principles of the rule of law, legal equality, and eliminating the causes of marginal behaviour.

Literature Review

Anomie and marginality were studied by representatives of various sciences: philosophers, sociologists, psychologists, lawyers, political scientists, cultural scientists, anthropologists, etc. The term "marginal person" was first introduced into scientific use by the American sociologist Robert Park back in 1928, when he investigated the situation of migrants who could not completely change their lifestyle and adapt to the new environment. Such individuals occupied an intermediate place in society, were a certain border between social groups. R. Park [3] considered a marginal person as a person who is a carrier of cultural conflict between different groups, different cultures, and different civilisations.

The connection between Durkheim's sociological concept of anomie and the problems of criminology was established as early as 1938 by the American sociologist R.K. Merton [4] in his article "Social Structure and Anomie". The main reason for crime, he considered the contradiction between the values that society directs people to achieve and the possibilities of achieving them according to the rules established by this society.

The concept of the "marginal person" was substantiated in the 1930s by the American cultural scientist E. Stonequist [5]. Common features of such a person are isolation, ignoring any norms, a heightened sense of their race, and an inferiority complex. Such a person is an apostate, finds themself between the group from which they left and the group to which they seek to join, they are characterised by various forms of mental disorder and deviant behaviour.

Modern study on the theory of anomie in the scientific English-language literature was conducted by O.V. Pletniov [6].

V.A. Kuzmenkov [7] systematised scientific approaches to the study of anomie, identified six groups of theories that explain this manifestation of social pathology, namely: structural and functional, socio-cultural, communicative and informational, criminological, psychological, managerial.

The analysis of the concept of marginality in the views of representatives of the Chicago School of Sociology was carried out by M.D. Napso [8], who considered the social, cultural, and psychological aspects of this phenomenon, studied the conditions for the emergence of marginal forms, drew attention to the processes of adaptation and integration of marginals into a new socio-cultural context, showed the negative and positive aspects of marginalisation processes.

The relationship between anomie and crime in the works of E. Durkheim was considered by B. DiCristina [9]. The activity of marginal groups from the standpoint of criminology was investigated by A.O. Yosypiv [10].

These authors investigated marginality as a product of social mobility, noted the problem situation of a person who is excluded from social relations. However, the fact that marginal behaviour not only destabilises public relations, but also leads to conflicts, offences, and anomie has been ignored. Such research is the task of the author of the study.

Materials and Methods

The choice of research methods is determined by the purpose of the study. The methodological basis is a system of philosophical and ideological, general scientific and special scientific principles and methods, in particular: principles of objectivity, concreteness, complexity; dialectical, formal and logical, systemic, structural and functional.

The application of the principle of objectivity reveals that the causes of anomie can exist independently of the subject of knowledge, that it is necessary to investigate not only their genesis and state at the moment, but also to consider possible further transformations.

Guided by the principle of concreteness, it is assumed that truth is always concrete, abstract truth does not exist. For example, the norm of behaviour should be specified. Otherwise, this is not the norm. The principle of complexity contributes to the investigation of various factors of anomie, including the marginalisation of society, the causes and consequences of this process. The dialectical method allows understanding the process of spreading marginality and the emergence of anomie, determining the factors contributing to this, understanding the nature of these phenomena and their manifestations through the consciousness of a person and society. The formal and logical method was used to define the concepts of "anomie", "marginality", "marginal person", "marginal behaviour" and the like.

The system method is applied in the process of determining the impact of marginality on legal behaviour. The structural and functional method explained the relationship between social marginalisation and anomie.

Results and Discussion

Marginality (from Latin *margo* – edge, border) refers to complex social phenomena that are interpreted differently in the scientific literature. From the standpoint of social philosophy and sociology, marginality is a state of an individual who is rejected by society or a particular community due to its denial or non-compliance with the norms, rules, and requirements of this society.

Marginal person is a person, the worldview and the way of life of which do not correspond to what is recognised as a standard in a certain society, is traditional. This is an individual who is "on the edge" and this state affects their consciousness, lifestyle, and actions in a contradictory way. Usually, such a person demonstrates alienation, isolation, self-doubt, and uncertainty in society. Marginal behaviour can be considered as based on the personal anti-social interests of the individual. Marginalisation is the process of pushing certain social groups, or individuals, out of society. A favourable environment for this process is the crisis state of society [11].

Modern society creates conditions for the emergence of a marginal state. Significant groups of the population fall into the sphere of marginality, the number of marginal persons is growing, which indicates the expansion of the marginalisation space, the gap between a person and the usual environment, which leads to the emergence of internal personal conflicts with oneself and society. In the context of increasing social mobility, which leads to serious changes in the social structure, marginality takes on the features of a widespread negative phenomenon. Marginal persons themselves are often associated with those who are called social outsiders.

A marginal situation is associated with the transition state of a certain group or person. Usually, migrants, persons without a specific place of residence, alcoholics, convicts serving sentences, or those who have already served their sentences get into this situation. Even a law-abiding person can get into such a situation, who will either seek to get out of such a state, while acting within the framework of the current legislation, or he is absorbed in the situation and becomes a criminal [12].

Anomie is also a negative phenomenon, a manifestation of social pathology, a violation in the axiological and normative system of society, which is reflected in the following: a significant decrease in the importance of moral and legal norms, their violation; disorganisation of social, political and legal institutions, weakening of their influence, primarily the influence of the state; a decrease in the stability of the whole society, the destruction of social solidarity; a significant decrease in social discipline; disintegration of society; conflicts between social groups; the division of society into "leaders" and "losers".

The causes that give rise to anomie are primarily social, they are systemic in nature. Endless reforms, usually incomplete, unemployment, increasing poverty, deepening social inequality, injustice and inefficiency of social control mechanisms, inevitably leads to the degradation of social values, the loss of the significance of moral norms, the destruction of the once established social system.

Anomie causes such a psychological state of a person, characterised by loss of orientation in life, a person faces the need to choose to fulfill or ignore norms that contradict each other. The uncertain position of an individual leads to the fact that people have increased frustration, a sense of helplessness, isolation, emptiness, uselessness and meaninglessness of their existence. A person deliberately refuses to comply with the current social norms, destroys ties with society, loses moral guidelines, and the meaning of life, and becomes marginal. All this increases the depression in society, which loses the ability to effectively regulate the behaviour of its members.

The cause of anomie at the micro level may be a negative assessment of an individual by an important and significant group. For example, for young people, the main factor in the occurrence of socio-psychological stress may be poor results in sports competitions, negative attitude on the part of their peers, low grades in an educational institution. The source of individual marginalisation and abnormal tension at the level of the individual is always "negative relationships with others, in other words, relationships in which the individual is not perceived the way they would like to be perceived" [13]. A researcher from Saudi Arabia, M.A. Alduraivish [14],

hypothesised that there is a causal link between marginal parents and illegal behaviour of children, and the presence of deviant friends and the establishment of a criminal. The researcher found that the influence of deviant groups of peers and deviant or marginal parents in adolescence is quite similar. Both a group of peers and parents occupy an important place in the life of a teenager. It is their influence that determines the further behaviour of a person.

Detention and imprisonment have a significant impact on a person's behaviour. The key features of the prison environment that affect a person's behaviour and character are the following: the inability to communicate with family and friends who have remained at large, the prisoner does not have personal space, they cannot choose those who will be around, must obey certain rules that they do not always agree with. This has a very negative effect on the psyche. Prolonged imprisonment completely changes a person. Therefore, the studies highlight the need for social and psychological support of convicts, the organisation of patronage over persons who have served their sentences [15].

A crucial role for marginal behaviour is played by the factor of alienation, due to which an individual opposes themself to others, isolates from them, ceases to be a full member of society, does not take part in political, economic, legal processes, and rejects generally accepted values. Apathy, frustration, and despondency towards society are complemented by low self-esteem, feelings of inferiority, increased emotionality, vulnerability, and anxiety. As a result, there is a fear of being offended, forgotten, neglected, which is confirmed in practice, especially in a marginalised society. Quite often, the only way out of this situation, the marginal person considers suicide or aggression towards others. A marginal person can show aggressive behaviour not only openly, but also covertly, disguised, direct their aggression at such persons and objects that are not related to their state of frustration at all, and take out anger on individuals who are not involved in their problems. This state of the marginal person, in turn, stimulates anomie.

Legal anomie has its own specific manifestations: its nature is determined by a complex process of awareness of the discrepancy between life standards and social experience and the new requirements of the social environment; social inequality, lack of opportunities to implement their legitimate interests and needs in society.

Institutional prerequisites for legal anomie are expressed in the dysfunctionality of the institution of law, the priority of implicit, latent functions of law over declared functions, and the expansion of opportunities for institutionalisation of non-legal practices. First of all, the social structure of a modern marginalised society, whose members have mutually exclusive social interests and use legal resources at their own discretion and in their not always legitimate interests, contributes to reducing the importance of legal norms. This refers not just to non-compliance with the norms, their violation, but also the absence of sanctions for this. Nominally, the norms continue to exist, they can be implemented, or they can be violated with impunity. The authorities that should bring violators to justice, at best, demonstrate inaction, at worst – they themselves are involved in the offence. The most effective way to solve everyday problems is not to comply with the laws, but to circumvent them, using not formal means, but their "connections", influence, and bribes. The idea that it is impossible to achieve the protection of personal rights legally prevails and is actively cultivated.

Legal anomie negatively affects not only the marginal strata of the population, but also focuses on various social groups. Legal anomie is associated with the expansion of the sphere of illegal freedom, inefficiency, up to the complete loss of state control over the implementation of laws, the spread of illegal behaviour, and criminalisation of society. The term "criminalisation" usually refers to a form of anomie in which there are no differences between positive (for society) behaviour and negative, crime rates increase, criminal authorities influence economic and political processes, and the spiritual sphere. Crimes that were previously quite rare are increasingly being recorded. Legal nihilism is becoming a lifestyle for a huge number of people. The law loses its significance, instead of it reigns personal interest, own discretion, arbitrariness, the desire to achieve goal no matter what, corruption, irresponsibility.

Evidently, the criminalisation of society is the result of both objective and subjective factors. A distinctive feature of anomie in the modern world is the complete disregard for the interests of society and the priority of personal interests, even selfish ones that violate the legitimate interests of other persons and overall society.

Wars, riots, terrorist attacks, and cataclysms of various types that can occur even under the influence of atmospheric processes contribute to the spread of anomie and the growth of the number of marginal persons in society. All this leads to disorganisation of management, chaos, deepening the social division of the population, and mass illegal behaviour. In particular, according to the Prime Minister of Poland, M. Morawiecki, Russia's war against Ukraine already has global consequences in the form of the current situation in Ukraine and it is difficult to assess them in the future. A prolonged war in the long run can mean "the emergence of a new global hegemony that can marginalise the Western world" [16]. The war

started by a nuclear state is pushing the world towards a potentially deep restructuring. This has led to an escalation of tension in the world and encourages the European Union, the United Nations, NATO, and all civilised countries to reconsider their attitude towards Russia as an aggressor country and take new positions.

A particularly sharp and intense increase in anomie is observed when crisis processes worsen, when social protection systems of the population are destroyed, the standard of living of citizens decreases, laws and regulations are not implemented, the foundations of social existence are undermined, individual and public legal awareness is deformed, and the morality of individualism prevails. To implement personal interests, people are increasingly using not legitimate means, but effective ones under these circumstances. This is possible due to the destruction or loss of their functions by institutions and groups that mediate relations between the individual and the state.

Transformational processes that lead to negative phenomena in the spheres of economy, politics, spiritual life, war, corruption, poverty – all this contributes to the emergence of a normative vacuum that levels the current legal norms, demoralises society and the individual, and deepens the crisis of public and individual consciousness. The main signs of the modern crisis include: instability; change in basic social values up to their loss; predominance of material interests over spiritual ones; extreme individualism and intolerance to any opinion other than one's own; injustice; promotion of arbitrary means of satisfying basic needs. All this leads to the destruction of a single spiritual space, the loss of socio-cultural identity, the marginalisation of society, and marginal behaviour.

A crisis is also possible in the field of human rights. Thus, during the coronavirus (COVID-19) pandemic, older people were at a disproportionately high risk of severe infection and mortality. They were also vulnerable to loneliness and social isolation during a pandemic. Consequently, the psychological and physical burden on such people increased, which is a certain marginalising factor. In addition to physiological risk, morbidity, polypharmacy (use of more than five medications per day) and increased mortality, various social factors such as insecurity, loneliness, isolation, ageism, sexism, addiction, stigmatisation, ill-treatment, and restriction of access to medical care are crucial negative factors in a pandemic situation. Added to this burden were weakness, cognitive and sensory impairments, restrictions on freedom of movement due to quarantine, and the traditional poverty of the vast majority of pensioners. Marginalisation and restrictions on human rights increase the suffering of older people during COVID-19 pandemic[17]. All this contributes to the spread of anomie.

This state of affairs contributes to the demoralisation of society and depression of the individual, who is aware of their rightness, but at the same time helplessness. For some people, this is the cause of apathy, despondency, loss of interest in life, even suicide. Other people believe that they have the right to achieve what they want, even if they have to commit a crime to do so. Now, for example, in Ukraine, against the background of violation of the principle of equality, sharp social division, inflation, poverty, corruption, manipulation of public consciousness, and war, the deformation of all forms of legal consciousness is noticeable. Focusing on own personal problems, indifference to the problems of society, despondency, or even despair becomes a distinctive feature of modernity. The majority of the population focuses on their own problems and has little interest in public life. Psychologists have proven that to protect against the prevailing negativity in the world, an individual needs negative, not positive information. Realising that he or she is not the only one having difficulties, comparing himself or herself with others who are also suffering from injustice, lawlessness, helplessness, the individual is only trying to survive. At the same time, modern man is characterised by well-founded aggressiveness and constant readiness for self-defence.

A certain place among the factors of anomie and marginalisation is occupied by globalisation, which contributes to the migration of people from one country to another. Forced migration is usually accompanied by severe consequences for a person: physical and mental health worsens; people experience post-traumatic stress, which manifests itself in increased aggressiveness and deterioration of relationships with other people. At the same time, they find themselves in an unusual environment, where the language, social norms and traditions, and religion are different. Migrants often become outcasts in society, which contributes to their marginalisation and the spread of anomie.

To overcome the state of anomie and reduce the level of marginalisation of society, it is necessary to implement a set of political, socio-economic, ideological, and legal measures that the state should provide.

In political terms, a change in socio-economic policy, de-bureaucratisation of the state apparatus, and strengthening control over the activities of the authorities, which should make decisions taking into account the opinion of relevant specialists, can contribute to overcoming anomie and reducing the marginalisation of society.

The socio-economic policy of the state should be based on real economic indicators, not fictional ones, be effective and balanced, aimed at economic growth, overcoming poverty, and social protection of the entire population.

In ideological terms, it is necessary to achieve the establishment of a system of national values and ideological guidelines. It is ideology that allows creating a system of values and guidelines that will underlie political behaviour, determining specific goals of national policy, and selecting the means to achieve them. When developing an ideology, the state should strive to achieve unanimity and consensus in society, which are necessary for social and state stability, and would contribute to the unification of the entire population of the country into a single whole.

The state should work to improve legislation, eliminate shortcomings in laws and regulations that violate the rights and legitimate interests of citizens, and achieve proper implementation of existing regulations. First of all, it is necessary to achieve social justice, implement the principle of legal equality, reduce crime rates and reduce corruption.

Conclusions

Thus, marginality is one of the causes of anomie, and anomie, in turn, contributes to the further marginalisation of society. Marginality can be considered as the state of a person who is rejected and ignored by society or a particular community because of its violation of the norms adopted by that community or overall society.

Among the objective factors of marginality can be distinguished: transformation processes in society, economic, political, and social crisis, any conflicts in society, globalisation. Subjective factors of marginality are determined by the psychological and physical characteristics of each individual. Specific legal factors of marginality are imperfect legislation, gaps in law, criminalisation of society, deformation of legal consciousness, violation of human and civil rights and freedoms.

Marginality affects social processes, contributes to the disorganisation of public life, creates a complex of problems, including conflicts, illegal behaviour, and anomie. Anomie is a manifestation of social pathology, in which social norms and institutions disintegrate, and the real direction of transformation diverges from the declared goals and values. This is a discrepancy between the institutional system and the goal that is approved by the population. At the level of individuals, this state manifests itself in a conscious refusal to comply with existing social norms, including legal norms, destruction of ties with society, change of moral values and attitudes. In the spiritual sphere, anomie manifests itself in the uncertainty of the value system of the social community and the lack of clear value patterns in particular.

It is important to understand anomie as a discrepancy between the goals and standards of living imposed by modern society, and the limitations of ways to legally meet officially approved goals.

Legal anomie can be considered as a state of inconsistency between legal norms and social practices of the population. It manifests itself in mass illegal behaviour and criminalisation of society, one of the signs of which is a sharp increase in crime rates. Legal anomie generates a chain of destructive changes aimed at expanding the scope of illegal freedom, inefficiency of state control over the implementation of laws and bylaws, and criminal degeneration of basic social institutions. The role of the state in the life of society is reduced to protecting the interests of privileged groups of people.

The influence of anomie on the management of social processes in society significantly depends on political and state institutions, on the activities of government bodies. In a stable society, the level of anomie cannot be high. However, stable development is possible only if there is an effective system of legal, moral, and other norms and social institutions that ensure their implementation.

Overcoming the marginalisation of society and anomie should follow the path of maximum neutralisation of their socio-structural and ideological determinants, reorientation of society to lawful behaviour, increasing the effectiveness of legal norms, and establishing the rule of law and increasing the civic activity of each person.

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Взаємозалежність маргінальності та аномії

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■ **Анотація**. Розглянуто причини, характерні риси й наслідки маргінальності та аномії, їх взаємовплив і взаємозв’язок. Доведено, що аномія становить комплекс соціальних і культурних патологій, які вражають суспільство. Правова аномія означена певною специфікою. Маргінальність можна розглядати як стан особи, що передбачає її виключення із соціальних структур і спричиняє невизначеність соціальних позицій, що позначається на свідомості особи, її способі життя та діях. Маргінальність слугує основою дезорганізаційних і реорганізаційних процесів у житті суспільства, зумовлюючи появу аномії як наслідку розбіжності між домінуючою ідеологією пріоритетності права й обмеженими легальними засобами та способами задоволення життєвих потреб, що може призводити до різкого зростання рівня злочинності. Обґрунтовано актуальність дослідження маргінальності саме як передумови аномії. Метою роботи є визначення факторів маргінальної поведінки, що мають руйнівний, навіть криміногенний потенціал; зосередження уваги на тому факті, що маргінальність дестабілізує суспільні відносини, призводить до конфліктів, правопорушень та аномії. Методологічною основою статті стала система філософсько-світоглядних, загальнонаукових та спеціально-наукових принципів і методів, зокрема: принципи об’єктивності, конкретності, комплексності; методи діалектичний, формально-логічний, системний, структурно-функціональний. У висновках констатовано, що маргінальність є однією з причин аномії, яка своєю чергою сприяє подальшій маргіналізації суспільства. Наукова новизна статті полягає в поясненні взаємозалежності маргінальності й аномії, визначенні способів нейтралізації аномічних процесів через практичну реалізацію принципів верховенства права, правової рівності й усунення причин маргінальної поведінки. Результати дослідження сприятимуть віднайденню оптимальних шляхів впливу на осіб, схильних до маргінальної поведінки, удосконаленню засобів і методів подолання аномії в суспільстві та зменшенню виявів протиправної поведінки, що підтверджує їхню практичну значущість

■ **Ключові слова**: конфлікт; правопорушення; криміналізація; суспільство; криза

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Features of Intelligence-Gathering Counteraction to Crimes Related to Gambling Business

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■ **Abstract**. The relevance of the study is conditioned by the fact that the authors comprehensively investigated the issues of intelligence-gathering counteraction to crimes related to gambling business, after the legalisation of gambling in Ukraine in 2020. The study clearly identified and described all the elements of the system of countering these crimes: crime prevention, crime detection, and response to crimes. The purpose of the study is to investigate the features of intelligence-gathering counteraction to crimes related to gambling in order to increase the effectiveness of counteraction to such crimes. To achieve this goal, the study used general scientific and special legal methods: the general dialectical method of scientific cognition of phenomena and their ties; formal and legal (dogmatic or legal and technical); system and structural; comparative law; generalisation. The system of intelligence-gathering counteraction to crimes related to gambling business includes: crime prevention, crime detection, and response to crime. Prevention of gambling-related crimes includes actions and intelligence-gathering measures for general and individual prevention. Detection of crimes related to gambling is carried out by operational units during intelligence-gathering activities to identify and suppress predicate crimes. Response to identified crimes includes documenting criminal activity and transferring materials to the appropriate investigative unit for making a decision on the initiation of criminal proceedings. The authors propose specific mechanisms for intelligence-gathering counteraction to crimes related to gambling

■ **Keywords**: intelligence-gathering activities; gambling establishment; gambling; corruption crimes; legitimisation of proceeds from crime; operational units

■ Introduction

The Law of Ukraine "On State Regulation of Activities on Organising and Conducting Gambling" No. 768-IX of July 14, 2020 [1] allows gambling in Ukraine. By the end of 2020, the authorised body of state regulation and control over gambling – the Commission for regulating gambling and lotteries – was established, and in 2021, the issuance of licenses for organising and conducting various types of gambling began. At the beginning of 2022, more than 30 licenses were issued for organising and conducting gambling in Ukraine: 8 casino licenses, 12 for slot machine halls (each gives the right to open up to 5 halls), 3 for organising and conducting betting activities, and 15 online casino sites were launched [2].

The legalisation of gambling has also contributed to changes in the structure of crime and the emergence of crimes related to gambling. Gambling-related crimes include the following types of criminally punishable acts, the method or means of committing or concealing which is the organisation and conduct of gambling, while the gambling organisers themselves are not always complicit in such crimes, and sometimes do not know about them.

Thus, all over the world, gambling is one of the tools for legalising corruption proceeds, proceeds from crime, and the commission of other crimes. Such high risks of gambling always determine its specific legal regulation by the state according to a special management model with enhanced monitoring and control over gambling.

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At the same time, as of 2022, the monitoring system in Ukraine still does not work, since the state system of online monitoring has not been put into commercial operation, and state control over the gambling market is also not carried out, since all control measures have been stopped for the period of martial law. All this contributes to the development of gambling-related crime, which leads to an increase in the overall crime rate.

The emergence of new ways of committing crimes using gambling requires the development of new forms of means and methods of countering such crimes, which determines the relevance of this study, because the prevention, detection, and documentation of such crimes due to their high latency is quite complex and requires scientific provision of operational workers with knowledge about the features of crimes related to gambling.

The studies from various branches of legal science are devoted to the investigation of problematic issues of state regulation of gambling business. International researchers have studied the criminality of pathological players, and crimes related to gambling have been considered from the standpoint of the nature and causes of crime related to gambling. J. Banks & D. Waugh [3, p. 339] considered the systematisation and main features of crimes related to gambling, and also analysed the relationship between pathological players and their propensity to crime. A. Adolphe, L. Khatib, C. van Golde, S.M. Gainsbury & A. Blaszczynski [4, p. 395] investigated the instrumental relationship between problem gambling and player crime. J.N. Arthur, R.J. Williams, & Y.D. Belanger [5, p. 49], studied the relationship between legal gambling and crime.

In particular, S. Chernyavsky & O. Juzha [6, p. 157] have investigated the issues of countering economic crimes as part of the system of ensuring the economic security of the state. L.V. Lefterov [7, p. 89] considered issues of countering cybercrime, in particular, fraud on the Internet. V.O. Dopilko, & R.V. Yavdoshchuk [8, p. 90] examined legal means of countering smuggling. M. Shcherbakovsky, & R. Stepaniuk [9, p. 117] inspected the problems of countering corruption crimes, focusing on the main mistakes of law enforcement agencies during intelligence-gathering activities and criminal proceedings, which affect the proof of corruption facts. M.A. Pogoretsky [10, p. 36] paid much attention in general to the issues of investigative activity and the use of its results in criminal proceedings when counteracting certain types of crime, in particular, fraud with financial resources. O. Tarasenko, & A. Shevchishen [11, p. 105] focused on the use of intelligence tools in pre-trial investigation.

At the same time, the issues of countering crimes related to gambling in the course of intelligence-gathering activities have not been comprehensively considered, which determines the relevance of this study.

The purpose of the study is to investigate the features of crimes related to gambling and develop a system of intelligence-gathering counteraction to them to provide practitioners with effective means of countering crime. To achieve this goal, the following tasks were set:

– carry out classification and determine the specifics of crimes related to gambling;

– investigate the system of intelligence-gathering counteraction to crimes related to gambling business, and characterise its elements;

– provide recommendations on the specifics of applying certain elements of intelligence-gathering counteraction to crimes related to gambling.

Materials and Methods

The authors used general scientific and special methods to achieve the purpose and consider the objectives of the study. The general dialectical method of scientific cognition of phenomena and their links is used to investigate the mechanism of criminal activity related to gambling and its reflection in the environment, and to study the forms, methods, and means of intelligence-gathering counteraction to these crimes.

The formal legal (dogmatic or legal and technical) method was used to study and interpret the norms of legislative acts that regulate the issues of legal regulation of gambling and intelligence-gathering activities. Special legal methods were also used, the system and structural method was used to determine the features of crimes related to gambling and group such crimes into a certain system by individual characteristics. The comparative law method was used to contrast the norms of legislative acts of various branches of law regulating gambling, crime, and intelligence-gathering activities.

The method of generalisation allowed consistently bringing certain facts together and formulating reasonable conclusions of scientific research aimed at improving the effectiveness of intelligence-gathering counteraction to crimes related to gambling.

The theoretical basis of the study is the laws and regulations of Ukraine regulating the issues of gambling, intelligence-gathering counteraction to crime, recognition of certain acts as crimes, and studies by Ukrainian and foreign researchers in this area.

Results and Discussion

Classification and features of crimes related to gambling. Crimes related to gambling are grouped according to certain characteristic features of the mechanism of criminal activity. Such characteristic features make certain changes in the environment, manifested in special traces, which determines the features of intelligence-gathering counteraction to such crimes.

Crimes related to gambling include such crimes that are committed or hidden using the sphere of gambling, in particular: articles 366-2 (declaration of false information), 368 (acceptance of an offer, promise or receipt of illegal benefits by an official), 368-5 (illegal enrichment), 369-2 (abuse of influence), which are hidden due to the concealment of the facts of obtaining illegal benefits under the guise of winning a gambling game or lottery; 209 (legitimisation (laundering) of property received, 222 (fraud with financial resources), which provide for the provision of false information about income in the form of gambling winnings; and a number of other crimes that can be committed by players in gambling establishments by prior agreement with employees of gambling establishments or without such – articles 190, 191, 212, 212-1 of the Criminal Code (CC) of Ukraine [12].

Characteristic features of crimes related to gambling are the presence of a mercenary motive, connection with the concealment of other criminal activities using gambling; usually committed by prior agreement with representatives of the legal organiser of gambling (licensee), etc.

The authors of this study propose to divide the crimes defined above into the following groups:

– legitimisation of corrupt income using gambling;

– legitimisation of income obtained by criminal means (arms and drug trafficking, smuggling, human trafficking) using gambling;

– other crimes related to the organisation and conduct of gambling (fraud, computer crimes).

Broad discretionary powers of officials and insufficient effectiveness of preventive functions to prevent corruption (preventing conflicts of interest, strengthening the role of the public, random verification of declarations, increasing the transparency of public service) an important role is assigned to repressive functions and the effectiveness of criminal prosecution of criminals [13].

When receiving corrupt income, a person usually plans a way to hide this fact and create a version of the legal origin of such income. To do this, a person can visit a gambling establishment or purchase a lottery ticket to create the appearance of winning a significant amount of funds. Unfortunately, today the Unified State Register of Declarations of Persons Authorised to Perform the Functions of the State or Local Government is closed for the period of martial law. However, a few years ago, the authors considered in detail the example when a people's deputy of Ukraine declared three lottery winnings for large amounts within a month, and another people's deputy declared lottery winnings for more than one million UAH [14].

To establish such facts, operational units can get acquainted with the documents of the lottery operator or gambling organiser, which record the facts of winnings for a certain period. For example, for a lottery operator, such documents are records of drawing panels, which record the fact that a winning game combination falls out for a certain draw, and accounting documents confirming the fact of payment of a certain amount of winnings. At the same time, gambling organisers keep personal reports on the accrual and payment of taxes on winnings, regardless of the amount of winnings, and therefore, when paying winnings, the gambling organiser receives personal information of the player and the taxpayer code, and also submits such information in the tax report for quarter 1DF. Lottery operators keep depersonalised tax reports, so it will be impossible to get personal information about the player, but it is advisable to compare information about the date of payment of winnings to the lottery player, its amount, and whether such amounts of winnings were recorded as lottery winnings on a certain date.

Legitimisation of other income obtained by criminal means through the use of gambling provides for the legitimisation of funds received from criminal activities through winnings in gambling establishments, in particular: arms trafficking, drug trafficking, human trafficking, smuggling, tax evasion, etc. Such actions are qualified under Article 209 (legitimisation (laundering) of property obtained by criminal means); Article 222 (fraud with financial resources) of the CC of Ukraine.

On the part of gambling organisers, such crimes are usually accompanied by forgery of documents, that is, drawing up and issuing a false certificate of winnings for a certain amount. To establish this fact, it is necessary to get information from the gambling organiser about the visit of a gambling establishment on a certain date by a specific person, because visitors are identified in gambling establishments. In addition, operational units can also check the information whether a win of this amount or several winnings for the total amount in the gambling establishment fell out. Now this information should also be available in the online systems of gambling organisers, and after the introduction of the state online monitoring system into commercial operation, this information will be available to the Commission for Regulation of Gambling and Lotteries, which is the authorised body of state regulation and control over gambling.

Other crimes related to the organisation and conduct of gambling include crimes whose method of commission is related to the functioning of the gambling business. Such crimes may be acts provided for in Article 212 of the CC of Ukraine (tax evasion – payment of wages as winnings or payment for work performed or services rendered in cash) and 212-1 of the CC of Ukraine (evasion of payment of SSC) and other insurance premiums, Article 190 of the CC of

Ukraine (fraud committed by casino players), commission of crimes against property by gambling – dependent players – articles 191, 185, 186 of the CC of Ukraine, computer crimes.

Almost half of the scams committed using computer technology, in particular phishing (and farming, which is a hidden variant of phishing), are committed through various fraudulent sweepstakes and lotteries [15]. Bank payments also practise replacing the MCC payment code on terminals – "black" acquiring, due to this payment is accepted for "video games", "sweepstakes" instead of indicating the real purpose of the payment – "gambling" ("The game is getting dark") . Such crimes can be committed only with the participation of esquires, which allow to make such a change in payment codes in payment systems [10, p. 40].

Tax evasion using gambling is implemented in countries where there is a certain amount of non-taxable winnings in a gambling establishment. Thus, the draft law No. 2713-D is awaiting consideration by the parliament, which is proposed to exempt from taxation income in the form of winnings in the amount of up to UAH 65,000 [16].

The bodies that are authorised to identify and investigate corruption crimes, and provided for in Article 209 of the CC of Ukraine according to Article 126 of the CPC of Ukraine are the National Anti-Corruption Bureau and the State Bureau of Investigation, depending on the status of the subject who commits the crime, and in relation to crimes provided for in articles 212, 212-1, 222 of the CC of Ukraine – Financial Investigations Service, which is provided for in Article 216 of the CPC of Ukraine [17]. Intelligence-gathering activities for these crimes are carried out by the relevant divisions of these bodies: the National Anti-Corruption Bureau of Ukraine – detectives, operational-technical, internal control; the State Bureau of Investigation – operational, operational-technical, internal control, personal security; the Financial Investigations Service of Ukraine – divisions of detectives, operational-technical units.

System of intelligence-gathering counteraction to crimes related to gambling. A well-established opinion is that countering crime by its nature is a law enforcement activity, which is considered as a multifunctional and diverse concept that covers almost all spheres of state activity [18]. The process of responding to a committed crime forms an independent system of measures that are applied in a certain sequence [19]. The authors of this study agree with M.L. Gribov & A.M. Chernyak [18], that the anti-crime system includes blocks for crime prevention, crime detection, and crime response.

The Constitution of Ukraine [20] in a number of Articles (29, 31, 34, 39) uses the term prevention of crimes. This term covers all preventive activities of law enforcement agencies, while the detection and suppression of crimes does not refer to preventive activities, because it means that the crime has already been committed (even at the stage of preparation or attempted crime, criminal activity is already taking place).

Crime prevention literally means activities that prevent the commission of crimes. The main purpose of preventive activities is to prevent the commission of crimes, reduce their number and thereby reduce the scale of crime [21].

Given the above, the authors agree that the prevention of crimes of a certain type includes general prevention (identification of the causes and conditions that contribute to the commission of certain crimes) and individual prevention – prevention of crimes (identification of persons who are trying to commit a crime, and the implementation of certain measures to them in order to prevent the implementation of their plans).

Thus, operational general prevention includes actions to identify the causes and conditions that contribute to the commission of a certain type of crime, that is, preventing the formation of criminal intent in the future in persons who are prone to committing criminal offences or in persons who use certain reasons and conditions. Such reasons and conditions may be gaps in the current legislation, lack of proper state control over the sphere of gambling or certain types of it, certain gambling establishments, imperfection of the system of identification and admission of players in a certain gambling institution, motivating a person to use them, as a result of which a criminal intention to commit a certain crime related to gambling is formed.

Now such reasons and conditions that contribute to the commission of crimes related to gambling are: the lack of a state system of online monitoring, the suspension of control measures for the period of martial law, violation of the procedure for identifying visitors to a gambling establishment, negligence in the registration of accounting and tax accounting documents regarding the recording of operations for accepting a bet and paying winnings in a gambling establishment, incorrectness, late entry of data into the online systems of gambling organisers about all operations for accepting a bet, returning a bet, paying winnings or any other operations. Intelligence-gathering measures for general preventive crimes related to gambling can be:

– holding meetings with gambling organisers (including on the basis of the regulator – the Commission for Regulation of Gambling and Lotteries) and covering information on the awareness of law enforcement agencies about the facts and risks of using gambling for criminal activities and on the readiness to respond to any facts of illegal activities using gambling;

– constant cooperation with authorised state bodies – the Commission for Regulation of Gambling and Lotteries (in terms of compliance by the organisers with licensing legislation and the procedure for organising and conducting gambling), the Ministry of Finance of Ukraine (in terms of compliance by the organisers with legislation on preventing the legitimisation of proceeds from crime), the state tax service of Ukraine (in terms of the exchange of tax information). For example, the Commission for Regulation of Gambling and Lotteries and the Financial Investigations Service signed a memorandum of cooperation and information exchange on February 23, 2022. According to the memorandum, the Ukrainian Commission for Regulation of Gambling and Lotteries and Financial Investigations Service will coordinate efforts in activities aimed at preventing, detecting, suppressing, and investigating offences related to the illegal organisation and conduct of gambling and lotteries in Ukraine, in particular, creating conditions for shadowing the sphere. Within the framework of the Memorandum, the agencies agreed on the exchange of statistical, reference materials, methodological recommendations, consultations, and joint activities [22].

– media reports on the successful results of intelligence-gathering activities, elimination of criminal schemes, and exposure of criminal organisations that help legalise funds obtained by criminal means using gambling;

– implementation of continuous criminal analysis of crimes related to gambling, for the implementation of measures to prevent such crimes in the future by means of general and individual prevention.

Operational individual prevention provides for operational work to prevent the commission of a crime by a specific person (at the stage of occurrence of intent to commit a crime, preparation or attempt to commit it), that is, to prevent the transition of a person from the process of forming intent to commit a certain crime to the implementation of criminal intent (performing preparatory actions for its commission, attempt or commission of a crime) and always has its own object of influence.

Such operational individual prevention can be carried out both in relation to employees of the gambling organiser, and in relation to other persons who are not employees of the organiser, but have acquaintances and influence on persons who work in a gambling establishment and can "help" to realise criminal intent, and in relation to persons who wish to realise criminal intent using gambling.

Information about persons who wish to commit a crime using gambling can be obtained from persons who heard the conversation or were participants in a conversation with a person during which a person announced their intentions to use gambling to legalise corruption proceeds, criminal proceeds, deception of a gambling establishment, etc. Perhaps in such a conversation, the person asked the interlocutor to assist in the search for persons who could become accomplices in such a crime or help in concealing it.

Crime detection is the activity of searching for and recording information about: preparation for a crime; attempted crime; committing a completed crime [18, p. 48]. Most gambling-related crimes are preceded by predicate crimes, which result in income that needs to be legalised. Thus, funds received as a result of the sale of weapons, drugs, smuggling, etc., are further legalised through playing in a casino, a person allegedly makes a bet and wins a large amount of funds, then receives a certificate of winnings from a gambling establishment and can then transfer such funds to a bank account or use them as legal funds.

In official crimes, there is a similar mechanism for legalising corrupt income: a person accumulates a certain amount of illegal income received as an illegal benefit, then plays in a casino and receives a certificate of winnings. After that, a person submits a declaration of changes in the property status, where they indicate income in the form of gambling winnings. For example, during the period of the ban on gambling, such a scheme was actively used in state lotteries, an example was mentioned when a people's deputy of Ukraine declared three lottery winnings for large amounts within a month, another people's deputy declared lottery winnings in the amount of more than one million UAH [23, p. 400].

A common way to conceal illegal enrichment can also simultaneously be to obtain a certificate of winnings from a gambling establishment, conclude imaginary transactions, etc., that is, perform any actions that would allow a person to obtain documents confirming the existence of income sufficient to acquire the received assets [14, p. 306]. Often a person first acquires an asset (real estate) under a preliminary contract of sale, a contract of acquisition of property rights, because in the register of real estate such contracts are not indicated, then provides themself with certificates of allegedly receiving additional income (certificates of winning in a gambling establishment), can even submit a notice of significant changes in the property status, and after that already enters into a contract of sale of real estate for the real amount of the transaction with the reflection of information in the annual declaration on the expenditure of funds for the purchase of property.

In addition, the gambling business can be used to pay wages to citizens, since when paying winnings in gambling, the tax will be less than when paying wages, since the employer additionally pays 22% of the single social contribution, and also deducts 18% of personal income tax and 1.5% of the military fee from the employee's salary [24]. When paying out winnings,

the gambling organiser, as a tax agent, only deducts 18% of personal income tax and 1.5% of the military fee. In addition, the draft law No. 2713-D [16] is awaiting consideration in the Parliament today, which are proposed to exempt from taxation income in the form of winnings in the amount of up to UAH 65,000. After the adoption of such a law, it is expected that the risks of paying "wages" without taxes as gambling winnings will become more frequent. In this case, it will be more profitable for employers to use the online casino, adding funds to the player's online wallet and then "withdraw" funds from it as winnings.

Detection of such crimes is quite difficult due to the high latency of both predicate crimes and actually those related to gambling due to the secrecy of their commission, involvement of organised criminal groups in the crime and preliminary collusion with representatives of the gambling organiser, who provide such "services" on a permanent basis and only through verified persons. Therefore, the organisation of work of operational units to detect such crimes requires special attention.

According to M.A. Pogoretskyi [25, p. 360], detection of a crime by units authorised to carry out the intelligence-gathering activities, is a complex process that consists in searching for factual data indicating the signs of a crime, their operational-search documentation (recording) to obtain the materials of the intelligence-gathering activities, research these materials, establish in them sufficient data indicating the signs of a crime (their criminal and criminal-legal assessment) and make a decision to initiate criminal proceedings or refuse to initiate it. Considering the norms of the current Code of Criminal Procedure of Ukraine, if the results of the implementation of intelligence-gathering activities reveal signs of a crime, the head of the operational unit immediately sends the collected materials, which record the facts of illegal activities, to the relevant divisions of the pre-trial investigation bodies or prosecutor to make a decision on entering information in the Unified Register of Pre-trial Investigation and the beginning of a pre-trial investigation according to Article 214 of the CPC of Ukraine, and the reason for starting criminal proceedings will be the independent identification from the materials provided to the investigator or prosecutor of circumstances that may indicate the commission of a criminal offence [26, p. 220].

Conducting intelligence-gathering activities to identify and suppress predicate crimes – arms trafficking, drugs, smuggling, committing corruption crimes (obtaining illegal benefits, illegal enrichment, abuse of influence), during which operational units can reveal the facts of concealing such crimes using gambling. Such activities are tasked with identifying individuals and facts of operational interest that have not previously come to the attention of operational units. Intelligence-gathering is an organisational and tactical form of intelligence-gathering activities, the essence of which is to identify persons and facts of operational interest to the internal affairs bodies [27, p. 191]. With an intelligence-gathering, the process of identifying criminal activity actually begins.

Confidential cooperation on the legitimisation of proceeds from crime (from the sale of weapons, drugs, smuggling) using gambling in Ukraine is usually carried out at the international level. In this case, crimes related to gambling are usually detected during the investigation of the facts of the main criminal activity. In this case, international cooperation may provide for the exchange between states of information that is necessary for conducting secret investigations, conducting joint operations by law enforcement agencies of two or more countries to secretly control the commission of crimes related to illegal crossing of state borders and illegal movement through them of objects and substances prohibited for free circulation; conducting a secret investigation (intelligence-gathering activities) by law enforcement agencies of one state at the request of law enforcement agencies of another and others [28, p. 18].

In the process of prompt search, documents can be drawn up that confirm the implementation of specific activities with a reflection of their effectiveness. An operational employee can provide: a report outlining the results of oral interviews conducted by them, a certificate of studying the documents of an organisation or enterprise for a certain period, indicating proposals on the methods and time of subsequent receipt of information from this source by procedural means, and other information and documents [29, p. 155].

An operational survey is effective for obtaining information necessary for the prevention and detection of crimes, and for the operational development of individuals. An operational survey is allowed to be conducted by the Law of Ukraine "On Intelligence-Gathering Activities" [30] of February 18, 1992 No. 2135-XII (Law No. 2135). Such a survey is usually conducted when receiving messages from citizens about facts of operational interest and is conducted by an operational employee openly and with the consent of the person being interviewed and is usually reflected in the person's own written explanations.

Separately, attention should be paid to the intelligence (secret) operational survey, which consists in direct communication of operational units with individuals to obtain information about persons, events, objects, facts of operational interest, but without disclosing their identity and the purpose of the survey. In order to identify possible facts of committing crimes related to gambling, operational units can

conduct a secret survey of employees of gambling organisers. A secret survey is an event conducted by law enforcement officers with the concealment of their personal data and professional affiliation, which also consists in obtaining information necessary for the prevention of crimes, their detection, termination, and investigation, by communicating with the interviewed persons (oral or written; direct or indirect; using technical means of communication or without them) [31, p. 10]. Law No. 2135 [30] separately defines only a survey of persons with their consent, that is, as a public survey. Accordingly, a secret survey is implemented not as a separate intelligence-gathering activities, but as part of the implementation of other intelligence-gathering activities (performing a special task to uncover the criminal activities of an organised group or criminal organisation, during confidential cooperation or during the agent work of full-time and freelance secret employees). The results of a secret survey are reflected in the documents compiled by the operational employee: report, reference, report. An unspoken survey should be consolidated in the current legislation of Ukraine, which would allow controlling such activities and avoiding abuse [31, p. 16].

Obtaining reference and analytical information consists in the open collection of information, including by sending requests to the enterprise and receiving information and documents from them. It is possible to identify the facts of committing crimes using gambling during familiarisation with the financial and economic activities of enterprises of both gambling organisers and other enterprises, institutions, and organisations. The task of such an intelligence-gathering activity is: obtaining data describing the activities of enterprises, institutions, and organisations, regardless of ownership forms; obtaining copies of documents that are important for solving the problems of intelligence-gathering activities; legending the source of information; checking primary operational information; establishing the causes and conditions that contribute to the commission of a crime; establishing persons involved in criminal activity and their connections; establishing possible witnesses to criminal activity; selecting candidates for secret cooperation [32, p. 209]. When studying the documents of gambling organisers, it is necessary to pay attention to whether there is a frequent payment of winnings to certain persons, what is the interval of such payment, who works a shift in a gambling establishment, when a certain person "wins" in gambling and receives winnings. The study of documentation of other enterprises may be related to obtaining information from banking institutions, whether the person provided a certificate of winnings to deposit a certain amount of funds to the account, or whether funds in a certain amount were received to the person's account from the gambling organiser, from one or more organisers funds were received as winnings in gambling, what is the frequency and amount of winnings. Such information is necessary to verify possible facts of declaring false information (when a person indicated winnings for a certain amount in the declaration) or facts of illegal enrichment.

The facts of committing crimes related to gambling can be revealed during the implementation of a personal intelligence-gathering or operational proceedings in relation to a certain person on the facts of such a person receiving illegal benefits or committing criminal activities in respect of which in the future there is a need to legalise the income obtained by criminal means. Personal search is carried out in relation to a certain person or place and involves the following tasks: identifying a place (gambling establishment) that is of operational interest among the network of institutions; identifying the causes and conditions that contribute to the commission of crimes in a particular gambling establishment; identifying the criminal activity of certain persons and its termination; identifying other persons (accomplices) who intend to commit a crime, plan, prepare for a crime or commit it; secretly obtaining certain data about a person of operational interest. Personal search can include audio or video recording of a person or place of operational interest. Fixing the results of a personal search is carried out by documenting: a report, certificate, or written explanation is drawn up. The response to crimes by operational units involves documenting criminal activities and transferring materials to the appropriate investigative unit for making a decision on the initiation of criminal proceedings.

Materials that contain information about detected criminal offences or events must contain information about: time, place, method, other circumstances of the commission of the crime; information about the person (group of persons) who committed (will commit) the crime (including the composition of the group, the role of each of them, information about the scheme of connections, bringing to criminal or administrative responsibility, etc.); specific criminal and illegal actions in which the specified criminal offence manifests itself (legitimisation of proceeds from crime through winnings in a gambling establishment, tax evasion by paying funds as a win in a gambling establishment, legitimisation of illegal benefits received as a win in a casino; declaration of false information in the form of information established in the course of conducting intelligence-gathering activities; instruments of crime that can be seized or that can be seized, etc.

Materials of the intelligence-gathering activities can be operational – service documents that are drawn up by authorised persons and other operational

and search units (operational documentation, operational-technical units, ensuring the safety of participants in criminal proceedings, etc.), documents that are obtained both publicly and secretly by the operational and search unit in the manner provided for by law from individuals and legal entities, documents and items discovered by the operational and search unit during the intelligence-gathering activities. The content of the materials of the intelligence-gathering activities is operational and search information – any information (factual data) included in the subject of research in the operational-search case, which is obtained in accordance with the purpose and objectives of the intelligence-gathering activities in a manner determined by law from any sources not prohibited by law by authorised subjects, which can be the justification of relevant decisions in certain areas of activity [25, p. 227].

These materials after the imposition of the resolution of the head of the investigative department are subject to mandatory registration by the relevant division of the pre-trial investigation body or prosecutor's office, in order to avoid possible information leakage (duty station, database "Unified accounting", (URPI) without decoding the data about the person who commits a crime, since Part 8 of the regulation on the URPI, the procedure for its formation and maintenance, approved by the order of the Office of the Prosecutor General of 06/30/2020 No.298 provides that access to the information entered in the Register regarding criminal offences related to the acceptance of an offer, promise or receipt of illegal use of gambling business opens from the moment of declaring suspicion to a person or making a decision to close the proceedings without declaring suspicion to a person [33].

After checking the received materials of the intelligence-gathering activities, the investigator or prosecutor registers it in the unified state register of legal entities and criminal proceedings begin. Making such a decision is preceded by a legal assessment of the materials received by the investigator. The materials of the intelligence-gathering activities are sent to the investigative unit with a cover letter, filed and numbered, with a description and analytical certificate, which must necessarily reflect the identified signs of the crime for which it is proposed to start criminal proceedings, with reference to the materials available in the case that confirm them.

The scientific originality of the study lies in the fact that the authors were the first to comprehensively investigate the issues of intelligence-gathering prevention of crimes related to gambling, after the legalisation of gambling in Ukraine in 2020. The study clearly identified and described all the elements of the system of countering these crimes: crime prevention, crime detection, and response to crimes.

Conclusions

The activities of operational units are extremely important for prompt response to any manifestations of crime and minimising the crime rate in general.

The authors of this study propose to divide the crimes defined above into the following groups:

– legitimisation of corrupt income using gambling;

– legitimisation of income obtained by criminal means (arms and drug trafficking, smuggling, human trafficking) using gambling;

– other crimes related to the organisation and conduct of gambling (fraud, computer crimes).

The system of intelligence-gathering counteraction to crimes related to gambling includes the following elements: crime prevention, crime detection, and response to crimes. Each of these elements provides for the performance by operational units of certain actions, intelligence-gathering measures aimed at fulfilling the tasks set.

In the system of countering crimes related to gambling, special importance is attached to the prevention of crimes, which is implemented through general and individual prevention measures. General prevention includes actions to identify the causes and conditions that contribute to the commission of a certain type of crime, that is, it significantly complicates the commission of such crimes in the future. Individual prevention measures are aimed at the work of operational units with a specific person and preventing the development of intent to commit a crime into criminal intent, preventing the commission of a crime by a certain person.

Detection of crimes related to gambling is carried out by operational units during the intelligence-gathering activities to detect and suppress predicate crimes – arms trafficking, drugs, smuggling, committing corruption crimes (obtaining illegal benefits, illegal enrichment, abuse of influence), in the process of which operational units can reveal the facts of concealing such crimes using gambling. It is possible to identify such crimes during confidential cooperation, including international cooperation, conducting an operational survey, obtaining reference and analytical information, studying documents, intelligence-gathering or operational proceedings in relation to an individual, etc. Confidential operational work of full-time and freelance secret employees is important for detecting crimes related to gambling. Response to identified crimes includes documenting criminal activities by operational units and transferring materials to the appropriate investigative unit for making a decision on the initiation of criminal proceedings.

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Особливості оперативно-розшукової протидії злочинам, пов'язаним з гральним бізнесом

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■ **Анотація**. Актуальність статті полягає в тому, що автори комплексно дослідили питання оперативно-розшукової протидії злочинам, пов'язаним з гральним бізнесом, після легалізації грального бізнесу в Україні 2020 року. Метою дослідження є вивчення особливостей оперативно-розшукової протидії злочинам, пов'язаним з гральним бізнесом, задля підвищення ефективності цієї протидії. Досягненню поставленої мети сприяло використання загальнонаукових і спеціальних юридичних методів: загальний діалектичний метод наукового пізнання явищ та зв'язків між ними; формально-правовий (догматичний або юридико-технічний); системно-структурний; порівняльно-правий; метод узагальнення. Розглянуто такі складові системи оперативно-розшукової протидії злочинам, пов'язаним з гральним бізнесом: запобігання злочинам, виявлення злочинів і реагування на злочин. Запобігання злочинам, пов'язаним з гральним бізнесом, передбачає здійснення дій та реалізацію оперативно-розшукових заходів загальної та індивідуальної профілактики. Виявлення злочинів, пов'язаних з гральним бізнесом, здійснюють оперативні підрозділи під час проведення оперативно-розшукових заходів з виявлення та припинення предикатних злочинів. Реагування на виявлені злочини передбачає документування злочинної діяльності й передачу матеріалів до відповідного слідчого підрозділу для прийняття рішення про початок кримінального провадження. Практична значущість результатів дослідження полягає в тому, що в статті запропоновано конкретні механізми оперативно-розшукової протидії злочинам, пов'язаним з гральним бізнесом

■ **Ключові слова**: оперативно-розшукова діяльність; гральний заклад; азартна гра; корупційні злочини; легалізація доходів, отриманих злочинним шляхом; оперативні підрозділи

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International Experience of Criminal Law Countering the Legalisation (Laundering) of Property Obtained by Criminal Means: Retrospective and Current Trends

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■ **Abstract**. The problem of countering the money laundering has always been in the centre of attention of law enforcement, financial authorities, and international organisations. It has become particularly relevant in the context of the COVID-19 pandemic, which has reoriented financial activities to the use of new modern technologies, changed economic processes, opening up new ways to obtain criminal proceeds. The purpose of the study is to investigate the current state of international regulation in the field of criminal law counteraction to the legalisation (laundering) of property obtained by criminal means. Methodological tools include the dialectical method of scientific cognition, formal and legal, system and structural, and comparative and legal methods. The implementation of a systematic analysis of international legislation in the field of countering money laundering provided the following conclusions: 1) the conceptual basis for effective counteraction to the laundering of "dirty" property is international cooperation, within which the establishment of a national system of legal norms took place; 2) international anti-money laundering legislation is sufficiently unified, the provisions of legal acts are mutually agreed and do not contain fundamental contradictions, in particular, regarding the description of objective and subjective signs of legalisation; 3) international standards are mainly advisory in nature, but countries adhere to the requirements for their implementation; 4) among the measures to prevent legalisation, the following are of the greatest interest: creation of a register of beneficial owners; development of standards designed to ensure integrity in the work of public and private organisations; introduction of a mechanism for monitoring the use of virtual currencies, etc. The results and suggestions presented in the study can be used in the further development of criminal law mechanisms to counteract the legalisation (laundering) of property obtained by criminal means

■ **Keywords**: international standards; anti-laundering legislation; criminal proceeds; terrorist financing; implementation

■ Introduction

The problem of countering the legalisation (laundering) of property obtained by criminal means continues to attract extraordinary attention of the entire international community, especially in the context of the COVID-19 pandemic, which has created new challenges for Ukrainian and foreign law enforcement agencies in the field of combating economic crime, primarily transnational. As noted by the State Financial Monitoring Service of Ukraine, the COVID-19 pandemic has caused changes in socio-economic processes, primarily of a technological nature, which has opened up new ways for criminals to obtain "dirty" income in financial activities [1]. Changes in financial behaviour, including an increase in the volume of remote transactions, have limited the ability of financial institutions to detect anomalies. Analysis by Financial Action Task Force (FATF)[1] also indicates

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[1]The anti-money laundering Financial Action Task Force is an intergovernmental body whose goal is to develop and implement internationally measures and standards to combat money laundering, financing of terrorism, and financing of proliferation of weapons of mass destruction.

that criminals continue to take advantage of the opportunities created by the pandemic around the world, associated with an increase in cases of counterfeit medical goods, investment fraud, cybercrime fraud, and exploitation of economic stimulus measures introduced by national governments [2]. The problem of money laundering, which now poses a threat to both national and international economic security, has become even more acute in the context of the COVID-19 pandemic. Moreover, the armed aggression of the Russian Federation against Ukraine has become a challenge to ensuring the stability of the financial system, and has created new risks in the field of financial control and monitoring.

According to statistics of the Prosecutor General's Office of Ukraine, the number of registered facts of legitimisation of criminal proceeds in Ukraine, responsibility for which is provided for in Article 209 of the Criminal Code of Ukraine [3], has increased in recent years: so, in 2018, 242 facts of legalisation of property obtained by criminal means were registered, of which 64 proceedings were sent to court with an indictment; in 2019 – 283 (88); in 2020 – 348 (93); in 2021 – 395 facts legalisation of property (103 proceedings were sent to the court with an indictment) [4]. At the same time, crimes of this type are characterised by a fairly high level of latency, and therefore, there is reason to believe that the real number of facts of money laundering is much higher.

FATF President M. Player said in his speech that "ensuring the protection of citizens from harm caused by criminal activities, including money laundering and terrorist financing, should remain a priority for all governments around the world" [5]. Consequently, countering the laundering of "dirty" property requires mutually agreed actions of law enforcement and financial authorities at all levels, and first of all, compliance with the standards of legal response set out in international acts. According to international experts, even the best Ukrainian laws against legalisation cannot be effective enough without international cooperation, since criminals are very rarely limited to the territory of one state, which causes jurisdictional and organisational problems. Therefore, the national legislation of states should meet the needs of international cooperation, that is, have common features [6, p. 31]. Consequently, it is extremely important to take steps to adapt the national anti-money laundering legislation to international legal standards, especially in the light of the intensification of the European integration processes, in particular, the signing by President Zelensky on 28 February 2022 of Ukraine's application for membership in the European Union, which may become a prerequisite for Ukraine to become an EU candidate in the near future.

Moreover, the study of these issues is of increased relevance in the light of the amendments made to Article 209 of the Criminal Code [3] on the basis of the Law of Ukraine "On Preventing and Countering the Legalisation (Laundering) of Proceeds from Crime, the Financing of Terrorism and the Financing of the Proliferation of Weapons of Mass Destruction" of December 6, 2019 No. 361 [7].

The purpose of the study is to comprehensively investigate international standards of criminal law on combating money laundering, considering modern challenges and threats in the field of financial control and monitoring.

Materials and Methods

Methodological tools are selected in accordance with the goal set, the specifics of the object and subject of research. In particular, the dialectical method was applied, which provided an interdisciplinary complex character and an in-depth scientific analysis of the provisions on criminal legal counteraction to money laundering, in their unity and interrelation, contributed to the formulation of conclusions and proposals on the topic under study. The comparative legal method was used in the analysis of national and international statutory regulations and other documents, allowed identifying identical and different, general and special, positive and negative in the problems of criminal law counteraction to money laundering, which outlined ways of potential borrowing useful experience. The system and structural method was used to investigate and identify the structural components of the theoretical concept of international criminal law counteraction to the legalisation of "dirty" property. The formal legal method was used in the study of legal provisions, legal terms, and wording, in particular, definitions of legalisation and related acts, predicate crimes, etc.

The theoretical basis consists of the studies by Ukrainian and foreign researchers (V.S. Beznogyh [8], K.V. Bysaga [9], I.I. Bilous [10], O.O. Dudorov & T.M. Tertychenko [11], N.M. Nanyun & A. Nasiri [12], W.R. Schroeder [13] and other scholars [14; 15]), the provisions of international laws and regulations, in particular:

– conventions (United Nations Convention Against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances of March 16, 1989 [16], Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime of November 8, 1990 [17], UN Convention Against Transnational Organised Crime of November 15, 2000 [18] and others [19; 20]);

– declarations (UN Declaration on Crime and Public Safety of 12 December 1996 [21], Vienna Declaration on Crime and Justice of 17 April 2000 [22], Bangkok Declaration "Synergies and Responses: Strategic Alliances in Crime Prevention and Criminal Justice" of 25 April 2005 [23]);

– other laws and regulations [24-26].

The paper also provides statistical data of the Prosecutor General's Office of Ukraine on the number of registered facts of money laundering in Ukraine [4].

■ Results and Discussion

In accordance with the provisions of the association agreement between Ukraine and the European Union, Ukraine has committed itself to implementing international legal standards for regulation and monitoring in the field of financial services. Article 20 of the Agreement [25] defined the principles of countering money laundering and terrorist financing, in particular, the need for international cooperation is emphasised, ensuring the implementation by the parties of relevant international standards, primarily the FATF and other EU standards equivalent to them. According to Article 127 of the Agreement [25], such international standards include: "Basic principles of effective banking supervision" of the Basel Committee [26], "Forty recommendations" and "Nine special recommendations for combating terrorist financing" of the FATF [27], etc.

Ukraine's cooperation on countering money laundering and terrorist financing is carried out within the framework of cooperation with such international organisations as the FATF (primarily the International Cooperation Review Group (ICRG) and the Policy Development Group (PDG), the International Monetary Fund (IMF), the Egmont Group of Financial Intelligence Units, the Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (Moneyval), the World Bank, the Organisation for Security and Co-operation in Europe (OSCE). In general, in the structure of international intergovernmental organisations that form the institutional basis of the global international system for combating money laundering, the following can be distinguished:

– organisations of general competence (the United Nations (UN), the World Bank, the Basel Committee on Banking Supervision (BCBS), IMF, etc.);

– law enforcement-type organisations (International Criminal Police Organisation (Interpol), etc.);

– international organisations of narrow specialisation [9, p. 46].

This category includes the already mentioned FATF, Moneyval, Egmont Group of Financial Intelligence Units, Asia-Pacific Anti-Money Laundering Group (APG), East and South Africa Anti-Money Laundering Group (ESAAMLG), Middle East and North Africa Financial Action Development Group (MENAFATF), Eurasian group on combating money laundering and financing of terrorism (EAG), etc.

These international organisations and regional groups are entrusted with the functions of ensuring the process of implementation in the national legislation of the participating countries of international norms in the field of countering the legalisation (laundering) of property obtained by criminal means, and their practical implementation. The Financial Action Against Money Laundering (FATF) group, established in 1989, will now play a leading role in this process. In 1990, the FATF issued "Forty recommendations" [28], which were designed to provide the action plan necessary to combat money laundering, which were subsequently supplemented by nine more special recommendations for combating the financing of terrorism. In 2012, the FATF completed a thorough review of its standards and published revised recommendations [12]. These recommendations reinforced the need for countries to define the list and characteristics of operations related to the legalisation of criminal proceeds, introduce rules for identifying customers and monitoring information, create authorised bodies in countries responsible for combating money laundering, etc. Thus, according to Recommendation No. 3 on the crime of "Money laundering" [27], the obligation of countries to criminalise money laundering is established on the basis of the UN Convention for the Suppression of Illicit Trafficking in Narcotic Drugs and Psychotropic Substances of 1989 (Vienna Convention) [16] and the UN Convention for the Suppression of Transnational Organised Crime of 2000 (Palermo Convention) [18]. This recommendation defined approaches to describing predicate criminal offences, in particular: a) by referring to all offences; b) by setting a certain threshold, linking to the category of "serious crimes"; or c) with reference to such a type of punishment as imprisonment. The subject of a crime is proposed to recognise any type of property, regardless of its value, that was directly or indirectly obtained by criminal means. It is emphasised that "intent and awareness" as subjective signs of the composition of a crime should be established according to objective factual circumstances. An interesting position is that it is necessary to extend criminal liability measures to legal entities (if this practice complies with the principles of national legislation). Recommendation No. 4 "Confiscation and temporary measures" [27] pointed out the need for countries to take measures to grant the competent authorities of these countries the authority to freeze or seize and confiscate legalised property, income, tools of crime used in money laundering or predicate crimes, etc. These international FATF standards are advisory in nature, but countries voluntarily adhere to the discipline of multilateral monitoring and mutual control, since failure to comply can lead to significant financial complications. At the same time, UN Security Council Resolution No. 1617 of July 29, 2005 obliged all UN member states to comply with the FATF recommendations when conducting financial monitoring (paragraph 7) [24]. Based on the results of inspections, the FATF publishes lists of "non-cooperative" countries in

its annual reports that do not adhere to the targeted measures provided for in the recommendations [14, p. 13]. Thus, for example, on April 21, 2022, a regular meeting of Ministers of the FATF member countries was held, which, among other things, considered the issue of including the Russian Federation in the FATF blacklist and excluding it from the FATF for gross violation of international standards [29].

The Basel Committee on Banking Supervision (BCBS) is the main body that sets global standards in the field of banking regulation and supervision. The committee issues directives and recommendations, including on regulating the issue of combating money laundering, "which are not binding, however, in most cases are reflected in the national legislation of the member states" [15, p. 38]. Such documents include, for example, the basic principles of effective surveillance of 1997, "Basel I" of 1988 (these standards, by the way, were implemented by more than 120 countries around the world [30]), "Basel II" of 2004, "Basel III" of 2011 and "Basel IV" (its main provisions should come into force in 2022), proper risk management related to money laundering and terrorist financing of 2020, etc. [26]. Separately, it is worth highlighting the Wolfsberg Group, an association of international banks whose goal is to develop the basics and recommendations for managing the risks of financial crimes [31]. The general directives on countering money laundering in the private banking sector (Wolfsberg principles) developed by this group in 2000, which defined the requirements for identifying customers, including beneficial owners, the algorithm of actions when detecting suspicious circumstances, etc., were implemented in the legislation of many countries [32].

Among researchers (for example, in the studies by I.I. Belous [10, p. 84] & W.R. Schroeder [13, p. 4]), it is widely suggested that in international practice for the first time the concept of money laundering was formulated in the UN Vienna Convention "On Combating Illicit Trafficking in Narcotic Drugs and Psychotropic Substances" of 1989 [16], which became the basis for the creation and further development of international legislation on combating money laundering. Thus, Article 3 of the Convention [16] called on the parties to recognise as criminal offences the following intentional actions: "conversion" or "transfer of property", if such property is obtained as a result of committing a criminal offence, in order to conceal the illegal source of its origin, location, or method of disposal, and movement, concealment of true rights in relation to such property or its acquisition, possession, or use. Notably, the Convention [16] focuses on the need to establish subjective signs of corpus delicti ("awareness, intention or purpose"). The same provision is found in the FATF recommendations outlined above, in a virtually identical design. As a punishment, the Convention [16] proposes to apply "imprisonment or other types of custody, penalties, and confiscation".

The next international document in the field of countering legalisation, which developed and supplemented the provisions of the Vienna Convention of 1989 [16], was the Council of Europe Convention "On Laundering, Search, Seizure and Confiscation of Proceeds From Crime" of 1990 (Strasbourg Convention) [17]. According to Article 1, "income" was defined as "any economic benefit acquired by criminal means"; the concept of "property" included "property of any kind, tangible property, or property expressed in rights, movable or immovable property, and legal documents or documents confirming the right to such property or a share in it"; and the "predicate crime" included all criminal offences that resulted in the specified criminal income. In the literature, there is a position that the Strasbourg Convention [17] for the first time established a penalty for laundering proceeds obtained and accumulated in the course of committing any crime, regardless of whether it is related to drug trafficking, that is, expanded the content of the predicate crime [8, p. 45]. However, the UN Vienna Convention [16] did not narrow the concept of a predicate act exclusively to those related to the sale of narcotic drugs, and recognised all types of crimes as predicates. The Strasbourg Convention (Article 6) [17] did not introduce a new meaning to the definition of "crimes related to money laundering". At the same time, provisions have been developed regarding the subjective characteristics of the corpus delicti: "each party may take such measures as it considers necessary to qualify all or some of these actions as criminal by its internal law, in any case where the offender: (a) had to assume that property was income; (b) acted for the purpose of making a profit; (c) acted with the aim of facilitating the continuation of criminal activity" [17]. In general, the Strasbourg Convention [17] can be considered the first international legal document aimed directly at countering the laundering of "dirty" income. Significant is the fact that it obliged the state party to criminalise the legalisation of income received from most criminal offences, and also regulated the confiscation of such criminal income [11, p. 115].

The Council of Europe in 1995, to facilitate the implementation of anti-laundering legislation in national legal systems, developed a Model Law on drug money laundering [33], which contained recommendations for the creation of legal regulation mechanisms. For example, Article 20 of Section III "Sanctions" contained the following version of the construction of a legal norm on establishing responsibility for the legalisation of criminal proceeds: "are punishable by imprisonment from ... to ... and a fine in the amount of from ... to ... or any one of these measures of punishment of persons who (option; intentionally)

convert or transfer funds or property obtained, directly or indirectly, from illicit trafficking in narcotic drugs, psychotropic substances or precursors, for the purpose of concealing the illegal source of this property or means, or providing assistance to any person involved in the commission of one of the offences, so that he can evade legal responsibility for such actions" [33]. In addition, the Model Law [33] regulated the issue of liability for attempted crime and complicity in a crime.

The UN Declaration on Crime and Public Safety, adopted by General Assembly resolution 51/60 of December 12, 1996 [21], emphasised the need to strengthen the fight against transnational flows of proceeds from criminal activities, with the concealment of the true origin of such proceeds, and the deliberate conversion or transfer of such proceeds for this purpose. It is significant that the Declaration [21] emphasised the obligation to keep proper records by financial and related institutions of member states and, where appropriate, to provide information about suspicious transactions, to ensure the adoption of effective laws and procedures allowing the seizure and confiscation of proceeds from dangerous transnational criminal activities, and also recognised the need to limit the application of laws concerning bank secrecy in relation to criminal transactions (Article 8). These provisions were developed in the UN Convention Against Transnational Organised Crime, adopted by General Assembly resolution 55/25 of November 15, 2000 [18]. According to Article 6 "Criminalisation of laundering of proceeds of crime" [18], each state party takes measures to declare criminal the following intentional acts: "conversion or transfer of property, if it is known that such property is the proceeds of crime, in order to conceal the criminal source of this property; concealment of the true nature, location, method of disposal, movement of such property; acquisition, possession or use of such property; participation, involvement or collusion to commit any of the crimes recognised as such under this article, attempt to commit it, and assistance, inciting, or advising in its commission". At the same time, Article 11 [18] establishes the principle that the definition of crimes falls under the national legislation of each state party, that is, the provisions of the convention [18] set only the minimum standards that states must adhere to in the interests of consistency. States parties may exceed these standards, since each state reserves the right not to be limited by them [34, p. 399]. As for predicate crimes, the Convention [18] called on states to assign a wide range of major offences to them. As an anti-money-laundering measure, it is proposed to establish "a comprehensive internal regulatory and supervisory regime for banks, non-bank financial institutions, and other vulnerable bodies, based on requirements for customer identification, reporting, and providing information on suspicious transactions". Article 12 [18] regulated the use of confiscation and seizure: "a) proceeds from crimes defined by the convention, or property whose value is equivalent to the value of such proceeds; b) property, equipment or other means used or intended for use in the commission of these crimes". The Convention [18] focused on the close relationship between the activities of organised criminal groups and the laundering of "dirty" proceeds. As preventive measures, states are invited to contribute to the development of standards designed to ensure "good faith" in the work of public and private organisations, in particular, codes of conduct; the creation of the possibility of depriving, by a court decision or other appropriate means, for a reasonable period of time, persons convicted of crimes defined by the Convention [18] of the right to hold positions of heads of legal entities; the creation of a national register of persons deprived of the right to hold positions of heads of legal entities, etc.

Further aggravation of the problem of countering transnational organised crime led to the intensification of efforts of the international community to combat the legalisation of criminal proceeds as its "satellite". Thus, the Vienna Declaration on Crime and Justice: Meeting the Challenges of the Twenty-First Century, adopted on April 17, 2000, at the 10th UN Congress on Crime Prevention and Treatment of Offenders [22], declared that "the fight against money laundering and economic crime is an essential element of strategies to combat organised crime". It was also noted that "the key to the success of this fight is to coordinate appropriate mechanisms to combat money laundering, including supporting initiatives aimed at states and territories offering offshore financial services that allow money laundering" [22]. A similar position of the UN is reflected in the Bangkok Declaration "Synergies and Responses: Strategic Alliances in Crime Prevention and Criminal Justice" [23], adopted at the 11th UN Congress on April 25, 2005, which expressed and consolidated "deep concern" about the spread and scale of transnational organised crime, including money laundering, sharp growth, expansion of geography and the consequences of new economic and financial crimes that have become a dangerous threat to the national economy and the international financial system.

The adoption of the UN Convention Against Corruption on October 31, 2003 [19], which is considered the first comprehensive and systematic multilateral international legal document aimed at combating corruption [35, p. 410], was an equally important step in countering money laundering, primarily from the standpoint of preventing these crimes. Thus, the Convention [19] consolidated key preventive measures (Article 14), in particular: the regime of regulation and monitoring in relation to banks and non-bank financial institutions, first of

all, the identification of the client and beneficial owner, reporting and providing reports of suspicious transactions; the establishment of a financial operational information unit concerning potential cases of money laundering; cooperation of bodies in the field of countering money laundering and the exchange of information at the international and national levels; requirements for individuals and legal entities to report cross-border transfers of significant amounts of cash, etc. Separately, the Convention [19] defined a set of measures to prevent transfers of proceeds from crime and detect them (Article 52), and measures for the direct return of property (Article 53). Article 23 "Laundering of proceeds of crime" formulated a definition of laundering that is generally similar in content to the concept of this crime, which was given in the UN Convention Against Transnational Organised Crime of 2000 [18]. The definition of laundering consolidated by the Council of Europe Convention on Laundering, Detection, Seizure, and Confiscation of Proceeds from Criminal Activity and Financing of Terrorism of May 16, 2005 (Warsaw Convention) has not changed much [20]. According to Article 9, "crimes related to laundering" [20] include: conversion or transfer of "dirty" property; concealment of such property or concealment of the actual nature, origin, location, placement, movement of property or rights to it; acquisition, possession, or use of property; participation, complicity or conspiracy in the commission or attempt to commit and assist, incite, or advise in the commission of any of the crimes established under this article. At the same time, according to the provisions of the Convention [20], a criminal who "suspected that the property was profit, or should have assumed that the property was profit, should be liable". Article 13 [20] established a requirement for the parties to take legislative and other necessary measures to create a comprehensive national monitoring regime to prevent money laundering, considering existing international standards, including, in particular, FATF recommendations.

In the future, the provisions of international law on countering money laundering were developed in the EU framework decisions (for example, Framework Decision 2005/212/SVS on the confiscation of proceeds from crime, dated 24 February 2005 [36]) and directives on preventing the use of the financial system for the purpose of money laundering and terrorist financing, in particular, Directive 2005/60/EC of 26 October 2005 [37], Directive (EU) 2015/849 of 20 May 2015 [38] and Directive (EU) 2018/843 of 30 May 2018 [39], each of which supplemented and improved the previous one. In the latest directive, the European Parliament and the Council stressed the need to further strengthen the transparency of the EU's economic and financial environment, and the need to ensure the implementation of rules on countering money laundering and terrorist financing by obligated entities. Attention was focused on the problem of anonymity of virtual currencies – now a significant part of this environment remains anonymous – which opens up the possibility of their illegal use for criminal purposes. It is determined that in order to counteract the risks associated with anonymity, national financial intelligence agencies should be able to obtain information that would allow linking the addresses of virtual currencies with the identity of their owner. In general, the Directive [39] recommends the implementation of the following measures to counter money laundering and terrorist financing: monitoring the use of virtual currencies by the competent authorities and ensuring the effective implementation of financial investigations in this area; ensuring the "widest range of international cooperation" of financial intelligence agencies regarding money laundering and related predicate crimes, considering the recommendations of the FATF and the principles of the Egmont Group; carrying out secure remote or electronic identification of individuals and legal entities; ensuring greater transparency of financial transactions of legal entities, primarily trusts; creating registers with information about beneficial owners, etc.

Summing up, it can be stated that the analysed international documents became the basis for creating a system of anti-laundering legislation and a guide for its further development. The United Nations Office on Drugs and Crime (UNODC), defining the strategy for 2021-2025 [40], noted the need to develop national systems of legislation and criminal justice to combat money laundering. Improving the effectiveness of criminal justice in this area should take place through the following measures: strengthening the capacity to conduct financial investigations to identify the proceeds of criminal activity; coordinating state programme initiatives to combat illegal financial flows; providing support to member states in tracking, arrest, freezing, confiscation, and recovery of assets, etc. Special attention is paid to the need to promote innovative methods of international cooperation, primarily with international and regional financial institutions in the field of countering money laundering and asset recovery. Close collaboration should improve collective understanding of illegal financial flows and lay a solid foundation for combating them.

Conclusions

The systematic study of international legislation in the field of combating money laundering provided the following conclusions and generalisations:

1. International cooperation, within the framework of which the Ukrainian legislative basis was created, plays a key role in countering the legalisation (laundering) of property and the financing of terrorism. Ukraine's cooperation on these issues

is carried out within the framework of cooperation with such international organisations as the FATF, the Basel Committee on Banking Supervision, the Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL), the Egmont Group of Financial Intelligence Units (EGFIU), etc. These organisations are responsible for developing anti-laundering measures (standards) and ensuring the process of their implementation in national legal systems. At the same time, Ukraine is not a member of most of these organisations.

2. International anti-laundering legislation is characterised by uniformity, which confirms the fact of well-established interstate cooperation in countering money laundering. The provisions of international regulations are consistent with each other and, despite certain differences, do not contain fundamental contradictions.

3. These standards are mostly advisory in nature, but countries adhere to the discipline of multilateral monitoring and mutual control, since their failure to comply may result in financial complications.

4. When describing the objective and subjective signs of laundering as a criminal act, the analysed legal acts use a standardised approach, and in general, it is reduced to the following: a) the subject of a crime is proposed to recognise any type of property, regardless of its value, which is directly or indirectly obtained by criminal means; b) predicate crimes are called to include the widest range of main offences; c) the objective side of legalisation covers the conversion or transfer, concealment of property or the actual nature, origin, location, placement, movement of property or rights to it, and acquisition, possession; d) emphasises the need to establish subjective signs of the corpus delicti ("awareness, intention or purpose") through objective circumstances. It is proposed to use imprisonment or other types of custody, penalties, and confiscation as punishment. At the same time, it is necessary to extend liability measures to legal entities (if such practices comply with the principles of national legislation).

5. Regarding measures to prevent the legalisation of criminal proceeds, the most interesting and promising from the standpoint of their potential borrowing are issued as follows: development of standards designed to ensure good faith in the work of public and private organisations, in particular, codes of conduct; creation of appropriate national registers, first of all, a register of persons deprived of the right to hold positions of heads of legal entities in connection with their conviction for laundering, and a register with information about beneficial owners; introduction of a mechanism for monitoring the use of virtual currencies by competent authorities, etc.

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Міжнародний досвід кримінально-правової протидії легалізації (відмиванню) майна, одержаного злочинним шляхом: ретроспектива та сучасні тенденції

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■ **Анотація**. Проблема протидії легалізації (відмиванню) майна, одержаного злочинним шляхом, завжди перебувала в центрі уваги правоохоронних, фінансових органів і міжнародних організацій. Особливої актуальності вона набула в умовах пандемії COVID-19, яка переорієнтувала фінансову діяльність на застосування нових сучасних технологій, змінила економічні процеси, відкривши нові шляхи отримання злочинних доходів. Метою статті є дослідження сучасного стану міжнародного регулювання у сфері кримінально-правової протидії легалізації (відмиванню) майна, одержаного злочинним шляхом. Методологічний інструментарій становлять діалектичний метод наукового пізнання, формально-юридичний, системно-структурний та порівняльно-правовий методи. Здійснення системного аналізу міжнародного законодавства у сфері протидії легалізації злочинних доходів дало змогу дійти таких висновків: 1) концептуальним базисом ефективної протидії відмиванню "брудного" майна є міжнародне співробітництво, у межах якого відбувалося становлення національної системи правових норм; 2) міжнародне антилегалізаційне законодавство є достатньо уніфікованим, положення правових актів взаємно узгоджені й не містять принципових суперечностей, зокрема, щодо опису об'єктивних та суб'єктивних ознак легалізації; 3) міжнародні стандарти мають переважно рекомендаційний характер, однак країни дотримуються приписів щодо їх імплементації та подальшого виконання; 4) серед заходів запобігання легалізації найбільший інтерес становлять такі: створення реєстру бенефіціарних власників; розробка стандартів, призначених для забезпечення сумлінності в роботі публічних та приватних організацій; запровадження механізму моніторингу використання віртуальних валют тощо. Наведені в роботі результати і пропозиції можуть бути використані під час подальшого розроблення кримінально-правових механізмів протидії легалізації (відмиванню) майна, одержаного злочинним шляхом

■ **Ключові слова**: міжнародні стандарти; антилегалізаційне законодавство; злочинні доходи; фінансування тероризму; імплементація

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Forensic Classification of Documents

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■ **Abstract**. The relevance of the study is conditioned by the major legal significance of documents in criminal science, since they are an evidence base, means of certifying certain facts, and their diverse variability and constant processes of change against the background of global informatisation. Based on the above, the purpose of the study is to analyse the conceptual category of the term "document" and its proportionality with such categories as criminalistics, forensic documentation, and criminal offences; in addition, the main task of the study is to build a variable and structured classification of documents, which is necessary for its practical application in document science in the field of forensic science. The systematic approach was central, and the methods of terminological analysis, analysis, synthesis, and comparison were also used. The study result is the presentation of variable forensic classifications of documents on the basis of a number of grounds that were analysed and investigated by analysing the doctrine in the works of researchers and authors, with the subsequent determination of the advantages and disadvantages of each approach to classification and based on the comparative analysis and comparison of data on the proposal of the most dominant classification structure of documents. The study of the forensic classification of documents, highlighting the optimal approach, will simplify their further use in the theory of criminalistics and in practice, directly during the investigation of criminal offences. The results can also be used in the course of the investigator's work at a particular stage of the investigation, determining the subject and tactical advancement of investigative actions

■ **Keywords**: document management; criminalistics; documentation analysis; systematisation

■ Introduction

The document as an independent type of evidence is the object of most examinations conducted as a result of an examination, in particular: forensic, technical and forensic, photo-portrait, phonoscopic, etc. Given the diversity and variety of forms of documents, and variable ways of information and its fixation in it, it is logical to have a large number of types of documents, and the presence of several approaches to their classification in forensic science [1]. The diversity of forensic classification of documents is conditioned by the rapid development of criminalistics and the level of discussion of the issue, because the development of a unified approach to document differentiation is impossible due to the needs of various areas related to document management [2].

The most authoritative in the doctrine of criminalistics is the division of documents according to R.S. Belkin in the work "Forensic encyclopaedia" [3], who proposed to classify documents according to three groups: documents as physical evidence, documents as written evidence, and documents that are samples for written research. I.M. Osyka in the paper "Investigation of forgery of documents and their use in the field of entrepreneurship" [4] suggests dividing the document carrier based on the form, for example, into electronic, paper, etc. There are also other divisions, in particular S. Gavrilin [1] suggests a division based on the degree of access to documentation: secret, top secret, etc. T. Bezsonna [5] proposes the differentiation of documents by their origin, authorship, purpose, etc.

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The significance and debatable nature of the issue of document classification in the field of forensic science is the basis for many studies in attempts to offer a more comprehensive and basic version of classification. In particular, this issue is a thesis in the paper devoted to the examination of judicial documents in the 21st century and the genesis of forensic research of documents as a branch of criminal science technology [6].

Also of great importance is the topic of the general theoretical approach to the study of forged texts and documents in forensic expertise, which outlines the fundamental classification approaches to the division of documents [7].

The originality of the study lies in several aspects that significantly distinguish it from the developments of other researchers. The first aspect is that a significant number of studies devoted to the topics of document science and its relations with forensic science only indirectly investigate the problems of document classification in criminalistics, in particular, the paper by I. Yudina "Topical issues of forensic research of documents with modified primary content" [8].

The next aspect is the importance of offering a balanced approach to the forensic classification of documents, which would consider errors, advantages and disadvantages, unresolved questions of other researchers regarding the classification of various materials in this area. This is of essential importance not only for theoretical scientific application, but also for the further implementation of this type of classification in practice during the investigation of criminal offences, determining the evidence base and other actions of the investigator.

The main task is to find out and offer solutions to the problems that exist in the field of document classification in criminalistics, it is necessary to investigate the state of the theoretical and practical level of content of existing approaches to the classification of documents in this legal sphere. In particular, the study should offer an overview of several scientific and author's approaches to forensic classification of documents, then identify their advantages and disadvantages and find a balance between the positive and negative elements of the selected classification approaches.

Considering all the above, to fully provide an exhaustive analysis within the framework of the study, it is necessary to investigate the theoretical aspects of the issue of forensic classification of documents, their significance in practical application through the use of various variations of classification and, during comparative analysis, determine the preferred classification approach of documents in the field of criminalistics.

Theoretical Overview

The term "document" from Latin means: a sample, proof of something. Historically this word belongs to the dialects of the Indo-European proto-language, where it meant "to transmit something from outstretched hands". With the development and modification of society, considering external and internal factors, it acquired new meanings and interpretations. For example, during the reign of Caesar, the concept of "document" was used in the sense of lecturing. In mid-century it was transformed to mean evidence, written proof. This meaning was widespread and existed until the 19th century; only at the beginning of the 20th century, it acquired the form that is used in the legal and other socio-state spheres: a material object, an information carrier, proof or evidence of something [9]. The category "document" and its essential features are the basis on which the system of scientific studies is based on what documents exist that are necessary for forensic science, and how the information available in them can be used for forensic and legal purposes. Moreover, document science in the field of criminalistics is designed to investigate the development of a document, its genesis and causes, approaches to differentiation and the significance of the document for the overall social system [7].

Despite the fact that the document is used in all spheres of social life, both at the grassroots and state levels, there is a variable set of definitions that characterise the concept of "document", depending on what specifics are inherent in a particular environment in which this concept is introduced into circulation. For example, in sociological studies, a document is an information carrier of any type, both traditional and innovative [10].

Researchers in the field of history refer to the category of documents only that information that was fixed by means that existed in ancient time intervals [11]. Otherwise, the document is determined by specialists in the legal field, officials, state managers, in particular, for them, this is something that can fix a particular action that has legal significance: a transaction, certification of a legal fact. Investigators, for example, consider the document as one of the sources of evidence [12].

The significance of the document is important in a number of socio-political areas, in particular: the sphere of general use of the document, the sphere of socio-state, scientific, legal and forensic. Given the subject of the study, it is most appropriate to pay attention to the last two areas, especially forensic, and the concept of a document that is significantly related to these areas.

As for the legal definition of the concept of "document", it is based on a number of regulations and provisions on document standardisation. Thus, the Law of Ukraine "On information" [13] defines it as follows: "a material carrier containing information, the main functions of which are its storage and transmission in time and space".

Given the appearance of the category "information" in the terminology of the document, it is advisable to find out what this element is and what functions and tasks it solves. In particular, by studying the above-mentioned Law "On information" [13], Article 9 indicates what main types of information activities exist. The provisions of the law include: use, creation, collection, distribution, receipt, and protection of information.

Article 10 of the Law "On Information" [13] provides a classification of information by content. In accordance with this, information is differentiated into the following types: information of a reference and encyclopaedic nature; information about the state of the environment; information about an individual; information of a legal nature; scientific and technical information; information about a product or service; statistical; sociological information, etc. Thus, based on a fairly expanded species diversity of information, it is worth highlighting its main features: information should be clear, not contradictory, identical to itself, the use and collection of information should be carried out legally, it should be accessible for its perception and further transmission, and not lose its content during processing. It is also worth paying attention to such articles as 20 and 21, which define the procedure for accessing information, in particular, Article 20 states that according to the procedure for accessing information, it is advisable to divide it into: one that of open character; one that is limited [13].

In accordance with the provisions of the law, any information that is not classified by law as information with restricted access can be considered open. Article 21 provides an opportunity to study the concept of information to which access is restricted, on this basis, the law allocates: secret; official; confidential information. Confidential information should be considered information about an individual, or that is restricted by an individual or legal entity for personal purposes and can be distributed only at their request or consent, or in cases provided for by law [13].

Thus, the information contained in the document, meeting all the requirements and characteristic features, can give the document such essential properties as: uniqueness, reliability, which indicates its legal weight and compliance with the requirements of the present.

Highlighting the above-mentioned provisions is quite an important aspect in the framework of this study, because it allows us to identify additional classification bases for the forensic classification of documents.

Materials and Methods

The study was conducted using several basic methods. First of all, the method of analysis and synthesis was used to decompose the subject of research into components, such as: document, forensic document science, the basis for classifying documents, and approaches to such classification. Thus, a basic analysis of each individual element provided a general idea of the value and theoretical importance of research on the classification of documents in the field of criminal science. Using the historical method, the study found the stages of development of the document as a material carrier, a necessary element of criminalistics, its genesis in general and its special meaning. Using a terminological methodological approach, the essence of the terminology was analysed to penetrate the main essence of the object under study, its content, the volume of relationships with other tangential categories, and to highlight the theoretical significance for further analysis. The next approach that was used is a systematic approach that allowed investigating complex objects in criminalistics, such as, document, criminalistics, classification; the meaning of these objects was studied as the essence of a separate object, with the clarification of all the necessary characteristics, and the meaning of these objects in an integral system, forming a single whole with the coordinated functioning of all individual selected parts and elements.

The comparison method was also used to find out the ratios and quality characteristics of various classification approaches to systematising documents in criminalistics and further clarify their advantages and disadvantages, in order to offer a balanced and preferred approach to classifying documents in this area. In particular, using this method, such approaches as classification of documents by the method of fixing, by the nature of origin, by the procedural nature, and others were compared. The research was carried out on the basis of a number of theoretical works containing an analysis of the doctrine of forensic classification of documents, both Ukrainian and foreign researchers and scientists. With the help of a formal legal methodological approach, the analysis of laws regulating legal relations in the field of criminalistics and document management was carried out. In particular, with the help of regulatory acts, such as the Classification of Occupations of Ukraine, the concept of a document was clarified [14].

Thus, the study was conducted in three main stages:

1. The first stage consisted in the investigation of the theoretical base, clarification of the terminology; using the terminological method, in particular, the concept of "document" and its genesis, correlation, and significance in criminal science were analysed; the concept of criminalistics and document management in this legal sphere was defined; various approaches to the interpretation of the above-mentioned concepts were proposed.

2. At the second stage, an analysis of foreign experience in the field of criminalistics and document management was carried out to identify the characteristic properties inherent in the forensic classification of documents with the identification of positive and negative features of a particular approach to their differentiation.

3. At the third stage, considering all the analysed approaches to forensic classification of documents, the advantages and disadvantages of each approach were determined separately. Based on the results obtained, the classification approach is proposed that would be most acceptable in terms of the number of its advantages and disadvantages, for its further use both for theoretical work and for practical application in the field of criminalistics.

Results and Discussion

Turning to the definition of the terminology of such a category as a document, depending on the legal area of certain documents, their concepts and features vary and change, in particular, in civil studies, the document is associated with transactions, obligations, and other legally significant actions. Labour law connects this concept with legal relations: employment, vacation, etc. [1]. Administrativists use the concept of "document" mainly to refer to certain administrative procedures: the procedure for bringing to justice, the registration procedure, etc. [2]. As for criminal and criminal procedure law, the document is the subject of a crime, or as a carrier of information that can act as evidence. In particular, the Criminal Procedure Code of Ukraine has a definition confirming the above statement: "a document is a material object specially created for the purpose of preserving information, which contains information recorded with written signs, sound, images, etc., which can be used as evidence of a fact or circumstances established during criminal proceedings" [14].

The use of the document in a significant number of legal areas has led to the creation of a number of requirements and conditions in accordance with which it should be drawn up. They are consolidated in certain rules, norms, and standards and are designed to facilitate and regulate the functioning of the government apparatus and the interaction of state institutions, enterprises, and other formations. Based on these requirements, which consist in the fact that the creator of the document must be a legal entity or individual, the information containing the document must be such that it corresponds to reality and show the true aspirations, intentions, and will of the person [10]. In addition, the document must comply with a legally defined form that defines the structure, language in which the document is compiled, content, how it should be drawn up and in what order its further registration takes place.

Each individual type of document, although it differs in its functional purpose, but in general, makes up the same set of basic functions that are inherent in it as a storage medium. Thus, the functions of documents, depending on in which area the document is used, can be divided into the main ones that are inherent in each document, and special ones that are inherent in individual types.

Main functions of the document:

– informational function, the meaning of which is that the document appears as an object in which a particular type of information is reflected, which may contain knowledge, evidence, facts, evidence, etc.;

– fixing function is that using a document, one can record, fix, and save the received information for further use or transmission;

– function of a social nature is inherent in the document due to the fact that it appears as a means that individuals use to express their will or need;

– with the help of the cumulative function of a document, the information that is in it can not only be transmitted, but also accumulated and systematised for longer storage;

– communication function of the document indicates that it is one of the means of exchanging and transmitting information, which primarily allows developing communication between people, their connections at different levels, both at the level of simple social groups, and at the power level, between lower and higher officials, between state and non-governmental structural entities;

– cultural function refers more to historical documents that are historical monuments and are designed to convey information about traditions, customs, etc.

– the special functions of the document, due to the specifics of the various activities in which the document is used, consist in the following aspects:

– functional purpose of the document is manifested in its ability to organise management processes, due to the fact that with the help of such a material information carrier, regulations, rules, charters, competence, powers, and other necessary attributive elements of each organisation, government or non-government;

– issue of planning the activities of certain organisations and formations is also resolved through the planning function of the documents in which it is recorded.

– drawing up regulations is impossible without the legal function of the document, with the help of which, in compliance with the established rules for drawing up documents, it is possible to consolidate the norms of law regulating relations between social groups within state entities.

In particular, considering the functional characteristics and features of both general and special features inherent in the document, researchers in this field tried to give it a terminological definition [15].

They most often considered the functional direction of the document (that is, the ability to transmit information); the presence of information and material parts; integrity, an identical feature of the document, which means the existence of the same essence of the document, even through changes in its information content; and the structure, which is mainly typical for each individual type of document, and is conditioned by the presence of a number of instructions, norms, and provisions that define it [11].

Thus, examples of concepts that were provided by researchers based on these characteristics are variants by G.M. Shvetsova-Vodka [16]: "a document is a material object that contains fixed information and is specially designed to transmit it in time and space, can be used for public purposes", "a document is a variable carrier of a material nature, which contains fixed or recorded information that has a social direction".

It is also worth paying attention to the definition given by Belkin – the document is an object of the material world, in which information is fixed, using language, signs, and symbols [3].

Prominent Ukrainian forensic scientist V. Lysychenko [17] proposed to define the concept of a document as something that is a written act, or a special material object, with the help of which certain but defined expressions of will, information, and other facts acquire legal significance, based on the norms of law.

M. Saltevskyi's [18] definition of a document is similar in its essential characteristics: "... it is information recorded by tangible media, which reflects relations and facts in the field of legal regulation and can change, terminate, or create legal relations by using document".

Analysing all of the above and considering the experience and reasoning of researchers, which are the basis of the scientific doctrine regarding the understanding of such a category as a document, it is worth noting that in all definitions, it appears as something that has a material character, acts as a carrier of information that primarily meets the requirements of legal norms, is a certain fact, significant information or expressions of will.

It is the experience of authors and researchers of such a topic and the consideration of their reasoning that allows comprehending the meaning of the document and its functional purpose not only in one specific area, but, considering different areas of application of this category, which, in particular, determines the variability of features those certain individuals take into account when working with documents in a particular area [19].

Considering the topic of research and its area in the field of criminalistics, for further research it is advisable to formulate a definition that would meet the requirements of forensic science and regulations of legal relations in this area.

Thus, based on the provisions of the Criminal Procedure Code of Ukraine [14], the document is an object of the material world, which was created specifically for the purpose of preserving information and contains information recorded using images, sound, written signs and symbols, etc., and can later be used as evidence of circumstances, facts that are established during criminal proceedings.

In criminal science, a separate industry has been formed, the functional purpose of which is precisely the study of documents. This area (a component of forensic technology) is forensic document science or forensic research of documents. Within the framework of this industry, the issues of the essential origin and nature of handwriting and written speech are investigated, the types of seals and stamps with which documents can be produced are studied, methods and techniques for working with documentation for the purpose of investigating, disclosing, and preventing criminal offences are analysed, and the methods of forgery of documents and how they can be recognised are also studied.

The retrospective of the emergence of the doctrine of the document in criminal science indicates that it is advisable to link it with the processes of generalisation and unification of variable achievements of practice and theory within such areas as forensic studies of documentation and scientific (in relation to certain types of documents), the study of their inherent features, general and special elements, the analysis of how and on the basis of what factors, these documents can be distinguished and systematised into separate systems based on the similarity of characteristic features [20].

The branch of criminalistic study of documents has emerged as an independent, due to the constant deepening and study of sub-sectors and main scientific areas in the field of document management, the analysis of research branches in the field of documentation processing and the development of new effective methods and means of processing documents in the field of criminalistics based on both theoretical and empirical, considering the advantages and disadvantages of each of the existing achievements. One of the researchers who investigated and paid attention to the issues of forensic document science was O. Obraztsov [1], who described the processes of generalisation and integration of forensic research of documents.

Notably, there is some discussion on the issue of determining the subject of forensic research of documents [21]. According to, I.I. Kohutych [22], forensic document science has a subject that studies the regularities of the functioning and creation of documents that are within the scope of criminal proceedings. K. Kovaliov [11] sees the subject in the patterns associated with the formation of handwriting, writing, the influence of external and internal factors on

these components, and which manifest themselves during the creation of documents.

The concept of a document in this area is identical with the concept of a document in the Criminal Procedure Code [14]: a document is understood as a material carrier of information (facts, information) that are directly related to the disclosure and investigation of crimes. It is advisable to disclose the essential aspects and purpose of forensic documentation through its tasks, which are significantly closely related to the tasks of technology and criminalistics, and consists in assisting law enforcement agencies in disclosure, investigation, and preventive activities.

There are also tasks that are unique to the above-mentioned field of forensic technology: the improvement of forensic tools for the experimental handling of documents, the development of new methods and techniques with information containing documents; the theoretical investigation of the constituent elements of the subject matter of this branch, the study of the mechanism of criminal offences committed with the use of documents [23]. First of all, forensic documentation is also divided into certain variable sub-sectors. This division occurs based on the object composition of what is being studied. For example, if handwriting is being studied, then this issue is referred to the competence of the sub-branch of forensic handwriting, which deals with methods of handwriting recognition using handwriting expertise.

Forensic authorship study, which is based on grammar, linguistics, etc., examines patterns of speech behaviour of a person, in order to further establish the authorship of a particular document. The sub-branch, which is designed to investigate information and ways of how a document containing records and changes was made, through the use of certain means, is a technical and forensic study of documents, for which a technical examination of documents is carried out.

Given the above, it is important to emphasise the importance of forensic documentation within the scope of the subject of this research and in other areas that use the theoretical and practical achievements of forensic documentation research in everyday work. In particular, the significance of considering the outlined industry is directly related to the subsequent classification of documents due to the presence of the described branches in the industry itself, that is, its division into handwriting, authorship studies, and technical and forensic. This determines the logical existence of a difference in the types of documents that are studied within each of the sub-sectors.

In addition, forensic documentation facilitates the implementation of operational and investigative actions, examining the document as a material carrier of information that acts as an evidence base in the investigation of a particular offence at various stages. Knowledge, within the framework of forensic documentation, is considered both during the judicial and pre-trial consideration of the case, since both during the first and during the second process, work is carried out with documents. This industry allows investigating and determining how a particular document was produced, identifying traces that indicate its forgery, movement, sale, and a number of other illegal actions that are taken into account at all stages of the investigation.

Forensic examination of documents is also particularly important during pre-expert examination of documents within the framework of obtaining data, which often contains legally significant facts and testimonies, which, in fact, are evidence. According to the same mechanism of interaction with documentation, forensic examination is also carried out [8]. The accumulated and systematised amount of knowledge in the field of forensic documentation is the main source of information for such industries as: operational search, investigative, expert activities of officials and bodies authorised to use, investigate and search for documents that are criminally significant and essential within the framework of investigative actions. In other words, the circle of people who use the achievements of forensic documentation is made up of lawyers, prosecutors, judges, investigators, pre-trial investigation bodies, experts in auto and handwriting studies, etc.

Assuming the widespread use of such a category as a document in all spheres of social existence, also considering its ambiguity, polyfunctionality, and major significance of the document in the framework of criminalistics, it would be advisable to investigate the question of differentiating it as a material carrier of information, considering the achievements of scientific doctrine in this area.

Considering the functions, characteristics, and terminology of the category “document” forensic scientist O. Zhizhilenko [24] proposed a classification of documents based on the following divisions:

– for their intended purpose, documents are evidence, as a result of certifying a particular fact, expressions of will, or have acquired the properties of evidence, considering the circumstances of the case;

– by primary origin: those authored by representatives of public authorities and private individuals;

– by content: those that record circumstances and facts that are legally significant and can give rise to legal consequences and those that do not have legal significance and are not able to give rise to consequences within the framework of legal relations;

– by form: those that are already drawn up according to the existing and defined form and those that can be drawn up without considering the provisions that establish the necessary structure of the document;

– by method of certifying an event or fact: those that cancel the ability to take into account evidence

containing other documents and similar information carriers and those that do not cancel this possibility;

– by their essential meaning: those that do not participate in criminal proceedings, those that are, on the contrary, procedural, and those that relate to the spheres of the existence of social groups in society.

– by method of presentation of documents: in the form of a certificate, application, etc.

As one of the most general and comprehensive classification divisions of documents, which significantly influenced the development of criminalistics and improving the understanding of documents in this area, it is worth describing the classification according to Russian criminologist R. Belkin [3], who proposed to divide documents on the following grounds:

– by the method in which the document was created: typographic, handwritten, typewritten;

– by the nature of the information contained in the document: open and encrypted;

– by legal origin: genuine and forged documents;

– by source of origin: those that come from private individuals and those that come from public law individuals.

It is advisable to present both the proposed and important division of documents, which was proposed by a foreign forensic scientist I. Vorobyova [25]. Describing her view on what grounds should be considered when classifying documents; it is worth outlining the following aspects:

– by basic method of recording: recorded in writing, on electronic media (for example, images, etc.), movies, photos, videos, and documents of a general and universal nature.

– by material from which the carrier of the information recorded on it is made, the base can be either artificial, that is, paper or polymer, or natural: wood, stone, etc.;

– by source of origin: those created in government bodies, enterprises and organisations, and those whose authorship belongs to private individuals, i.e., unofficial documents;

– by their intended purpose: personal, financial, official, etc.;

– by the order of origin: for a copy and duplicate, for the original and draft, etc;

– by procedural significance: physical evidence, written and those that are a model for comparative analysis.

– by authenticity: real and fake;

– by degree of openness: open nature; secret; documents required for official use;

– by storage time intervals: those that are stored permanently, temporarily, or for a long time;

– place of occurrence: internal and external.

Of particular interest is the approach of I. Aspen [4], who suggests classifying documents based on a common division, namely according to the form of the information carrier. Based on this foundation, I. Aspen [4] distinguishes plastic documents or combined documents, documents in which information is recorded on electronic media and on traditional paper documents.

Considering the appearance of the category "electronic document" near the category "document", it is important to illustrate the reasoning of V. Sezonov [26], which offers a definition of the concept of an electronic document and outlines the species diversity of this phenomenon. An electronic or digital environment of activity should be understood as systematised objects containing elements such as computer tools, etc., and are in a certain ratio and interaction with each other regarding the language that is programmed, the standards on which they are based and the technical parameters that are inherent in them, processing, accumulation and further transmission of the information that they contain [26].

The widespread use of electronic documents is conditioned by a decisive step in the field of innovative technologies, which leads to progress at all levels of global development, starting new ways of transmitting information and improving the ways and forms of media on which this information can be stored. Thus, in particular, progress was caused by the emergence of secure databases, which allows storing legally important information that certifies certain facts that can give rise to legal consequences or other expressions of will, testimony, etc. The possibility of using or familiarising oneself with this information occurs in accordance with a certain available and defined access procedure, including the use of verification by e-mail, phone number, biometric data, bank card data, and using passwords or codes [27].

But these are not the only means of access, for example, access to electronic documents and more has recently been made easier with the advent of the QR code-, a two-dimensional barcode that can be scanned with a smartphone or other device, and gain quick access to the necessary data. Thus, the concept of "electronic document" should be understood as information that is contained on an electronic medium and access to it is carried out in the appropriate order, which is defined.

According to V. Sezonov [28], electronic documents of legal significance should be classified according to the following division bases:

– by origin: those created by private users, government agencies, enterprises, organisations, or other authorities;

– by the form in which they are located: virtual, which are information objects that are stored in special electronic repositories, for example, state registers, which are accessed according to certain algorithms; material – those in which information is stored on an electronic medium, it can be copied, read, etc., and it is meaningful and legally significant;

– by the nature of the material media: placed on external memory devices; placed in the computer's memory, such as virtual disks, etc.;

– by the level of security: inherently open and restricted access;

– by content: graphic, animated, text documents, or those that contain information that is recorded using special codes.

Continuing the study of classification approaches to the classification of documents in criminal science, it is worth highlighting the opinions of another forensic researcher, which are the basis for further clarification of the prevailing classification approach that would meet modern realities and the needs of both theory and practice. In particular, I. Podvolotskyi [29], suggests considering documents within two divisions or groups.

1. Documents that are being studied in the field of technical and forensic research:

– made of paper, polymer materials, leather, fabrics, glass, etc.;

– according to the method of recording information in them: using printing, writing; photo, film, video, electronic documents, etc.

2. Documents that are the subject of a crime; genuine and forged documents. Considering their attitude to the criminal process: documents that are material evidence; documents that certify certain facts and are evidence that is legally significant in the framework of the investigation of a criminal offence.

According to I. Podvolotskyi [29], it is advisable to classify documents in criminalistics both by their origin (into private and official) and by the method of transmitting information.

It is worth noting that this approach to the classification of documents is of essential importance for technical and forensic examination of documents. Technical and forensic research, as noted earlier, is a sub-branch of forensic document science and consists in studying and developing methods and methods according to which the handling of documents is carried out, for further investigation of criminal offences and their prevention. With this particular type of research, it is possible to fully and comprehensively investigate the required document. Accordingly, the document and its derived elements, such as materials or written tools, are objects of technical and forensic research [30].

There is also an internal division of this type of expertise into one that examines the details of the document and one that deals with material issues.

Regarding the functional purpose of each of the subspecies of examinations, the requisite system is designed to solve the following tasks:

– the need to establish the facts and methods by which changes were made to the document, for example, writing, re-pasting cards, or erasing information;

– identification of characteristic features regarding the printing means used to produce the document and the presence of their traces;

– finding out the content of information available on materials that are flooded, faded, soiled or poorly visible, on materials that have been exposed to temperatures and fire, only if the document manufacturing material has not become ash;

– identification of the brand, system characteristics, typological data on the category of printing equipment, followed by clarification and identification of these tools;

– finding out the font affiliation of a particular set of letters;

– identification of the statute of limitations of a document, whether holistic or fragmentary, solving the issue of dashed drawing on a document and its sequence;

– finding out the origin of writing tools by strokes;

– identification of such elements as: seals, stamps, facsimiles; means of multiplication techniques; composter signs behind clearings, etc.

A subspecies of technical expertise designed to investigate the material composition of a document performs the following fundamental tasks:

– clarification of the question of the time during which strokes of handwritten notes were made in documents;

– analysis and further determination of whether documents belong to a genus or species according to classification, etc.;

– determination of the material composition of the document: paper, polymers, etc.

The most common category in the framework of technical and forensic expertise is the study of the so-called standard document, performed according to template samples, contains a certain uniformity of questions reflected in it. Thus, it can be noted that an important element of the object of research (document) in criminalistics is the banking details and the form.

Each document contains banking details, they reflect a certain set of mandatory data and information that must be submitted based on the provisions of laws and regulations. There is a division of banking details, depending on the method of applying them to the document: those that are applied according to the template when creating the form, that is, permanent, and those that are marked on the document when directly filling in and have the name of variables. The rules and regulations on the correctness of filling out the form with banking details, both permanent and variable, contain unified systems that regulate the procedure for organisational and administrative documentation and establish requirements for how documents should be processed [31]. As for the form, as a mandatory element of a certain type of document, it is a form of an approximate type, which

is either in the form of a printed material object, or is located on another material storage medium, and is then filled in with the necessary data in certain places, that is, filled in with banking details.

Returning to the issue of classification approaches to document differentiation in criminal science, it is advisable to start a systematic review of the obtained theoretical basic approaches with the allocation of their advantages and disadvantages and significance for modernity. In particular, in general, each of the classifications considered, although it is of outstanding importance for the development of forensic knowledge in the field of document research and has solid provisions, does not fully meet the challenges of the modern world in the framework of criminalistics that arise today. Considering the significant time intervals that exist between the proposed classification approaches and the present, it is worth noting the need for their updating and improvement to such a level that would allow the use of such classification bases not only for theoretical research, but also for practical use in the work of investigators, legal practitioners, expert researchers, etc.

The described classification approaches do not allow fully depicting the possible variability of the document and its polyfunctionality, which still exists, considering high technical development and development of IT, which creates new challenges for criminologists to track new trends in the field of document science with further research of newly formed types of documents and find out their belonging to a particular species or genus. For example, analysing the classification approach of I. Podvolotskyi [29], who proposed to divide documents on such grounds as: by origin, by the method of transmitting information, by the method of fixing information, by the legal and material nature, and by the nature of the materials from which the document was made. The advantage of this classification is the division of differentiated documents into two groups, with the allocation of important elements that are necessary for technical and forensic examination [29].

Regarding the shortcomings, the author missed essential approaches to the classification of material objects containing information, in particular I. Podvolotskyi [29] did not divide the documents depending on the type of information carrier of the document, and the question of the number of authors who created the document was also not taken into account; the question of the purpose of the document was also not taken into account, including what percentage of the document was ready and at what stage of production it was. This quantitative advantage of the disadvantages of this classification approach indicates that its use for investigation purposes by investigators or experts will significantly complicate the investigative process and examination of document research.

Regarding the classification bases of division by I. Vorobyova [25], who proposes a fairly wide list of grounds on which it is advisable to divide documents, in particular, by recording information in them, by materials from which the document was created, by the source of the document, i.e., by authorship, by the order of execution of the material medium, on what procedural value it has, by reliability, openness, periods of storage and use of the document, and on the place of origin which is assigned to it.

Obviously, the classification is quite comprehensive and in some aspects corresponds to modernity, but the content of these bases of division is not such that it would be quite appropriate to use it in a practical area in the field of criminalistics. In particular, for example, such grounds as the retention period of documents, their time and place of origin are not important for criminalistics, but they are important for document science and other sub-sectors in this field. In addition, such grounds as the method in which the information was transmitted, the nature of the information carrier and its legal significance were not considered by the author, although they are quite important for the process of investigative actions and the judicial process.

Classification approach of the prominent forensic scientist R. Belkin [3] also has a comprehensive character, because it offers a number of bases for separating documents, for example, by the nature of the information content of the document, by the method of creation, and by the legal significance and source of origin of the document.

It is advisable to note that although this classification is not considered relevant, given the technological process and the existence of information technologies and the introduction of such a concept as an electronic document, which makes it impossible to consider this classification as corresponding to the present, but its theoretical significance is difficult to overestimate, because it was the basis for further research and practical and theoretical improvement of the forensic classification of documents.

The classification according to A. Žižylenok [24], which was necessary for theorists and practitioners of the 20th century, because it proposed the distribution of documents on the following grounds: essential importance, purpose, origin from the primary source, contents, the form, the nature of the information it contains, etc. Such differentiation at that time showed its practical value at the stages of the investigative and judicial process [24].

Within the framework of the present, this system becomes the basis for the development of specialists, theorists, and practitioners working in the field of forensic research of documents and acquires gradual improvement and adaptation to the realities of the modern judicial and investigative process.

Regarding the approach to differentiation by I. Osyka [4], it is worth noting, although it is somewhat narrow and does not show all the specific and variable variety of documents, but it sufficiently meets the modern requirements, given the presence of the basics of classification on a common basis – the form of an information carrier, and distinguishes on its basis documents from polymer, paper, and traditional documents in paper form and electronic documents.

Considering the above analysis of the positive and negative features of each of the approaches, it is proposed to form the basis for classification, which would be most acceptable for practical application in the work of investigators, specialists in the field of document science, experts, practitioners, and theorists. Based on the principles that were used by the above authors, which include the division of documents into one basis, the foundations should not be identical and occupy a certain place, considering the area in which it is necessary to perform classification, etc.

Considering the provisions of legal norms and modern conditions of the existence of criminal science, the classification approach to the division of documents can be carried out on the following grounds:

– by the legal form in which the document exists: application, contract, order, resolution, order, law, management act, verdict, decision, will, etc.;

– by the origin of the media and the method of fixing information on it: paper document; on magnetic media; on media that record audio information; information is recorded by handwriting; photographic method; information is recorded by optical or electrical signals with special equipment, etc.;

– by source of origin: those that come from persons of public law – official (from enterprises, institutions, organisations); and those that come from individuals – personal, for example, personal records, manuscripts, letters, diaries, etc.;

– by the level of secrecy inherent in the document: secret; documents intended for official use with the appropriate algorithm that determines access to them; confidential; those marked with a security stamp, for example, “especially important”;

– by their intended purpose: those that are designed to certify legal phenomena; those that contain a certain type of information of any nature; securities; financial securities; reference and certification documents (for example, a ticket);

– by how information is reflected: typewritten; handwritten; printed; reprographic; photo documents; film documents; video documents; audio documents; electronic documents; combined documents;

– by meaning in relation to procedural law: they are written evidence; material evidence (for example, they are a means of committing a crime or its object, they serve as an evidence base, because they contain facts of legal significance); documents used for comparative research to establish the authenticity of the document;

– by the ratio between the time of committing an offence and the time of creating a document: the one that was created during the commission of an offence; before the commission of a criminal offence; after the commission, but within the time limits of the investigation;

– by its authenticity: the one that is authentic, that is, the facts that are attested in it correspond to the real state of affairs; and the one that is fake.

In particular, forgery can be of two types: intellectual and material. Material forgery means complete forgery of all attribute elements of the document (form, content) and partial forgery, when only a certain part is modified, for example, the banking detail. Intellectual forgery is false evidence in favour of a forged document and concealment of facts about the present one. The establishment of the fact of intellectual and material forgery occurs during the investigation process and with the help of a number of forensic examinations using technical and forensic tools, techniques and methods inherent in the technique of criminalistics and forensic documentation.

Considering the shortcomings of classification approaches that were outlined earlier, and the nature of the origin of a document that comes from the creation of a certain person, their mental and creative activity, it is advisable to determine another basis for dividing by the number of creators, performers of the document: a document that was created, executed by one person; two persons; three or more persons. When examining a document during, for example, a technical and forensic examination, it is necessary to consider what type or type of material was used to produce a particular document that is the object of research. Therefore, based on this provision, it is advisable to distinguish the following basis for classifying documents – by the type of document manufacturing material: paper; glass; ceramics; fabric; document made of polymer materials; plastic; metal; rubber; wood; combined materials (that is, a combination of two or more materials with different properties during the production of documents). The next basis for classification will be the degree of openness and access to the information contained in the document. Given this, it is advisable to divide it into: an open-type document; an encoded document with a specific access algorithm.

Thus, using the reasoning of researchers and their best practices in the field of forensic document science, and relying on those shortcomings that were analysed, now the authors of this study have described the preferred classification approach for a number of division bases, which allows comprehending the concept and main features of the document in the field of forensic science.

Conclusions

Thus, the study on the topic of forensic classification of documents allowed investigating more deeply and in detail the issues related to the essential meaning of the document in the modern world and identify the category of electronic document as a logical consequence of modern progress in the context of globalisation and information processes.

The attention paid to such an element of the document as information and the study of its significance based on the normative legal provisions of the legislation allowed identifying and outlining the basics of division necessary for a comprehensive classification of documents in criminal science.

The analysis of scientific approaches to the study of this topic with the allocation of shortcomings and advantages of each, in accordance with the conditions of modernity and the needs of specialists in the field of criminalistics, researchers, practitioners, investigators, provided a classification division of documents on the following grounds: the organisational and legal form in which the document exists, the origin of the carrier and the method of fixing information in it, the source of origin of the document, the level of secrecy, the purpose, the way information is reflected in the document, its value in relation to procedural law, the ratio of the time of creation of the document and the time of committing a criminal offence, the degree of openness of information in it, for reliability, the type of material from which the document is made, and the number of document creators.

The results of the study and the proposed forensic classification of documents are practically valuable and such that it is advisable to use during investigative actions, judicial and pre-trial processes, within the framework of forensic examinations, in particular, technical and forensic, etc.

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Криміналістична класифікація документів

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■ **Анотація**. Актуальність статті зумовлена значущістю ролі документів у криміналістиці, їх варіативністю та постійними процесами змін на тлі світової інформатизації. Мета дослідження полягає в аналізі змісту поняття «документ» крізь призму його співмірності з такими категоріями, як «криміналістика», «криміналістичне документознавство» та «кримінальні правопорушення», а також побудові варіативної та структурованої класифікації документів, що необхідна для її практичного

застосування в документоведенні у сфері криміналістичної науки. Основними методами, які використано в процесі дослідження, є систематичний, методи термінологічного аналізу, синтезу та порівняння. На підставі результатів вивчення наукової доктрини в цій сфері наведено варіативні криміналістичні класифікації документів, визначено переваги й недоліки кожного підходу до класифікації. Обґрунтовано найбільш прийнятну класифікацію структури документів. Доведено, що дослідження криміналістичної класифікації документів, зокрема визначення оптимального підходу, дозволить спростити подальше їх використання в теорії криміналістики й на практиці, безпосередньо під час розслідування кримінальних правопорушень. Результати дослідження також можуть бути використані в процесі роботи слідчого на певному етапі розслідування, визначення предмета й тактичного просування слідчих дій

■ **Ключові слова**: документознавство; криміналістика; аналіз документації; систематизація

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Interrogation Tactics for Underage Victims of Domestic Violence

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■ **Abstract**. Conducting an interrogation of minors who have suffered from domestic violence, considering the special procedural situation of the latter and the threatening trends in the growth of these offences, determines the need to develop tactical features and formulate the optimal sequence of implementation of this investigative (search) action, so the relevance of this study does not raise objections. The purpose of the study is to investigate the procedural, tactical, and psychological features of conducting an interrogation of underage victims of domestic violence and formulate appropriate scientific and practical recommendations for timely and high-quality implementation of this investigative (search) action. To highlight the specifics of the stages of conducting such an interrogation, to reveal the specifics of organising preparation for the interrogation of underage victims, and on this basis to formulate appropriate scientific and practical recommendations. Find out the possibility and conditions for conducting remote interrogation of underage victims of domestic violence. Outline the main questions that need to be answered during the interrogation of an underage victim of domestic violence. Methodology. During the research, a set of scientific methods was applied: dialectical, methods of analysis and synthesis, induction and deduction, system and structural, formal and logical, comparative legal, modelling, and generalisation. Conclusions. As a result of the conducted research, it was determined that the interrogation of an underage victim of domestic abuse should consist of a set of tactical, psychological, and legally regulated actions of the investigator to collect, evaluate and record criminally significant information about the event of a criminal offence (the fact(s) of domestic abuse) by direct communication of the investigator with the minor to obtain truthful information about the circumstances of the committed illegal act. Attention was drawn to the need to establish psychological contact and trusting relations with a minor. Attention is focused on the advantages of conducting remote interrogation of underage victims of domestic violence. It is concluded that during the interrogation, the age, individual characteristics, level of psychophysical development of an underage victim of domestic violence, and a situational approach combined with appropriate correction of the investigator's behaviour are subject to consideration. The practical significance lies in the fact that the study formulates conclusions and proposals aimed at improving the effectiveness of investigators' interrogation of underage victims of domestic violence. The study results can also serve as a basis for improving national legislation, as proposals were formulated to amend the criminal procedure legislation of Ukraine

■ **Keywords**: criminal proceedings; tactical technique; psychological contact; situational approach; investigative (search) action; remote interrogation

■ Introduction

In order to clarify the circumstances that are subject to evidence in criminal proceedings opened on the grounds of a criminal offence related to family violence, the testimony of a person who suffered from an illegal act is essential. They can be obtained during interrogation, since the victim may be the only eyewitness and, accordingly, the bearer of important information related to the commission of an illegal act, and can reveal the most important details of the event.

Victims of domestic violence, for the most part, are minors who have suffered physical, psychological, or material harm by this act. They are the most vulnerable category of society, which is determined by their age and socio-psychological characteristics. Therefore, the specifics of conducting investigative (search)

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actions with their participation, in particular interrogation, should be based on taking into account a significant number of factors, and using a wide range of procedural and tactical means and techniques aimed at obtaining information about the time, place, method of committing domestic violence, the person(s) who committed it.

The number of children who were questioned during the domestic violence investigation, according to a study conducted by T.V. Ishchenko [1, p. 133], is relatively small. According to the researcher (and it is difficult to disagree with this), the reasons for this situation are the failure to provide the child with the appropriate procedural status, reducing additional trauma and negative impact on the child's relationship with an abuser. In addition, there are cases of conducting search actions by investigators who have little (or no) experience in investigating criminal offences involving children. Therefore, one of the most effective ways to eliminate this disadvantage is proper professional training of investigators investigating criminal offences of this category and building a theoretical model of the procedure for conducting an interrogation as an important investigative (search) action.

Thus, considering the special procedural situation of minors as participants in criminal proceedings and the harmful consequences that can occur as a result of violent actions committed against them by family members, it seems relevant to study the specifics of conducting this investigative (search) action with their participation as victims of this type of criminal offences.

The scientific originality lies in the fact that the study comprehensively reveals the tactical features of conducting an interrogation of an underage victim of domestic violence, and defines the circumstances that the investigator must consider when performing this investigative (search) action. Based on the study results, scientific and practical recommendations were formulated that, during the interrogation of an underage victim of domestic violence, would allow the investigator to build a rational line of relations with a victim and achieve the goal of conducting this investigative (search) action – obtaining objective and most accurate testimony.

■ Literature Review

Many criminologists and processalists have focused their attention on issues related to the specifics of legal regulation and interrogation of minors. The scientific developments of this problem are quite informative, but they relate mainly to the general tactical features of interrogating minors, without considering the specifics of the illegal act, as a result of which the child was harmed. Among the lawyers, it is advisable to mention I.V. Bassist & S.O. Pryshlyak [2], who quite thoroughly investigated the features of interrogation of underage victims of crimes against sexual freedom and sexual integrity. Features of interrogation of adolescents at the stage of pre-trial investigation were also studied by some researchers: L.D. Udalova [3], O.O. Prochenko [4], O.A. Galustyan [5], O.V. Voloshyna [6] and others. Psychological aspects of conducting an interrogation with the participation of minors were considered by S.V. Kharchenko [7], T.O. Lutcenko & S.V. Belan [8], M.P. Klymchuk & Y.V. Furman [9], E. Slyozka [10], G.U. Nikitina-Dudikova [11]. Some procedural and forensic problems of conducting interrogation of minors during the investigation of criminal offences are covered in the dissertation research by S.V. Kharchenko [7], K.I. Dyachenko & N.V. Shost [12], I.P. Osipenko & O.O. Kalitnyk [13], O.O. Kochura [14].

Considering the significant scientific contribution to the development of these issues, the issues related to the training of relevant specialists, whose competence includes conducting investigative (search) actions involving minors – victims of domestic violence – remain relevant today. It is well known that minors need special treatment, and the protection of their rights, freedoms, and legitimate interests is a priority task of law enforcement agencies at all levels. However, it is precisely because of the lack of special knowledge and skills necessary for the qualified conduct of the relevant investigative (search) action that investigators quite often use techniques and methods of conducting the same interrogation of minors without taking into account their specific characteristics (age, individual, corresponding psychological state). Such a situation, in turn, can not only increase the occurrence of conflict-of-laws issues and negatively affect the effectiveness of the investigation, but also harm the interests or even the health of minors. Therefore, knowing the specifics of conducting an interrogation with strict compliance with the requirements of the law will prevent these consequences and get truthful and objective information about the fact of domestic violence from the minor.

Thus, despite the relevance of the problem and a significant amount of scientific experience, the issues of procedural, organisational, and tactical features of conducting interrogations of minors affected by domestic violence require a thorough analysis. The difficulties that arise before the investigative authorities during this investigative (search) action during the investigation of domestic violence determine the expediency of developing a methodology for interrogating underage victims of this particular type of illegal encroachments.

■ Materials and Methods

To achieve the goal of the study, a significant number of scientific sources were analysed using both general scientific and special legal methods of scientific

cognition. The choice of these methods was determined by the specifics of the study and the problems defined in it. The research methodology was based on dialectical, methods of analysis and synthesis, system and structural, formal and logical, comparative legal, modelling, and generalisation. The methodological basis of the research was the dialectical method of scientific cognition, which contributed to understanding the object of research in the context of combining the needs of science and practice. The dialectical method of cognition was used to determine the essence of the concept of "psychological contact", to determine the features and specifics of conducting an interrogation of an underage victim of domestic violence. The use of the system and structural method contributed to the study of the stages of conducting an interrogation of an underage victim of domestic violence, and also identified the tasks that are solved at each of the stages of its implementation. The formal legal method allowed analysing the content of the norms of the current criminal procedure legislation of Ukraine. The use of formal and logical methods (analysis, synthesis, induction, deduction, and generalisation) allowed forming conclusions and definitions and proposing a system of tactical techniques and recommendations for the preparation and direct interrogation of underage victims. The generalisation method contributed to the conclusion in this study.

During the study of this problem, the available research papers by researchers were used and analysed. The normative basis of this work consists of: the Criminal Procedure Code of Ukraine [15], the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse [16] and other laws and regulations of national legislation on preventing and countering domestic violence.

Results and Discussion

Many researchers speak about the complexity of the interrogation due to the specific nature of its participants. In Particular, L.D. Udalova [3] calls interrogation an independent way of obtaining information about the circumstances of the event under study, characterised by its specific methods of obtaining and recording relevant information (procedural, tactical, psychological), the conduct of which in the framework of criminal proceedings is assigned to the powers of the investigative bodies and the court [3, p. 200]. The specificity of interrogation as an investigative (search) action is explained by the fact that the testimony of the interrogated person, considering various circumstances, may contain contradictory facts and errors that must be identified and considered on the way to achieving the goal of conducting the specified investigative (search) action. In addition, the testimony of a minor, for the most part, is inconsistent, has an emotionally increased colouring (excitability) and a tendency to exceed the severity of the encroachment committed against them. As a result, it is not necessary to count on the full (maximum) frankness of the minor during the interrogation. Minors may not always be able to identify the main and significant facts and circumstances of the relevant event or situation. According to O.O. Prochenko [4], "They are more likely than adults to make mistakes when determining distances, time intervals, sequences of actions and events, rather forget the perceived events, but quite accurately convey the facts that interested them. For minors, a characteristic feature is the rapid forgetting of perceived situations, but also a fairly accurate transmission of facts that are of interest to them. Minors are characterised by rapid changes in mood and behavioural reactions, which significantly affects their testimony" [4, p. 87]. The presence of a limited vocabulary of a minor and an unstable psyche can also complicate the interrogation. Accordingly, the interrogation of this "special" category of victims requires professional and special knowledge from the investigator, and considerable tactical efforts. Moreover, according to O.A. Galustyan, "the process of obtaining testimony from underage (minor) victims should, if not exclude, then necessarily minimise the repeated psychotraumatisation of the victim of violence during interrogation" [5]. Attention should be drawn to the inexpediency and inadmissibility of conducting a repeated (additional) interrogation of minors, therefore, according to O.V. Voloshin [6], the investigator needs to organise psychological interaction with the victim in such a way that obtaining the most complete and accurate testimony is carried out during one interrogation.

As a general rule, the interrogation of a minor consists of several aspects:

– procedural – strict compliance with legal requirements for the organisation of the interrogation;

– psychological – considering the psychological, age, gender, and socio-psychological characteristics of the interrogated person;

– ethical – moral-tactful behaviour of the investigator;

– pedagogical (educational) – construction of the interrogation considering the individual approach (individual line of behaviour); tactical – use of tactical and special interrogation techniques depending on the existing situation [6, p. 191].

The specifics of the interrogation of minors, S.V. Kharchenko [7, p. 126], defines: 1) normative and legal regulation; 2) tactical considerations; 3) individual characteristics of minors, combined with insufficient knowledge and life experience, low ability to focus attention, increased suggestibility, insignificant development of analytical thinking in the perception and

assessment of facts, a tendency to mix the real with the imagined, increased emotionality of judgments and actions.

Next, the study closely examines the specifics of conducting an interrogation of underage victims of domestic violence.The legal regulation of this investigative (search) action certifies that the interrogation of an underage or minor person is carried out in accordance with the general rules established by Article 224 of the Criminal Procedure Code [15] (hereinafter – CPC), and the provisions provided for in Article 226 of the CPC [15], which regulates the specifics of this investigative (search) action specifically in relation to a minor.

According to the current legislation, the presence of: a) their legal representatives (articles 44, 59, 226 of the CPC) is mandatory during the interrogation of minors. Such persons are parents, adoptive parents, guardians, other close relatives or family members, and representatives of guardianship authorities, institutions and organisations under whose guardianship a minor is located. According to Part 3 of Article 44 of the CPC of Ukraine [15], the decision to involve a legal representative of a minor suspect is made by a resolution that the investigator and prosecutor have the right to make [15]; b) a teacher or psychologist (Articles 226, 227 of the CPC); c) if necessary – a doctor (Articles 226, 227 of the CPC). In this context, the provision of timely assistance to children affected by domestic violence depends on the joint (coordinated) activities of all participants in the criminal process. Such activities should be carried out in compliance with a number of principles: legality, mutual assistance, emotional support, clearly defined guidelines for the activities of all specialists involved in the interrogation of minors. In this aspect, the authors of this study fully agree with O.A. Galustyan [5] that the investigator must maintain a balance between the obligation not to harm the person under interrogation and the need to obtain information. If the risk of harm exceeds the need for information about the committed criminal act, it is necessary to find out alternative sources of information about the offence [5].

The specialised literature has repeatedly stated that teachers or psychologists involved in criminal proceedings are given the status of a specialist. Their task is to assist the investigating authorities and the court in establishing contact with the minor, promote the legality of the interrogation, the accuracy of recording, use the opportunities of other branches of knowledge to obtain accurate testimony, mitigate the uncomfortable situation, and encourage the minor to engage in dialogue. According to some researchers (T.O. Lutcenko & S.V. Belan [8], M.P. Klymchuk and Y.V. Furman [9], E. Slyozka [10], G.U. Nikitina-Dudikova et al. [11]), it is quite appropriate to involve persons with appropriate (psychological or pedagogical) education in interrogations.

Participation of a teacher (psychologist), according to T.O. Lutcenko & S.V. Belan [8], is desirable if the minor has a significant lag from the appropriate level of development for their age. Evidence of the latter can be such signs and facts as a long-term illness, repeated retention of the student in grade, underdevelopment of intellectual abilities, etc. [8]. Therefore, the participation of a teacher (psychologist) would help to defuse a tense or unusual situation for a minor, create a normal psychological climate, or remove conflict during investigative (search) actions. As noted by M.P. Klimchuk & Ya.V. Furman [9], the transmission of information and the content of its presentation depend on the desire of the information carrier to inform the investigator during the interrogation, the presence of psychological contact. The content and volume of information that the investigator receives from the interrogated person is larger than only the speech description of the fact, event, since it also covers the behaviour of the interrogated person, the features of their speech, mental state, etc. [9, p. 175]. Therefore, it is with the participation of a teacher (psychologist) that psychological and social support of an underage victim is carried out during the interrogation, after which a professional conclusion is provided. In certain cases, psychologists help prepare the child for questioning. The task of the specialist in this case is to establish psychological contact with the child and promote their psychological (moral) attitude to the conversation and readiness for the investigator's questions. According to the investigator of the investigative department of the NPU in the Odessa Oblast, having no psychological and pedagogical education, the right decision was made before the interrogation to involve a psychologist in a conversation with the child in order to understand whether they would agree to contact communication [10, p. 17].

When choosing a specialist to interrogate a child who has been subjected to domestic violence, or who has witnessed it, preference should be given to a practicing psychologist in the field of age and pedagogical psychology. T.V. Ishchenko [1, p. 136] highlights the importance of such a condition. Given the fact that the consequence of domestic violence can be the occurrence of a significant psychological trauma in the child, and the teacher does not always have the appropriate experience of working with this category, and may not have sufficient knowledge in the field of psychology, accordingly, the effectiveness of conducting an interrogation may significantly decrease.

The law does not provide for a period within which it is necessary to interrogate a minor. However, it is recommended to interrogate minors of younger age groups as soon as possible after they perceive the

event of a criminal offence. If there is information about the emotional impact of a criminal act on the interrogated person, it is advisable to postpone the conduct of this investigative (search) action for two to three days after the commission of the act.

Conducting investigative (search) actions at night (from 22 to 6 o'clock), in accordance with Article 223 of the CPC [15], is not allowed. Only urgent cases that may indicate that delay in carrying out the relevant event may be accompanied by the loss of traces of a criminal offence or the escape of a suspect may be an exception to this provision [15]. According to Article 35, paragraph A, of the Council of Europe Convention for the Protection of Children from Sexual Exploitation and Sexual Abuse of October 25, 2007 [16], a child should be interviewed only after the facts are reported to the competent authorities. The interrogation of a minor may not last more than one hour without a break and more than two hours a day (Part 2 of Article 226 of the CPC). The authors agree with O.A. Galustyan [5] that such time limits for questioning are rather possible for older minors. Minors, the scientist notes, can focus their attention for a much shorter time. And, considering the fact that conducting an interrogation is accompanied by a psychological burden, the duration of this investigative (search) action should be "reasonable" to obtain the necessary information for criminal proceedings. Therefore, the duration of the interrogation for different age categories should be as follows: a) from 5 to 7 years – no more than 15 minutes; from 7 to 10 years – no more than 20 minutes; from 10 to 12 years – no more than 25 minutes; older than 12 years – no more than 30 minutes [5]. That is, the duration of the interrogation should be "proportionate" for the possibility of obtaining the necessary information, since the specified investigative (search) action is associated with severe psychological stress, which entails the above consequences. In this regard, the disadvantage can be called the lack of legislative consolidation of the duration of the break – such a "prerogative" is assigned to the investigator, who must determine it personally according to their inner conviction. These provisions are especially important to take into account when planning an interrogation, which would allow getting the maximum benefit from this investigative (search) action.

According to Part 3 of Article 226 of the CPC of Ukraine [15], minors are explained the obligation to give truthful testimony, but they are not warned about criminal liability in case of refusal to give evidence and for deliberately false testimony.

An important circumstance that lawyers emphasise (K.I. Dyachenko & N.V. Shost [12], I.P. Osipenko & O.O. Kalitnyk [13], O.O. Kochura [14]), the interrogation of a minor should be preceded by a preliminary receipt of testimony from adults and a meaningful study of other available information**.** This would allow the investigator to build reliable versions of what happened and correctly determine the most effective and rational tactics of actions for communicating with a minor [10, p. 77].

The activity of organising and conducting an interrogation consists of several stages, in particular: 1) organisational and preparatory; 2) actual conduct of the interrogation; 3) final. Detail these stages as follows: 1) the initial stage; 2) establishment of psychological contact; 3) stage of free storytelling; 4) detailing stage; 5) comparing the information received with the available one; 6) final stage. Next, the study will consider them in more detail [12].

The organisational and preparatory stage of conducting an interrogation of underage victims of domestic violence necessarily requires considering the age and individual characteristics of the latter and the preliminary training of the investigator. The investigator's preparatory actions for conducting an interrogation should be reduced to:

– choosing a comfortable place of interrogation for a minor (at home, in a children's institution, in the "green room"). A prerequisite for conducting an interrogation with the participation of a minor is a sense of complete security on their part. Therefore, it is not recommended to conduct an interrogation in a place associated with negative memories, and where the latter was harmed. In this regard, G.Yu. Nikitina-Dudnikova [11] emphasise that the effectiveness of conducting an interrogation of an underage victim depends on the latter's stay in a safe and stable family situation. The researcher also notes the need for the absence or presence at a significant distance from minor persons who can manipulate them or even violate their safety [11, p. 79]. Given the fact that domestic violence, as a rule, is a consequence of an "abnormal" situation in the family, it is not advisable to interrogate a minor at their place of residence. In some circumstances, the interrogation of a minor may also take place in the investigator's office or other official institution, where staying may have a beneficial effect on the minor and emphasise the importance and responsibility of this investigative (search) action;

– determination of the time, optimal duration and circle of participants in the interrogation, which should be carried out taking into account the schedule of the day and the interests of the minor [12, p. 80]. It is necessary to avoid interrogating the child in the afternoon, during daytime sleep, or (in case of illness) while taking medication [18, p. 35]. Regarding the expediency of involving an underage victim as a legal representative of one of their parents in the interrogation, the following can be noted. A minor may experience feelings of fear, shame, etc. in the presence of their parents, react sensitively to the emotions of their parents, monitor their facial expressions, gestures,

movements and, accordingly, give evidence or refuse to answer the investigator's questions at all. To the above, the same position was expressed by K.I. Dyachenko & N.V. Shost [12] regarding the involvement in the interrogation process of a teacher from the educational institution where the underage victim is studying or studied, if they are in a conflict relationship. According to researchers, the presence of such a participant will only have a negative impact on the conduct of the interrogation [12, p. 13]. Thus, supporting the position of researchers, when interrogating underage victims of domestic violence, it is not necessary to invite parents (one of the parents) or close relatives or those persons who, according to the investigator, can negatively affect the interrogation of underage victims. If parents are held accountable for committing domestic violence, their presence during the interrogation is not allowed. I.P. Osipenko & O.O. Kalitnyk [13] state that the involvement and necessity of a doctor is determined by the investigator due to the physical and mental development of the child, the existence of an illness or special medical needs

– study of individual and psychological characteristics of a minor, their "strengths" and "weaknesses"; tendency to fantasise or exaggerate; hobbies, etc. It is advisable to read their social media account. The investigator's knowledge of the victim's personality, character, preferences, etc. will be important for establishing contact, and for possible forecasting of their behaviour during an investigative (search) action;

– obtaining information about the social environment and family relations of the minor (family composition, family relations and relations with friends, peers, family atmosphere, behaviour in everyday life, what measures of encouragement and punishment are applied to the minor, the child's reaction to them, the places where minors spend free time, whether they visit children's institutions);

– finding out the emotional state of an underage victim at the time of perception of the event – the fact of domestic violence (for example, scared, agitated, worried, etc.); their actions after the criminal offence, how exactly they spent the time between the event and the interrogation (according to O.O. Kochura [14, p. 180], "it is important for establishing the possibility of "layering" further impressions");

– finding out the facts of discussion by adults of the event that occurred in the presence of a minor and the possibility of influencing their subjective judgments on the position of the latter (to cause fear, guilt, shame, etc.);

– obtaining advice from specialists (educator, psychologist) with appropriate experience in working with children of a certain category on proper preparation for conducting an interrogation; including choosing a list of issues that are understandable and least traumatic for a minor. The question should be formulated in such a way as not to focus on the circumstances of the illegal act committed against the injured person, but in general to lead them to give truthful and objective testimony. Such interrogation tactics, given their rather sensitive nature, will be appropriate for investigating cases of sexual violence against a minor;

– organising preliminary meeting with the child to establish and establish a trusting relationship (ideally – several times);

– setting up a minor for the interrogation process (a child of any age must consciously go to the interrogation, understand the purpose of its conduct);

– informing all participants about the conduct of video filming during the interrogation;

– preparation of visual material (toys, layouts, photos, drawings, etc. – taking into account their age preferences). In some cases, it is easier for the child to show than to express their opinion;

– preparation of technical means of recording the interrogation process (video equipment, microphone for shooting, etc.).

The information collected at the stage of planning the interrogation (depending on the circumstances) is: 1) last names, first names, and contact details of the parents/legal guardians/other guardians of the child; 2) housing (household) conditions in which the child lived (size, household composition; history of omission; history of disorders in the relationship of parents (disputes over guardianship, domestic violence, etc.); 3) injuries received earlier by the child; 4) facts of domestic violence against the child's siblings; 5) the presence of mental health problems in the family and/or in the close environment of the child in the past; 6) dependence on harmful substances (in particular alcohol and psychoactive substances 7) the presence of previous criminal records of any of the child's family members; 8) the level of support for the child from parents/legal guardians/other guardians (in particular, a history of non-fulfilment of parental duties); 9) the possibility of access of the alleged abuser to the child; 10) the state of health of the child (chronic diseases, neuropsychiatric disorders, and/or disability). This information should not be limited only to a confirmed official diagnosis, but should contain any information about possible, but not yet diagnosed, neuropsychiatric disorders [19, p. 34].

Tactical and psychological techniques for establishing communicative interaction with an underage victim, according to the authors, should be reduced to the following aspects: a) the beginning of the interrogation – a free conversation on the topic(s), which(s) do not directly relate to the subject of the interrogation, the basis of which is information obtained in the course of forensic study of the victim's

personality; b) constant monitoring of nonverbal manifestations (facial expressions, gestures, behaviour) of the minor; c) considering the situational approach, combined with appropriate adjustments to their own activities (behaviour), including tracking the content of statements, their presentation, intonation, etc.

Establishing a positive (trusting) relationship between the investigator and an underage victim is facilitated by: a) addressing the minor by name; b) moderately slow, clear, and understandable speech for the minor; calm voice; c) sensitive statements and c) friendly attitude; d) maintaining eye contact, but without excessive (including continuous) observation of the minor; e) the ability to reformulate the question if the minor does not understand its content; f) in case it is impossible to give an answer to the question, emphasis on the need to voice the truth about ignorance, and not inventing an answer. Preliminary discussion with the persons participating in the interrogation, the general tactical plan, the role and degree of their participation in the investigative (search) action will help reduce the possible negative impact on the minor [20, p. 156].

Thus, psychological contact can be defined as professional communication between the investigator and the interrogated person by creating appropriate favourable conditions and circumstances, which is achieved by applying special, legally permissible techniques to influence the minor, stimulating them to give truthful testimony.

Stage of the interrogation. The effectiveness of conducting an interrogation of underage victims largely depends on the investigator's consideration of the psychological characteristics of minors [18, p. 182]. This provision also fully applies to the tactics of interrogating underage victims of domestic violence.

Minors are characterised by excessive activity or tacit behaviour. According to V.Yu. Shepitko [21, p. 16], they, on the contrary, can succumb to the influence of an adult, and therefore try to meet the expectations of the latter. This state is an obstacle to the logical and rational thinking of the child in the process of information reproduction.

Psychological features, according to G.O. Hanova, I.I. Prysiazhniuk, & M.S. Turkot [22, p. 47], which determine the specifics of the interrogation of minors aged 14 to 18 years (regardless of their procedural status), include: a) an increased need for self-affirmation, which, in turn, manifests itself in demonstrative independence (defending their maturity and independence), bravado, an increased desire to imitate; b) lack of sufficient life experience and incomplete formation of the intellectual sphere of the individual. Therefore, they are inferior to adults in the ability to understand the event as a whole and highlight the main point. In addition, minors are characterised by increased suggestibility (the ability to be influenced, infused).

The algorithm of actions of the investigator during the interrogation of a minor who suffered from domestic violence should be reduced to the following aspects:

– checking the personal (biographical) data of the participants in the interrogation, including familiarising them with their rights and obligations;

– the investigator's offer to an underage victim to state (by free narration) the circumstances of the event that took place known to them;

– the investigator, as a rule, asks questions prepared in advance to the interrogation.

A tactical feature of the interrogation of a minor, notes M.A. Gotvyanska [23, p 247], is the maximum use of the possibilities of free storytelling. The latter can also help to identify possible reservations and contradictions, and avoid suggestibility of the interrogated person. Given the not always sufficient possibility of providing minors with detailed information (in particular, due to insignificant life experience, due to insufficient development of logical thinking), the "question-answer" stage of interrogation becomes important [24, p. 1018]. Therefore, it is necessary to to carefully think through and analyse the content and form of questions that should be clear and understandable for perception, and not be leading. The tactics of interrogating a minor should be aimed not only at obtaining complete and truthful information about the criminal actions that were carried out against them, but also at the possible evidence that can confirm their testimony.

The free narration stage involves telling the minor about the course of the event at a personally defined and convenient pace, in accordance with the specified content. Initiation of a free story by a specialist should be carried out with the child's full understanding of the relevant expectations (and interrogator can say: "Tell me what happened to you. I know it is hard for you. Tell us about everything you remember and what is important to you"). If the child has difficulty starting a story, an investigator can help them by asking questions about the scene of the event related to various emotional experiences (ask about colours, smells, sounds), which can help reduce confusion in the memories of the latter [14, p. 33-34]. During the story, the minor should not be interrupted, even if they deviate from the content of the story. If the information provided contains different content than that known to the investigator, clarification, correction and refutation of their statements are also inappropriate [25, p. 21].

The fact that the child may not be aware of the illegal nature of the actions performed with them is subject to consideration. Accordingly, a positive attitude towards their relatives remains, as the fear of committing actions that are unpleasant for them [18, p. 80].

If a minor interrupts their story for a long time and gets the feeling that they have lost their previous thought, the interrogator can encourage them to continue the conversation with questions like: "what happened later?" or "you said that... and what happened after?" [26, p. 97].

It is advisable to contact a minor not "from top to bottom", but descending to their height level. It is forbidden to raise voice, make sudden movements, push, criticise, and push the child. During contact with a minor, the presence and intervention of other people is subject to restriction. It is important to create an atmosphere of silence and prepare means (objects) that would help establish contact with the child (pencils, paper, toys, etc.) [25, p. 23].

Considering the peculiarities of the mechanism of committing domestic violence, it is possible to determine an oriented list of issues that are subject to clarification during the interrogation of a minor:

– circumstances of domestic violence (where, when, under what circumstances, and how often the violence occurred (including the first act of violence), the time of its commission);

– method and type of violence that was caused (what words were accompanied and with what tools and means);

– identity of the criminal (family relations and relations with the victim, whether the offender committed illegal actions in relation to other family members, what clothes they were wearing);

– consequences of committing violence (its nature, type, and location of injuries on the body, expression of verbal insults and what was done to the victim;

– presence of witnesses (who else was in the room, except for the child and the abuser, that is, who can witness illegal actions, how other family members behaved during the commission of an act(s) of violence);

– cases of violence that have occurred: (attempts by the abuser to frighten the victim or resolve the conflict in another way, actions of the victim after committing violent actions (seeking medical help, contacting a law enforcement agency, telling other family members or other persons about a criminal offence, etc.).

The wording of the question about the part of the day in which the illegal act was committed, as noted by G.Y. Nikitina-Dudikova [11], it is necessary to carry out taking into account the usual and daily activities of the child's actions, daily routine, namely: watching children's programmes, bathing, relaxing, eating, returning them from a children's institution or developing classes, etc. The question concerning the day of the event, time of year or year can be compared with important or special dates, periods in the life of the child [11, p. 81].

Researchers identify a number of prohibitions that should be observed during the interrogation of minors [14, 32-33], namely: a) do not disturb the physical space of the child, it is necessary to stay at a safe distance; b) do not push the child, they need time to think about their answers; c) do not try to evaluate the child and what they say; c) do not show excessive surprise at the strange or shocking statements of the child; d) do not comment on the facts stated by the child according to their ideas (for example, "it was dangerous for you", "it must be terrible for you"); e) do not rush the child to provide an answer, and even more so do not force; f) do not make unfulfilled promises; g) do not discuss with the child the possible punishment of the offender; h) do not evaluate from their own position the actions of persons close to the child;) do not get lost and do not dramatise in case of negative emotions of the child, for example, crying; it is advisable to support the child by saying that you understand their reaction; j) do not interrupt or correct the child. The consequence of such actions may be a restriction of the freedom to further present events, interference with the train of thought, or a change in the order of individual elements mentioned.

Thus, the actual stage of questioning underage victims of domestic violence should be based on the following provisions:

– beginning of the interrogation – a conversation on general topics that are far from the subject of the interrogation, using data obtained during the forensic examination of the victim;

– observation of nonverbal manifestations (facial expressions, gestures, behaviour) of a minor;

– operational adjustment of their own activities, considering the situational approach, paying special attention not only to the content of their own remarks, assessments, but also to the intonation and tone of their expression.

Detailing phase. At this stage, the goal of the specialist conducting the survey, as stated by N.O. Pashko [27], is an addition to the course of events committed by a minor during the free narration phase, and their ordering to clarify the circumstances of the event of a criminal offence. The specialist should take care of the smooth and natural transition to the next phase of the survey. The child should not have any anxiety due to the fact that he may not be able to cope with the answers. The specialist should remember that this stage of the survey should have a form of conversation that is selected taking into account the age and psychological characteristics of the minor.

Detailing of questions, according to G.Yu. Nikitina-Dudikova [11], should be carried out considering the following forensic recommendations: a) addressing the victim in a quiet tone, avoiding the expression of emotions, regardless of the essence of the question, start the conversation with ordinary (easy) questions,

gradually complicating them. Questions should be short and consist of simple terminology, it is advisable to avoid pronouns; b) the use of simple grammatical constructions, controlling that one question reveals only one topic that should be explained; c) the use of expressions used by the child earlier; d) confidence (before asking the victim a question that requires special knowledge) in the availability of sufficient knowledge to provide an answer; e) providing sufficient time for the answer [11, p. 83].

Remote interrogation. One of the important issues that, according to the authors, should be discussed is the conduct of interrogation of a minor in a remote format (remote interrogation or videoconference interrogation). In accordance with paragraph 3 of Part 1 of Article 232 of the CPC [15] of Ukraine, the interrogation of a minor witness during a pre-trial investigation may be conducted via videoconference when broadcast from another room (remote pre-trial investigation). The need to conduct such an interrogation, first of all, is associated with reducing the negative psychological impact on the minor by other participants in criminal proceedings, takes place in a remote place, which should be comfortable and convenient. Both the investigator (judge) and the interested participant can initiate an interrogation in a remote format (Part 2 of Article 232 of the CPC of Ukraine). The course and results of procedural actions in the video conference mode must be recorded on video (Part 9 of Article 232 of the CPC of Ukraine).

According to the authors, this type of interrogation can be quite effective, and therefore, should be widely used during the investigation of criminal offences of this category. In addition to the simplified procedure for obtaining testimony and ensuring the principle of efficiency, an important advantage over other types of interrogation is to ensure that it can be (for example, staying in another country, fear for their own safety, etc.). Creating a sense of privacy, which can be achieved through this type of interrogation, will help the minor feel more comfortable and focused during the conversation. The authors of this study suggest that this issue requires a thorough analysis, and therefore in subsequent scientific studies it is worth focusing on a detailed clarification of the issue of conducting investigative (search) actions, in particular, interrogation via video communication.

The final phase. Most often, during the final phase, according to N.O. Pashko [27], the child, as a rule, has complete relaxation. At the same time, the researcher notes, after giving evidence, the child may experience nervousness, anxiety, worries about the consequences of their statements and their possible assessment, and further participation in criminal proceedings. Therefore, the investigator at this stage should help the minor cope with their emotions and, if necessary, calm them down. It is not superfluous to tell the child that their emotions are clear, an investigator can praise a child for their frankness and self-control, even if their testimony did not contain significant information. It is recommended to find out the child's condition and mood after the survey, and ask if they have any concerns. If the child is supposed to participate in other investigative (search) actions, it is necessary to warn them about this with a detailed explanation of the purpose of their implementation [28, p. 25].

Experts recommend that the final stage of working with the child should be set aside for about 10 minutes. Before completing the interrogation, it is necessary to: make sure that the child is overcoming stress; take a break – play a game that is not related to the topic of conversation; return to an unpleasant topic; thank the child for the conversation; if there was a video recording, explain to the child that people who do not deal with this problem will never get access to such a video. It should be borne in mind that victims of child pornography are particularly vulnerable, who are mostly afraid of video cameras after the experience; find out if the child has any questions; get advice or advice from specialists if there are questions or problems during the interrogation of a minor [5, p. 96].

The final stage of the interrogation involves recording data by the investigator. Based on the information received, the investigator comes to appropriate conclusions. Their review takes place simultaneously with comparison with the testimony of different persons, and with the data of previous interrogations [29, p. 187]. The main means of recording the course and results of an interrogation, according to Article 104 of the CPC of Ukraine [15], is the protocol (Article 104 of the CPC of Ukraine).

A.R. Yatsyuk [30] draws attention to the need for mandatory audio and video recording, which will become a guarantee and direct evidence that the investigator did not use prohibited methods of psychological influence on the minor during the interrogation. In particular, the significance of video recording of interrogations of children affected by sexual violence is manifested in the following: a) serves as a means of protection against possible changes in the testimony of the interrogated child; b) can be considered as an auxiliary means for conducting a psychological and psychiatric examination of the child; c) use for its intended purpose-recording the actions of participants in the investigative experiment [13]. The authors support this position and believe that video recording of the results of the interrogation of minors is an additional proof of its indisputability (will avoid possible changes in the testimony of a minor) and will protect the investigator from possible

accusations by the prosecution of the illegality of certain investigative (search) action, for example, receiving testimony from a minor with the use of any influence.

Recording the testimony of an underage victim in the protocol provides for taking into account the peculiarities of their language (Ukrainian, Russian, "surzhik") and speech (insufficient clarity, indistinctness), and therefore the testimony should be recorded in simple and understandable sentences for a teenager [31].

As a result, a child who has become a victim of domestic violence is, first of all, a child who was harmed by the criminal actions of persons close to them, and only after that – a participant in the criminal process [31, p. 15]. In order to prevent the aggravation of mental trauma and additional emotional burden on the child, all efforts of participants in criminal proceedings involved in investigative (search) actions should be aimed at conducting one interrogation with the participation of a minor. This meets the requirements of the Council of Europe Convention for the Protection of Children From Sexual Exploitation and Sexual Abuse [16], which Ukraine ratified on June 20, 2012 (Article 35).

■ Conclusions

The interrogation of an underage victim of domestic violence should consist of a set of tactical, psychological, and legally regulated actions of the investigator to collect, assess, and record criminally significant information about the event of a criminal offence (the fact(s) of domestic violence) by direct communication of the investigator with the minor in order to obtain truthful information about the circumstances of the committed illegal act, of which they became a victim.

The main circumstances that must be considered during the interrogation of underage victims of domestic violence are defined as:

– individual, psychophysiological features of the interrogated person's personality;

– the specifics of illegal actions committed against the minor;

– the nature and severity of the damage caused.

Psychological contact is defined as professional communication between an investigator and an interrogated person by creating appropriate favourable conditions and circumstances, which is achieved by applying special, legally permissible techniques to influence a minor, stimulating them to give truthful testimony.

When choosing a specialist for questioning an underage victim of domestic violence, it is recommended to give preference to a practising psychologist in the field of age and pedagogical psychology as a specialist who will be able to competently assess the emotional, psychological, and behavioural characteristics of the minor while fully respecting and protecting their rights, freedoms, and legitimate interests.

The authors propose to supplement Part 2 of Article 226 of the CPC of Ukraine with the following provision: "if necessary, the interrogation may be interrupted before the end of this time."

Further promising areas of scientific research devoted to the topic of investigative (search) actions, in particular, interrogation, with the participation of minors, according to the author, are:

– tactical features of conducting the interrogation of an underage victim of a specific type of domestic violence (physical, psychological, sexual, economic);

– the use of video communication tools and capabilities when conducting remote interrogation of a minor during the investigation of domestic violence.

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Тактика допиту неповнолітніх потерпілих від домашнього насильства

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■ **Анотація**. Проведення допиту неповнолітніх осіб, які постраждали від домашнього насильства, означене особливим процесуальним становищем останніх та загрозливими тенденціями до збільшення кількості вказаних правопорушень, що актуалізує потребу в розробленні тактичних особливостей і визначенні оптимального алгоритму здійснення цієї слідчої (розшукової) дії. Мета статті – дослідити процесуальні, тактичні та психологічні особливості проведення допиту неповнолітніх потерпілих від домашнього насильства та сформулювати відповідні науково-практичні рекомендації щодо його своєчасного і якісного здійснення. Розкрито особливості етапів проведення цього допиту, специфіку підготовки до нього, на підставі чого сформульовано відповідні науково-практичні рекомендації. Визначено умови проведення дистанційного допиту неповнолітніх потерпілих від домашнього насильства. Окреслено коло основних запитань, на які необхідно отримати відповіді під час проведення зазначеного допиту. У межах дослідження застосовано комплекс наукових методів: діалектичний, методи аналізу й синтезу, індукції та дедукції, системно-структурний, формально-логічний, порівняльно-правовий, моделювання, узагальнення. Обґрунтовано висновок стосовно того, що допит неповнолітнього потерпілого від домашнього насильства має охоплювати комплекс тактичних, психологічних і законодавчо врегульованих дій слідчого щодо збору, оцінки та фіксації криміналістично значущої інформації про подію кримінального правопорушення (факти домашнього насильства) шляхом безпосереднього спілкування слідчого з неповнолітнім з метою отримання правдивих відомостей про обставини вчиненого протиправного діяння, жертвою якого він став. Наголошено на необхідності встановлення психологічного контакту й налагодження довірчих відносин з неповнолітнім. Наведено переваги проведення дистанційного допиту неповнолітніх потерпілих від домашнього насильства. З'ясовано, що під час проведення допиту слід ураховувати вікові, індивідуальні особливості, рівень психофізичного розвитку неповнолітнього потерпілого, а також застосовуати ситуаційний підхід, поєднаний з відповідним коригуванням поведінки слідчого. Практична значущість полягає в тому, що в статті сформульовано висновки та пропозиції, спрямовані на підвищення ефективності проведення слідчими допиту неповнолітніх потерпілих від домашнього насильства. Результати дослідження також можуть слугувати підґрунтям для вдосконалення законодавства, передусім кримінального процесуального

■ **Ключові слова**: кримінальне провадження; тактичний прийом; психологічний контакт; ситуаційний підхід; слідча (розшукова) дія; дистанційний допит

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Social-Wide Prevention Measures in Relation to Vandalism in The Modern Context

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■ **Abstract**. At the present stage of development of society, the problem of vandalism does not lose its relevance, but is actively developing, expressing itself in new forms (vandalism in relation to landscaping, outdoor lighting, and small architectural forms, vandalism in relation to Jewish monuments – anti-semitism). Nowadays, vandalism reigns in various spheres of public relations with the participation of all segments of the population, the legal nature of this phenomenon is constantly developing, improving, and does not correspond to the conventional legal interpretation. Thus, the purpose of the study is to consider and characterise measures of social-wide prevention aimed at effectively preventing the commission of vandalism in modern conditions. The methodological basis of the study consists of dialectical, formal logical, system and structural, and statistical methods. The theoretical basis of the study is the papers of Ukrainian and foreign researchers on the analysed negative social phenomenon and improving the effectiveness of countering it in Ukraine in the modern context. The study examines the issue of vandalism as an urgent problem of modern society, because in modern social conditions vandalism poses a real threat to the national security of the country and requires an urgent state response. The author formulated the definition of the concept of prevention of criminal offences related to vandalism, which fully reveals the structure of prevention, considering the significance and area of vandalism. During the study of the procedure for preventing vandalism, it was established that one of the areas of prevention in law enforcement activities are social-wide measures. It is determined that social-wide prevention, first of all, should be aimed at improving the well-being of the population through influencing social transformations that determine the social, economic, cultural and educational, ideological, legal, organisational and managerial existence of society. It is highlighted that the peculiarity of prevention measures in modern conditions is to consider all elements of criminal offences initiated on the grounds of committing acts of vandalism. The practical significance of the study is both theoretical and practical, because the described scientific provisions, individual generalisations, conclusions, and recommendations can be used in the future in research and in the educational process, because today there is a tendency to a comprehensive study of vandalism to improve the effective mechanism for preventing it

■ **Keywords**: acts of vandalism; political measures; economic measures; social measures; ideological measures; cultural and educational measures; organisational and managerial measures; legal measures

■ Introduction

Vandalism is one of the most common manifestations of aggressive illegal behaviour, which has a number of features, in particular: group character, latency, surprise, unpredictability, speed of actions, and criminal orientation. V.V. Vytvitska [1, p. 69] notes that quantitative and qualitative indicators of vandal-oriented offences are a specific barometer that demonstrates the "degree of the internal state of society". Ultimately, the actions of vandals committed in public places acquire a special anti-social connotation and negative social significance. Moreover, their consequences become known to a large circle of people, which causes resistance, indignation, and rejection of such behaviour. Despite the fact that the problem of vandalism has always been relevant, in modern conditions it has increased significantly in new colours and has gained importance at the social-wide level [2, p. 57].

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As the review of scientific studies and research papers shows, interest in vandalism does not decrease over time, and this negative phenomenon is investigated by representatives of various branches of knowledge, including criminologists, psychologists, sociologists, specialists in the field of criminal law, etc. This paper will consider studies on vandalism prevention in recent years. Thus, K.A. Bocharova [3] in the study "Vandalism as a manifestation of aggressive illegal behaviour" examines the essence of aggressive illegal activities, investigates the motives and reasons that contribute to the commission of such actions, and also focuses on the imperfection of sanctions defined by the Ukrainian legislation. In addition, K.A. Bocharova [4] in the publication "Aggression as a dominant behaviour of a vandal criminal" describes the criminological structure of the criminal's personality according to socio-demographic, moral and psychological, social role, criminal and legal characteristics. K.A. Salayeva [5] in the study "Prevention of vandalism in modern conditions" makes proposals for rationalising preventive activities in the field of countering acts of vandalism and the mechanism for implementing these recommendations in the current legislation. A.S. Skorokhodova [6] describes the degree of prevalence of vandalism and the social consequences caused by it, the socio-psychological characteristics of persons prone to committing an offence, the motives that control them, and ways to prevent and control vandalism. O.V. Kruzhkova and I.V. Devyatovskaya [7] in the paper "Organisational vandalism: to the problem of the destructive behaviour of personnel" investigate the problem of destructive behaviour of persons within the framework of complex organisational vandalism, its forms, psychological basis, and factors contributing to the manifestations of vandal orientation, and characterise prevention considering the psychological causes of this phenomenon. S.Yu. Malakhov [8] in the paper "The concept of "vandalism" as a subject of criminological research" describes the etymology of the occurrence of vandalism, its classification and the genesis of criminal liability for committing the analysed criminal offence.

The concept of "vandalism" is quite common and often used in various genres of literature. As a rule, this term is used to define destructive actions with the humiliation of honour and dignity of a person, aimed at destroying or damaging someone else's property. In legal science, the definition of "vandalism" has a specific meaning. For example, in legal encyclopaedic publications, it is interpreted as "illegal, senseless destruction or damage of material and cultural values" [9, p. 63]; "deliberate illegal (or non-normative) damage or destruction of someone else's property, which is a goal in itself" [7]; "intentional damage or destruction of property that is in public or private ownership" [3, p. 16]; "actions of a person who intentionally destroys (distorts, spoils) property without the consent of the owner or a person who has the right to use it" [8, p. 64].

The purpose of the study is to describe the set of measures used to prevent acts of vandalism committed in Ukraine in the modern context, and positions on making appropriate changes to the legislation of Ukraine to improve the performance of the system for preventing this phenomenon.

The object of research is the process of committing acts of vandalism, which entails negative consequences both for the individual and for the overall society.

Materials and Methods

During the study of the analysed problem issue, considering a certain goal, the following methods were used: *analysis*, since the system of preventing vandalism was studied comprehensively, for an in-depth understanding of the issue, in the process of studying a single whole was divided into appropriate parts. The study also used the *modelling method*, since the essential signs of vandalism were considered according to a particular model, the purpose of the study was formulated; *formal and logical method*, which described a set of measures to prevent acts of vandalism; *dialectical method*, since in parallel with the prevention measures, the causes, patterns, and other phenomena that contribute to the commission of this criminal offence were investigated.

These methods were used at all stages of the study, in particular, during the definition of scientific problems, their relevance, goal setting, presentation of the main material, and formulation of conclusions.

The theoretical basis of this study was the papers of researchers on the concept, content, and existing system of vandalism prevention, and a set of laws and regulations, in particular, the Criminal Code of Ukraine [10], the Criminal Procedure Code of Ukraine [11], Code of Administrative Offences of Ukraine [12], the Law of Ukraine "On Amendments to Article 194 of the Criminal Code of Ukraine (Concerning Liability for Vandalism)" [13], Draft Law of Ukraine "On Amendments to the Criminal Code of Ukraine Concerning the Protection of Monuments, and Historical and Cultural Landmarks" [14].

Results and Discussion

Vandalism as a negative social phenomenon. In the public consciousness, there is a certain stereotype of a "vandal", who appears as a primitive being with disabilities in mental development. And at the same time, the danger of vandalism is manifested in the fact that these actions not only grossly violate public order, the peace of citizens, and the norms of public morality, but also cause great property damage, and as a rule, budget funds are spent on restoring

destroyed objects. In addition, it increases the public danger of vandalism committed by a group of persons, and committed on the grounds of race, religion, nationality, hatred of a certain social group, etc.

Destruction of property most often occurs impulsively, under the influence of a situation involving several people. There are usually three or four of them, and they are most often the same age. Even a well-mannered person, once in a group with a negative leader, will not behave as usual, and may also resort to vandalism. In addition, vandalism is often accompanied by other, more serious offences.

Vandalism is related to mass riots (Article 294 of the Criminal Code of Ukraine), hooliganism (Article 296 of the Criminal Code of Ukraine), intentional destruction or damage to cultural heritage objects (Article 298 of the Criminal Code of Ukraine), grave desecration (Article 297 of the Criminal Code of Ukraine), intentional destruction or damage to property (Article 194 of the Criminal Code of Ukraine), damage to communication routes and vehicles (Article 277 of the Criminal Code of Ukraine) [10]. Most often, judicial practice develops in such a way that the court covers all actions of a convicted person with one more serious offence, indicating that damage to property, desecration, damage or destruction of buildings and other structures were the result of mass riots, hooliganism, deliberate destruction or damage to property, etc. The difference between vandalism and other offences is made by the subject or place of the crime.

The fight against vandalism should be carefully planned and carried out at different levels and areas. Prevention of vandalism is carried out by applying measures to eliminate the main causes of such crime, using a separate influence, in particular, preventive, on the behaviour of persons prone to illegal actions [5].

Measures of social-wide prevention. Important and effective measures to prevent vandalism are measures that are implemented at the social-wide level. Having analysed the existing scientific approaches to the interpretation of the essence of social-wide crime prevention, it becomes clear that this is the development and implementation of measures by special subjects defined at the legislative level to identify and eliminate political, economic, social, ideological, cultural, educational, and legal factors that have a negative impact on society in general. A.P. Zakaliuk [15, p. 123] notes that in general, actions aimed at preventing the emergence, development, and implementation of the causes and conditions of crime in society are carried out by various subjects both at an early stage of preventive activities and before the prevention of recurring crimes.

Thus, the study suggests that measures to prevent vandalism should be grouped into 7 blocks: political, economic, social, ideological, cultural and educational, organisational and managerial, legal, which together would have an impact on each branch of social existence and, at the same time, reduce those determinants that contribute to the commission of vandal crimes.

The first group of general vandalism prevention measures – ***political***, the main goal of which is to improve the diplomatic situation and overcome the systemic crisis in the country. Ukraine is going through difficult times both in terms of legal policy in general, and in terms of management in the field of crime prevention in particular [16, p. 87]. Negative phenomena and processes that exist in the political sphere provoke aggression, cause distrust of political figures and political parties, reduce the level of social tolerance of the population, generate a thirst for demonstrative self-affirmation, and a desire to destroy and establish justice. As a result, cases of abuse of state symbols, damage to administrative buildings, painting or destruction of propaganda posters have become more frequent.

It is worth outlining the following main measures of political orientation in preventing vandalism:

– implementation at the national level of specially developed programmes for the prevention of vandal crimes. An important aspect is the development of state programmes in various areas of society's development, in particular, in the context of general economic, social, cultural, and spiritual functioning;

– improvementof the quality of life of citizens by changing state minimum standards;

– strict compliance with the requirements of Constitution [17] and other legislation of the state aimed at strengthening the rule of law in the field of protection of human rights and freedoms, expanding their reserves. Understanding and feeling the possibility of implementing human rights and freedoms is an integral element of legal awareness, to increase the latter in Ukraine, it is important to ensure that everyone has a clear idea of the law, while the state should direct its policy in educational activities to consolidate each citizen's awareness of their rights and obligations as a subject of law and legal relations [18, p. 249];

– implementation of a rational national policy to eliminate racial and interethnic conflicts;

– development of a state strategy for the appropriate protection of cultural heritage sites. In addition, it is necessary to develop and implement a decommunisation policy in historical sequence;

– introduction of more effective mechanisms for implementing the national policy of the family institution in the context of child protection, based on international standards.

The second group of general vandalism prevention measures – ***economic.*** The existence and reproduction of vandalism are also influenced by economic factors. The socio-economic situation in Ukraine is difficult, the standard of living is declining, inflation

is growing, and this, of course, outrages citizens and forces them to resort to decisive actions. According to O.O. Bilousova [19, p. 25], the instability of the economy has a significant impact on the activities of criminal groups, which leads to the strengthening of their illegal positions. S.A. Khalipaeva [20, p. 56] points that people's dissatisfaction with the implementation of their spiritual or material needs leads to the accumulation of feelings of emptiness, frustration, confusion, and humiliation, which causes the search for comfort in an antisocial environment. In addition, it increases the level of aggressiveness of people, encourages illegal offensive actions to meet personal needs. Moreover, an oligarchic model of the economy has been established in Ukraine [6, p.18], as a result of which the phenomena of the shadow economy are observed, labour relations are decreasing, and the poverty of a significant part of the population increases. All this causes an increase in the criminogenic potential of society and increases the scale of crime [21, p. 18].

Economic measures should improve the overall level of profitable development of the country, in particular, they should include:

– launch of an uncompromisingly new programme of socio-economic recovery of the state;

– constant state control over the pricing policy for goods, reducing the level of inflationary manifestations;

– improvement of the level of income of citizens, reviewing the financing of relevant national and local programmes;

– increase the social payment system;

– support of domestic producers at the state level in all areas;

– development of the cultural and educational sphere, social infrastructure;

– development and modernisation of Ukrainian production, restoration of the activities of a number of enterprises;

– creation of new jobs and addressing issues related to unemployment.

The third group of general vandalism prevention measures – ***social.*** Some types of vandalism (for example, damage to religious buildings, shrines, religious buildings, cultural heritage sites, inscriptions with offensive statements about certain national groups) can provoke social conflicts [6].

This group of measures concerns the social sphere of public life and provides for the following:

– compliance of living conditions with social standards of all segments of the population;

– work with social contradictions in order to eliminate them;

– various state support for the younger generation;

– improvement of the social and living conditions of residents;

– more effective implementation of measures to counteract domestic violence and provide appropriate assistance to persons who have been subjected to such violence;

– elimination of social inequality on such grounds as material, political, national, racial, etc.

The fourth group of general vandalism prevention measures – ***ideological.*** Ideological vandalism occurs when the destroyer imposes their own political or ideological beliefs, thereby demonstrating dissatisfaction with the existing government, people or nation living in the territories of the state. This behaviour is inherent in people who are prone to aggression against representatives of ideology, who broadcast the opposite position [4, p. 189].

The following ideological measures to prevent vandalism can be noted:

– restoration of forgotten spiritual values, moral principles, national culture, etc.;

– resolution of interethnic, interreligious, and interethnic disputes;

– restoration of patriotic education of the younger generation at the national level;

– rapid application of measures to respond to the propaganda of cruelty, cynicism, debauchery, immorality, and vandalism in the media;

– increase state control over the functioning of informal extremist unions, which are dominated by the cult of violence and cruelty;

– short-term and rapid response to crimes committed on the basis of racial intolerance, ethnicity, religion, etc.;

– development and introduction of a clear national idea, the so-called "national-state ideology".

Measures aimed at preventing these crimes should include a large array of actions of an ideological, and cultural and educational nature to neutralise criminal and subcultural customs and traditions in society, reduce jargon, and minimise negative stereotypes of behaviour in everyday life [16, p. 26-27].

The fifth group of general vandalism prevention measures – ***cultural and educational programmes,*** aimed at improving the cultural and educational level of citizens:

– identification and further adoption of appropriate measures regarding disrespectful attitude to generally accepted norms and rules of conduct and demonstration of such actions to the public;

– development of government platforms aimed at promoting cultural and historical heritage [22, p. 85];

– raising the degree of education and upbringing of citizens with a special focus on young people;

– overcoming of legal nihilism and social parasitism;

– improvement of the knowledge, skills, and abilities of teachers and educators in teaching skills;

– development and introduction of educational programmes to combat vandalism into the academic process;

– setting up teaching activities with minors who are characterised by illiteracy, neglect, and belong to the risk group;

– support of clubs, creative groups, and youth centres whose activities are aimed at comprehensive personal development;

– organisation of festivals, exhibitions, fairs, and Olympiads aimed at developing the creative abilities and talents of the younger generation;

– conducting educational work with adolescents who have an uncoordinated or deformed system of value orientations;

– implementation of national cultural and spiritual measures;

– promotion of orderly, exciting socio-cultural work, tourism, energetic recreation, and other forms of leisure;

– implementation of explanatory work among the population to disseminate legal knowledge of the provisions of the current legislation.

Sixth group of general vandalism prevention measures – ***organisational and managerial,*** aimed at improving the work of entities that carry out measures to counteract vandalism and increase their effectiveness, in particular:

– increased control over law and order, discipline and legality in public life;

– promotion of the effective functioning of major social institutions;

– timely regulation of social contradictions that arise in the spheres of society's life;

– systemic destruction of causality, which causes vandal behaviour and contributes to the commission of aggressive and violent offences with a destructive nature;

– improvement of the material well-being of the population, housing and living conditions, and working conditions;

– increasing the limits of responsibility of state bodies and local self-government bodies for improper protection of objects of cultural value for modern and future generations;

– involvement of most public organisations in the implementation of measures to prevent vandalism;

– providing support to charitable and volunteer organisations that aim to improve the cultural level of individuals, develop the institution of family and childhood, and provide assistance to socially vulnerable segments of the population;

– development of measures to prevent vandalism together with international experts.

Seventh group of general vandalism prevention measures – ***legal,*** which aim to identify shortcomings in the regulatory framework for preventing vandalism and eliminate them:

– development of a special programme for the prevention of criminal offences that encroach on public order and morality;

– implementation of certain plans and programmes for the prevention of certain administrative offences;

– development of laws and regulations, the purpose of which will be to effectively protect motherhood, the institution of family, prevent the commission of domestic violence, strengthen the protection of cultural heritage objects, and resolve conflict situations against the background of interethnic and interethnic intolerance;

– conduct a so-called "audit" of the current Ukrainian legislation in these areas and further develop, make changes and additions, eliminate the identified shortcomings and gaps;

– improvement of the conceptual and categorical apparatus in the field of countering vandalism at the legislative level;

– measures aimed at improving the legal culture of the individual and their legal awareness.

M. Shepitko [23, p. 282] noted that the activity of the state to protect citizens and society from criminal attacks, and crimes in general, opens up an opportunity to study in more depth the prevention and counteraction of criminal offences by measures of public and state influence on the reform of criminal justice and its bodies in the long term.

Conclusions

As a result of the conducted study of the existing state mechanism, a list of key measures aimed at social-wide prevention of the population as a whole is presented. However, the set of measures provides for an indirect nature, because it has an impact at the general level, so it is quite difficult to determine a direct connection with the dynamics of crime. Social-wide prevention is a kind of foundation for special and individual prevention, as it creates political, ideological, economic, legal, social, organisational, cultural, and educational conditions, is carried out by state bodies, public organisations, and also covers all sectors of society and directs its activities to identify the causes of acts of vandalism and criminal offences related to it.

Thus, the paper describes seven groups of measures for social-wide prevention, each of which has an inexhaustible list of positions. The first group is political measures that are aimed at raising and improving the diplomacy of the state, since there are vandal actions in political life in order to radicalise society. The economic component was studied next, because the presence of a shadow economy, a reduced standard of living, and the poverty of a significant number of Ukrainians, who are overwhelmed with aggression, humiliation, and frustration, leads to mass acts of vandalism.

A group of social measures is also an important element in the prevention system, because they are aimed at meeting people's needs for material goods, services, reproduction of the family, and the development of public communications to strengthen the state. The next group of ideological measures provides for the resolution of interethnic and interstate conflicts, the rapid response of the relevant authorities to manifestations of cruelty and cynicism, educating young people in patriotism, and monitoring the activities of informal entities that promote violence.

Cultural and educational measures are designed to improve the level of education and culture by introducing legal education classes into the educational process, improving the skills of scientific and pedagogical specialists in pedagogical skills, continuous development and providing state support for the activities of diverse circles, conducting explanatory conversations among the population, etc. Organisational and managerial measures in the system of social-wide prevention provide for measures to support charitable organisations, intensive control over the legal order in society, regulation of social contradictions, etc. And the final block of the study is legal measures, the essence of which is to identify gaps in legislative acts.

Thus, when preventing offences related to vandalism, it is necessary to consider the multiplicity and possibility of new forms, consider the latency of this phenomenon, identify difficulties and eliminate them by conducting measures to prevent this phenomenon that entails significant negative consequences for society and the state as a whole.

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Заходи загальносоціальної профілактики вандалізму в умовах сьогодення

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■ **Анотація**. На сучасному етапі розвитку суспільства проблема вандалізму не втрачає актуальності, адже означена появою нових форм цього протиправного явища (вандалізм щодо озеленення, зовнішнього освітлення та малих архітектурних форм, вандалізм стосовно єврейських пам'яток – антисемітизм). Нині вандалізм наявний у різних сферах суспільних відносин за участю всіх прошарків населення. Правова природа цього явища постійно розвивається, удосконалюється та не відповідає традиційному юридичному тлумаченню. Метою статті є розгляд і характеристика заходів загальносоціальної профілактики, що спрямовані на ефективне запобігання вчиненню вандалізму в умовах сучасності. Методологічну основу дослідження становлять діалектичний, формально-логічний, системно-структурний і статистичний методи. Теоретичною базою статті слугували праці українських та зарубіжних учених щодо питань дослідження аналізованого негативного соціального явища і вдосконалення ефективності протидії йому в Україні. Доведено, що в сучасних соціальних умовах вандалізм становить реальну загрозу для національної безпеки країни та потребує невідкладного державного реагування. Сформульовано авторське визначення поняття запобігання кримінальним правопорушенням, пов'язаним з вандалізмом, у межах якого враховано структуру запобігання, значущість і спрямованість цього протиправного явища. Встановлено, що одним з напрямів запобігання в правоохоронній діяльності є заходи загальносоціального спрямування, що передбачають покращення добробуту населення через вплив на суспільні трансформації, які детермінують соціальне, економічне, культурно-виховне, ідеологічне, правове й організаційно-управлінське буття суспільства. Особливістю заходів запобігання визнано врахування всіх складів кримінальних правопорушень, розпочатих за ознаками вчинення актів вандалізму. Практична значущість статті полягає в тому, що описані наукові положення, окремі узагальнення, висновки й рекомендації можуть бути використані в науково-дослідній діяльності й освітньому процесі, адже на сьогодні простежується тенденція до всебічного вивчення вандалізму з метою вдосконалення дієвого механізму запобігання йому

■ **Ключові слова**: акт вандалізму; руйнування; політичні заходи; економічні заходи; соціальні заходи; ідеологічні заходи; культурно-виховні заходи; організаційно-управлінські заходи; правові заходи

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History, Current State, and Prospects of Development of Unmanned Aerial Vehicles as a Technical and Forensic Tool and Object of Forensic Research

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■ **Abstract**. The relevance of the study is conditioned by the scientific originality and practical significance of using modern capabilities of unmanned aerial vehicles by law enforcement agencies. The purpose of the study is to investigate the history, current state, and prospects of development of the unmanned aerial vehicle as a technical and forensic tool and object of forensic science. The study is based on the dialectical method of cognition of social and legal phenomena and concepts. Along with it, such general scientific and special research methods as historical, comparative legal, system and structural, sociological, statistical, logical, and other modern approaches were used, allowing the study to formulate assumptions and draw conclusions. Based on the findings, an analysis of the history of the development of an unmanned aerial vehicle was carried out, where the author identifies five main stages, namely: the period of the late 19th – early 20th century, the period of the First World War and the post-war period, the period of the Second World War, the period of the Cold War and local military conflicts of that time, and the modern period, which was characterised by the involvement of modern unmanned aerial systems not only in the military sphere, but also in various spheres of human life, including criminal activities, and in the activities of law enforcement agencies to disclose, investigate, and prevent criminal offences. Based on the intended purpose, technical characteristics and parameters, the classification of unmanned aerial vehicles is given, depending on their types, size, weight, power plant, and control method. In this regard, attention is focused on unmanned aircraft systems related to multicopters, as the most promising unmanned aerial vehicles that can be implemented in the work of law enforcement agencies. Certain aspects and features of using an unmanned aerial vehicle as a technical and forensic tool and an object of forensic research are considered. In this regard, problematic issues related to definition of a unified legal terminology for systems and elements of an unmanned aviation complex. Priority areas of introduction of unmanned aerial vehicles in the activities of law enforcement agencies are highlighted. Considering international standards in the aviation sector, the main areas are proposed for improving Ukrainian legislation on registration, licensing, and certification of unmanned aerial vehicles, and the grounds and procedure for its use by relevant law enforcement agencies in the detection, investigation, and prevention of criminal offences. The practical significance of the study is conditioned by the fact that it examines topical issues of the history of development, the current state, and prospects for improving Ukrainian legislation on issues related to the practical use of an unmanned aerial vehicle as a technical and forensic tool and the object of forensic research

■ **Keywords**: drone; quadcopter; unmanned aviation system; unmanned aircraft; statutory regulation

■ Introduction

Over the past few decades, man has conquered more natural forces than in the entire previous history of mankind. Nowadays, the use of modern information and digital technologies is no longer considered something unusual. Moreover, due to their accessibility and capabilities, they have found their wide application not only in the military sphere, but also in law enforcement, civil, economic, and administrative activities [1-3].

Admittedly, most technological developments, to one degree or another, are closely related to the military-industrial complex. Unmanned aerial vehicles (hereinafter – UAVs, drones) are no exception to

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this rule, the main purpose of creating which was to implement and perform certain combat and reconnaissance tasks on enemy territory [4].

To date, unmanned aerial systems are one of the most promising areas of development of modern military aviation. Even today, the use of drones has led to significant changes in the tactics of conducting combat operations. It is believed that modern warfare is a war of drones and howitzers, where drones are the eyes of artillery. Their value is expected to increase even more in the near future. Now the market for combat drones is on the rise. According to some estimates, in the period from 2020 to 2029, the volume of its turnover will be at least UAH 38.7 billion [5]. Progress in their creation is probably the most important achievement of modern aviation over the past few decades.

At the same time, UAVs have become the subject of public discussion, in particular, regarding their irresponsible use in military intelligence operations and law enforcement activities. The incident that occurred in 2020 in Libya, as a result of which, the drone-kamikaze Kargu 2, without a specially given order, using artificial intelligence, independently tracked down and attacked an innocent person (a live target) [6].

It is also impossible to ignore the fact that today there is a need for proper legal regulation of Ukrainian legislation on the use of UAVs over private property, critical infrastructure facilities, and other protected objects. A separate study requires legislative regulation of the grounds for the use of drones by authorised law enforcement agencies and their officials, including during the detection, investigation, and prevention of criminal offences, etc.

In this regard, the discussion of problematic issues of scientific and technical support for the activities of law enforcement agencies is not new for legal science. They have been the subject of many scientific discussions of researchers and practitioners in the fields of criminal procedure, criminalistics, and intelligence-gathering activities not only in Ukraine. At the same time, the issue of using UAVs as a technical and forensic tool and object of forensic research, in contrast to military exercises, is relatively new areas of scientific study. However, some of their aspects, in particular, concerning the regulation of legislation on the use of drones in the activities of bodies and divisions of the National Police, are reflected in scientific discussions by Ye. Bakutin [1], V. Bilous [7], V. Korshenko [8], Ye. Kuzmenko [9], A. Movchan [10] and others. The scientific and theoretical developments of these authors are important for solving the problem of using UAVs by law enforcement agencies when performing their assigned tasks. With this in mind, this paper will investigate in more detail the history, current state, and prospects of drone development in the context of their use as a technical and forensic tool and object of forensic research.

Purpose of the study: the main purpose of the study is to investigate topical issues related to the history of UAV development, features of their classification, and the current state and prospects for improving the statutory regulation of the use of unmanned aerial systems in the detection, investigation, and prevention of criminal offences.

Materials and Methods

The methodological basis of the research was general laws and categories of cognition. To achieve the goal of the study, general scientific and special methods were used, which allowed formulating assumptions and drawing conclusions. Formal and logical methods allowed for studying laws and regulations, analytical materials, concepts, and authors' opinions on certain issues related to the subject of research. Based on the descriptive and analytical, dogmatic method, the interpretation of legal categories, the formulation of definitions and clarifications of the terminology, the development and formulation of proposals for improving legislation on the research topic were carried out. Using the comparative legal and formal legal method, the analysis of international and Ukrainian laws and regulations defining the concept and legal grounds for using UAVs was carried out. Using the modelling method – general conclusions and proposals were formed to improve the current legislation regulating public and legal relations in the aviation industry and law enforcement activities.

The study is based on the norms and provisions of the Air Code of Ukraine No. 3393-VI of 05/15/2011 [11], Convention on International Civil Aviation of 07/12/1944 [12], Aviation Regulations of Ukraine "Regulations for the use of Ukrainian airspace" approved by a joint order of State Aviation Service of Ukraine and the Ministry of Defence of Ukraine dated 05/11/2018 No. 430/210 [13], Rules for the use of flights by unmanned aircraft complexes of the State Aviation of Ukraine, approved by Order No. 661 of the Ministry of Defence of Ukraine dated 12/08/2016 [14], Instructions for the use by police bodies and divisions of technical devices and technical means that have the functions of photo and film shooting, video recording, approved by order of the Ministry of Internal Affairs of Ukraine No. 1026 dated 12/18/2018 [15], Rules of registration of state aircraft of Ukraine and rules of certification of a copy of a state aircraft of Ukraine: approved by Order of the Ministry of Defence of Ukraine No. 63 dated 02/07/2012 [16], Regulations on the use of Ukrainian airspace approved by resolution of the Cabinet of Ministers of Ukraine No. 945 of 12/06/2017 [17], Aviation Regulations of Ukraine, part 47 "Rules for

registration of civil aircraft in Ukraine", approved by order of the State Aviation Service of Ukraine No. 153 dated 02/05/2019 [18], Aviation Regulations of Ukraine "Technical requirements and administrative procedures for flight operation in civil aviation", approved by order of the State Aviation Service of Ukraine No. 682 dated 07/05/2018 [19].

■ Results and Discussion

History of UAV development. The development of UAVs can be divided into five historical stages, each of which was marked by its own important dates and events, which as a result contributed to their spread and improvement.

Stage I (early period). Unmanned piloting systems are inextricably linked to the beginning of the 20th century. It was during this period that radio waves were first used to transmit information wirelessly. With the development of radio technology, the frequency range of waves that can be generated and perceived by radio equipment has also expanded. This circumstance in 1903 allowed the Spanish engineer and inventor, Leonard Torez de Quevero, to invent a radio control system called "Telekin". The principle of its operation was a robotic device capable of executing simple commands, and its main purpose was to remotely control airships, boats, and torpedoes. Subsequently, due to lack of funding, the inventor was forced to abandon these projects [20].

Notably, "Telekin" was the second device, the operation of which was controlled by radio communication. Nikola Tesla is considered the inventor of the world's first patent for a radio-controlled device; his invention was called "Teleautomat" [21].

Stage II (the First World War and post-war period). The war of 1914-1918 gave an impetus to the development and introduction of unmanned radio-controlled devices in the military sphere. For example, the squadron of unmanned aerial combat vehicles described by N. Tesla as early as 1915 inspired English physicist and inventor Archibald Montgomery Lowe in 1916 to make the first attempt at unmanned aerial targets with an internal combustion engine [22, p. 120-186].

Around the same time, the prominent inventor and entrepreneur Elmer Ambrose Sperry, together with the company's designers "Hewitt-Sperry", developed by and they tested a bomber aircraft known as the "Flying Bomb" or "Hewitt-Sperry automatic airplane", which had the ability to deliver explosives to specified targets without a crew [23].

At the beginning of 1918, the chairman of the French Senate Committee on the Army, Georges Clemenceau, announced the launch of a state project to introduce "unmanned aircraft" into the French armed forces. The first French UAV was designed, manufactured and tested in 1923 by engineer Maurice Percheron [24].

In 1935, aircraft modelling enthusiast Reginald Leigh Dugmore (Denny) developed the first large-scale production model of a remote-controlled target "OQ-2 Radioplane" [25].

During the same period UAVs received their second name – *a drone.* The word *drone* refers to males in the honey bee family. In the 1930s, this word, in a joking form, began to be informally referred to English automated versions of aircraft "DH.82 *Queen Bee*". Due to the fact that these UAVs had a low speed and noisy flight more similar to a bumblebee (rather than a bee), they received the unofficial nickname "drone". Subsequently, in 1941, this name took on an official form and was adopted by the US Army [26, p. 67-81].

Stage III (the Second World War period). In 1940, Reginald Denny founded the company for the production of UAVs "Radioplane Company", which during the Second World War increased the model range of drones, not only for performing combat tasks, but also for training pilots [25].

In Germany, developments on the creation of radio-controlled drones began in 1938. As a result, a target drone of the "V1" model was created. *Vergeltungswaffe* – weapons of revenge), which was powered by a pulsed rocket engine. Today, the V1 is considered the first cruise missile in the history of Aeronautics [26, p. 96-101].

The use of UAVs during World War II was also reflected in intelligence purposes. For this purpose, the Luftwaffe was armed with aircraft-type drones of the Argus as-292 model, which also had the name Flakzielgerät 43, they were equipped with a camera for aerial photography and a parachute to prevent damage to the film during the landing of the drone [27].

Stage IV (post-war period and the Cold War). The post-war period was marked not only by the Cold War, but also by a number of local military conflicts, including the Korean War, the Tonkin incident, the Vietnam War, the Egyptian-Israeli war (War of Attrition), the Doomsday War (Arab-Israeli war), the 1982 Lebanon War, the Afghan War, etc.

All these armed conflicts have become an impetus for the production and testing of UAVs in the conditions of real military operations. One of the reasons for their rapid development and widespread use in military aviation was announced in 1972 by the US Air Force Command as a doctrine of *"zero deaths"*, the main purpose of which was that the use of drones allows performing military tasks without sacrificing the life and health of military personnel [28; 29, p. 65-72].

This was confirmed by Israel's development of the world's first drone IAI Scout, which was equipped with equipment that allowed to conduct real-time surveillance. The images and radar false targets provided by these UAVs helped Israel completely neutralise the Syrian air defence system at the beginning

of the Lebanese war in 1982, as a result of which none of the Israeli pilots were shot down [29, p. 14-20].

In the 1950s, for the first time, American company Ryan Aeronautical, developed a series of UAVs "Fairby" capable of launching from an airplane or ground launcher using a single rocket accelerator. Subsequently, in 1966, the Lockheed D-21 supersonic reconnaissance drone was developed [29, p. 25-30].

In the Soviet Union, since the 1950s, developments were also carried out to create military drones. The first such drone was a reconnaissance UAV model La-17 designed by the Lavochkin Design Bureau. The next UAV developed in the USSR was the Tu-123 supersonic long-range unmanned reconnaissance aircraft, which was designed and manufactured by the Tupolev Design Bureau in 1961. But the greatest success was the Tu-143 "Reys" reconnaissance UAV of 1970, designed for conducting tactical low-altitude reconnaissance in the frontline zone by photo and television reconnaissance of objects and individual routes, and monitoring the radiation situation along the flight route [30].

Stage V (modern period). The current stage of UAV development, first of all, was marked by high-tech innovations, the introduction of which took place in the development and improvement of unmanned aircraft systems. This circumstance gave an impetus to the introduction of unmanned aircraft in the commercial and civilian industries. Thus, in order to use UAVs for civilian purposes, in 2002 the European Union initiated the CERESON project, for which EUR 2.8 million were allocated and which attracted more than 20 international organisations, educational and scientific institutions, and leading manufacturers and developers in the aerospace industry [29, p. 44-49].

In 2014, the first commercial UAV flight to Alaska was made in the United States. Already today, issues related to the use of drones for domestic purposes are being publicly discussed, for example, during the delivery of food, medicine, mail, etc. In addition, the development of intelligent technologies and power supply systems has led to the use of drones not only for consumer purposes, but also in general aviation. As of 2022, drones show a wide demand among the population, they are used not only as entertainment and hobbies, but also in sports competitions. As a result, this circumstance created prerequisites for the emergence of new manufacturers of UAVs for entertainment and civilian needs in the start-up market.

The main market for the production and operation of drones belongs to the United States, Israel, China, India, Iran, Turkey, Great Britain, and the European Union (Germany, Italy, France, Spain, the Netherlands). Some of the most famous military UAVs in the world are MQ-1 Predator manufactured by General Atomics Aeronautical Systems equipped with air-to-ground missiles. It is the main combat drone in service with the United States [29, p. 4-6].

The smallest UAV is considered to be a helicopter-type micro drone Black Hornet 3, which belongs to the personal intelligence system used by the armed forces and law enforcement agencies. The system includes two drones controlled by a ground control station. The drone has a rotor diameter of 12.3 cm, a body length of 16.8 cm and a weight of about 33 g. At these sizes the Black Hornet 3 has a best-in-class audio and visual surveillance signature. In addition, the drone produces very little noise, which allows it to be used in secret operations. It is capable of operating at wind speeds from 7.5 to 10 m/s and air temperatures from -10 to 43°C [29, p. 15-18].

With the beginning of the military operation in the East, the Armed Forces of Ukraine, the National Guard and Border Guards also began to need UAVs, which gave an impetus to the development of domestic industries for their production. Leaders in this field are a number of state and private enterprises, including the Oleg Antonov Aviation research complex, LLC NPP "Athlon Avia", "Aerotekhnika-MLT", JSC "Meridian' named after S.P. Koroliov, etc.

It is impossible not to mention the Ukrainian enterprise "Motor Sich" whose engines are installed on UAVs not only Ukrainian companies, but also leading foreign UAV manufacturers [31].

Classification of UAVs. Classification of UAVs is carried out based on its intended purpose, technical characteristics and parameters, depending on its type, size and weight, flight altitude and range, engine installation and control method, etc.

Thus, depending on the type, drones are divided into:

– aircraft-type UAVs. That is aircraft with fixed wings like an airplane;

– helicopter-type UAVs (single-rotor), having a rotating wing on the helicopter shaft;

– glider-type UAV, which also has the name "skimmer" or "multicopter" [7, p. 170-175; 32, p. 44-49].

Unlike aircraft and helicopter-type drones, which use a complex system of blades with a variable angle of inclination, the multicopter has three or more propellers corresponding to the total number of its rotors, and relatively simple flight control.

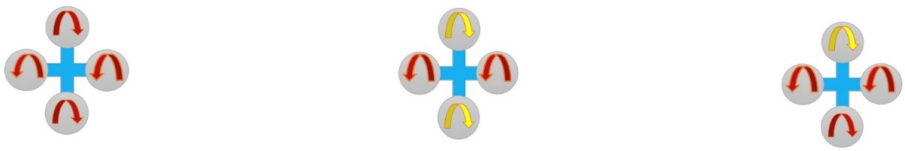
Depending on the number of rotors, skimmers are distinguished by:

– tricopters – equipped with three motors;
– quadrocopters – equipped with four motors;
– hexocopters – equipped with six motors;
– octocopters – equipped with eight motors.

The most common type of multicopter is a quadcopter. In terms of external parameters, its body usually has a cross-shaped appearance, and the rotors that it is equipped with are usually located at its ends. To direct the movement and flight of the quadcopter, a

mechanism is provided that causes the first pair of propellers to rotate in one direction, and the other in the opposite direction. Thus, by changing the relative speed of diametrically located one-from-one propellers, control of the flight and movement of the glider is achieved.

This configuration of the propellers allows you to reduce the net torque around the angle of movement of the aircraft to zero and by creating the opposite torque – to fly without the tail rotor, which is utilised by helicopters (Fig. 1).



a) b) c)

Figure 1. The figure shows the direction of movement of rotating quadcopter robots in which the following actions are performed

Note: *a – hover or adjust the height (applying equal traction to all four screws); b – roll, pitch, and yaw adjustment (by increasing the thrust of diametrically located rotors rotating in one direction); c – quadcopter roll adjustment (by increasing the thrust of one or two adjacent rotors, which leads to its horizontal movement)*

Given its small size, simple control system, and relatively low price, the quadcopter has become one of the most popular UAVs on the private market, which as a result allowed its widespread use not only in entertainment, commercial, military or law enforcement purposes, but also during the commission of torts, including its use as a tool for committing a criminal offence.

The literature describes other types of motorised and non-motorised UAVs, which differ in design features in paragliders, aerial sleds, blimps, drones based on the bionic principle of a flapping wing (flywheel, ornithopter), copying the movements of birds or insects, etc., but all of them have not found their wide application in practice [2; 4].

Depending on the size and maximum take-off weight, drones can be divided into three groups, namely:

– UAVs with a maximum take-off weight of no more than 50 kg (ultralight – with a take-off weight of up to 5 kg; light – with a take-off weight of up to 50 kg);

– UAVs with a maximum take-off weight of 50 to 300 kg (small – take-off weight of up to 100 kg; medium – off weight of up to 300 kg);

– UAVs with a maximum take-off weight of 300 kg (heavy – with a take-off mass of up to 1.000 kg; super-heavy – with a take-off weight of more than 1.000 kg) [3, p. 44-49].

Depending on the flight altitude and range, according to NATO standards, drones are divided into three classes, namely:

– UAVs whose range does not exceed 40 km (nano – range up to 1 km and flight altitude up to 100 m; micro – range up to 10 km and flight altitude up to 3 km; mini – range up to 40 km and flight altitude up to 3 km);

– UAVs whose range does not exceed 500 km (short-range – range up to 150 km and flight altitude up to 4 km; medium-range – range up to 500 km and flight altitude from 5 to 8 km);

– long-range UAVs (LALE – range of more than 500 km and a flight altitude of up to 4 km; MALE – range of more than 1,000 km and a flight altitude of up to 8 km; HALE – range of more than 4,000 km and a flight altitude of up to 20 km) [3, p. 44-49].

Depending on the type of engine, drones are divided into electric and those that run on an internal combustion engine, including hydrogen or solid fuel (piston, rotary, gas turbine (turboprop, turbofan, propeller-driven), jet).

The power plant system, along with the electronic computer control system, communication system and navigation system, is part of the main systems of the unmanned aviation complex.

Depending on the list of tasks set, additional systems and devices can be installed, such as:

– intelligence system (optoelectronic, thermal imaging, radar, radio engineering, radiation, chemical, bacteriological, and other types of intelligence);

– means for electronic warfare or electronic interference devices; devices for guidance and correction of guided weapons;

– means of hitting various types of targets;

– means of control and communication with the ground control point;

– automatic piloting and landing equipment;

– transport cassettes, compartments, fasteners, etc. [8, p. 12-24; 33, p. 7-17; 17].

Depending on the period of use, unmanned vehicles are divided into multiple-use UAVs (reconnaissance,

reconnaissance and strike, transport, weapons carriers, with advanced carrier functionality, with possible separation, interceptors) and single-use UAVs (false targets, barrage kamikazes, reconnaissance and strike kamikazes, interceptors) [34, p. 139-146].

The above classification is not exhaustive, and therefore UAVs are also divided depending on their intended purpose and scope of use (military, civil, commercial, industrial), according to the method of control (remote, automatic, and combined), according to the nature of the tasks performed (strategic, operational-tactical, and tactical, can perform such tasks as observation, collection of intelligence data of the area and objects, cargo transportation, electronic strikes, patrolling and monitoring of the area and objects, aerial photo and video shooting, striking air and ground targets of a potential enemy), etc. [28].

The International Civil Aviation Organisation of the United Nations, which is responsible for the organisation of world aviation, does not refer flight models (models of aircraft of reduced or miniature size) used for entertainment or air sports to UAVs. In turn, US legislation refers to drones as any aircraft without a crew, regardless of its size [29]. In Ukraine, the attitude to remote-controlled aircraft models is not clearly defined and remains open.

III. Statutory regulation. In accordance with international and national legislation, UAVs refer to aircraft whose use is regulated by specific laws and regulations. In Ukraine, one of the main codified legal acts regulating legal relations in the aviation industry is and remains the Air Code of Ukraine [11]. Thus, according to its norms, "*unmanned aircraft* – is an aircraft that is part of the *unmanned aviation system*, and is intended for performing a flight without a pilot on board, whose flight control and control is carried out *remote pilot (operator)* using a special control station located outside the aircraft" (paragraph 23 of Part 1 of Article 1 of the Tax Code of Ukraine).

A similar definition is found in the provisions of the Aviation Regulations of Ukraine, approved by the Joint Order of the State Aviation Service of Ukraine and the Ministry of Defence of Ukraine dated 05/11/2018 No. 430/210 [13], according to which, "*unmanned aircraft* – is an aircraft designed to perform flights without a pilot on board, whose flights are controlled by a special control station located outside the aircraft" (paragraph 6 of Section 1).

A similar concept is contained in the norms of the Chicago Convention on International Civil Aviation of 1944 [12], where "*an unmanned aerial vehicle* (*pilotless aircraft)* includes any aircraft capable of flying without a pilot on board" (Article 8).

In turn, to the elements *unmanned aviation system,* according to the Rules for the use of flights by unmanned aircraft complexes of state aviation, approved by the Order of the Ministry of Defence of Ukraine dated 12/08/2016 No. 661 [14], it was assigned "an unmanned aircraft, associated remote piloting points, necessary control lines, and other equipment, including, but not limited to any device, mechanism, appliance, software, or accessory necessary for the safe operation of an unmanned aircraft".

With this in mind, when formulating the definition of the concept *"unmanned aerial vehicle"*, the provisions of the above-mentioned regulations focus on the phrase *"aircraft"*. One of the reasons that contributed to this was that in Ukraine the term "*unmanned aerial vehicle"* appeared relatively recently. Having a virtually foreign-language origin (from English *an unmanned aerial vehicle* – UAV), this phrase is mostly reflected in international regulations and recently adopted Ukrainian bylaws, including by the Ministry of Internal Affairs of Ukraine.

These may include, for example, the Annex and Regulation of the Council of the European Union No. 428/2009 of 05/05/2009[1], or paragraph 2 of Section 1 of the Instructions for the use by police bodies and divisions of technical devices and technical means that have the functions of photo and film shooting, video recording, approved by the Order of the Ministry of Internal Affairs of Ukraine dated 12/18/2018 No. 1026 [15], where under the concept of *"unmanned aerial vehicle",* it was defined as an aircraft designed to perform a flight without a pilot on board, the control of which is carried out using a special control station located outside the aircraft – which actually literally repeats the definition given in paragraph 6 of Section 1 of the Aviation Regulations of Ukraine [13].

Given the above, it can be concluded that *"unmanned aerial vehicle"* refers to *"unmanned aircraft"* in the same way as *"unmanned aerial system'* refers to *"unmanned aviation complex"*. That is, these terms are absolutely identical and lexically synonymous, and therefore, their definition should not be misinterpreted and perceived differently.

This is also emphasised by the Rules for performing flights by unmanned aircraft complexes of the state aviation of Ukraine, approved by Order No. 661 of the Ministry of Defence of Ukraine dated 12/08/2016 [14] according to which, "an unmanned aerial vehicle (UAV) is an aircraft whose flight control is carried out remotely, using a remote piloting point located outside the aircraft, or an aircraft that flies autonomously under the appropriate programme".

In turn, "an unmanned aviation complex (unmanned aviation system) is an unmanned aircraft, its associated remote piloting points (ground control stations), necessary control and control lines, and other elements specified in the approved project of the type of unmanned aviation complex. An unmanned aviation complex can include several UAVs".

[1] According to Annex I of the EU Council Regulation No. 428/2009 of 05.05.2009, a UAV is any aircraft capable of starting and maintaining a controlled flight and its navigation without the presence of a pilot on board.

According to the norms of Ukrainian legislation, all aircraft of Ukraine by scope of use are divided into:

– *state-owned aircraft* – aircraft used in the military, border guard, civil protection service, National Police and customs authorities – paragraph 31 of Part 1 of Article 1 of the Tax Code of Ukraine);

– *civil aircraft* – all other aircraft that do not belong to state-owned aircraft (Paragraph 103 of Part 1 of Article 1 of the Tax Code of Ukraine) [11].

Registration and certification procedure of *state-owned aircraft of Ukraine* defined by the Rules of registration of state aircraft of Ukraine and the Rules of certification of a copy of the state aircraft of Ukraine, approved by the Order of the Ministry of Defence of Ukraine No. 63 dated 12/07/2012 [16]. In accordance with these rules, UAVs that relate to state aircraft of Ukraine, including those used by the National Police, without exception are subject to mandatory registration in the Register of state aircraft of Ukraine, the introduction of which is entrusted to the Department for regulating the activities of state aviation of Ukraine of the Ministry of Defence of Ukraine (Section II of the Rules for registration of state aircraft of Ukraine). At the same time, flights of state-owned aircraft of Ukraine that are not registered in the relevant register are strictly prohibited, since they violate a certain procedure for using Ukrainian airspace in accordance with the Regulation on the use of Ukrainian airspace approved by resolution of the Cabinet of Ministers of Ukraine No. 945 of 12/06/2017 [17].

In turn, the procedure for registration and certification of *civil aircraft of Ukraine* is regulated by the relevant Regulations for registration of civil aircraft of Ukraine [18] approved by the Order of the State Aviation Service of Ukraine of 02/05/2019 No. 153, and the Aviation Regulations of Ukraine "Technical requirements and administrative procedures for flight operation in civil aviation", approved by the Order of the State Aviation Service of Ukraine of 07/05/2018 No. 682 [19].

According to the above-mentioned bylaws, UAVs are subject to state registration of civil aircraft of Ukraine, the introduction of which is entrusted to the authorised body for Civil Aviation (State Aviation Service of Ukraine) or an institution authorised by it, except for those, *maximum take-off weight* which do not exceed 20 kg, and which are used for entertainment or sports activities (Section II of the Rules for registration of civil aircraft of Ukraine, Article 39 of the Tax Code of Ukraine) [18]. In this case, the registration procedure for UAVs classified as civil aircraft that are not subject to registration is regulated by the relevant provisions (part 9 of Article 4 of the Tax Code of Ukraine) [11].

The complexity of this issue lies in the fact that referring to such an indicator as "maximum take-off weight", it was not taken into account that most UAVs that are freely available do not contain this information in the operating documentation. At best, the technical documentation provides data on the mass of the UAV itself, taking into account its battery and rotors. This circumstance, first of all, is explained by the fact that most UAVs that are freely available for sale do not technically provide any fasteners for lifting additional cargo. However, ignoring the provision of indicators for the maximum take-off weight, the manufacturer created conditions under which a person would be able to deliberately avoid the registration procedure for registering a UAV. When solving this issue, it is also necessary to consider the fact that today a wide range of parts and spare parts is available for free sale, allowing for independent assembly of a UAV at home, which would require registration according to its technical characteristics.

Unregistered UAVs, along with legal nihilism and a low level of legal culture of citizens, pose a real threat to aviation security, the interests of the state and national security in general. This refers to the use of UAVs for the purpose of committing criminal offences related to smuggling, terrorist activities, collaboration, sabotage, espionage, etc.

Special attention should also be paid to the issue of unauthorised filming that violates the right to privacy and privacy of citizens. Thus, for example, with the help of UAVs, it is possible to conduct aerial photography of the private (personal) life of citizens, and property belonging to them, in order to further publish provocative photos and videos on the Internet that can negatively affect the business reputation of an individual or humiliate their honour and dignity [1, p. 314-327].

During the violation of the use of Ukrainian airspace, there is also a threat to people's lives and health. The possibility of accidents caused, for example, by a UAV falling on passers-by citizens, their vehicles, houses, and other property located in localities is not excluded. In addition, the use of UAVs over critical infrastructure facilities or within air routes can lead to particularly serious consequences or even disasters. This, first of all, indicates that the UAV as an aircraft is a source of increased danger, since its unauthorised use by an incompetent person can lead to irreparable consequences for people, society, and the state as a whole.

Conclusions

Thus, it is possible to conclude that today, in Ukraine, a number of issues related to the definition of a single terminology for an unmanned aviation complex, its systems and elements, the procedure for its registration, licensing, and certification need to be clearly regulated. When resolving these issues, it is advisable to consider the possibility of legal liability for non-registration or late registration of the UAV by its owner.

This is a confirmation of the relevance and need to develop common international approaches to the legal regulation of the Ukrainian aviation sector by implementing international standards in national legislation. In order to remove the Soviet influence from the legislation of Ukraine and bring its norms to international standards, it is advisable to consider the provisions of legal acts regulating legal relations in the aviation industry:

– establishment of uniform rules for registration (certification) of UAVs, mandatory for all copyright holders, including individuals;

– determination of the main restrictions and prohibitions on unauthorised use of UAVs related to ensuring flight safety, protecting the private life of citizens, and compensation for damage caused during the use of UAVs;

– establishment of general rules and prohibitions on the use of UAVs by civilians, including in areas where military facilities, penitentiary institutions, power lines are located, in crowded places, in rural areas during aviation processing of fields, etc.;

– granting the right to the relevant law enforcement agencies to stop the operation of unauthorised UAVs in the airspace in order to protect the life, health, and property of citizens, during mass events, investigative (search) actions and operational search measures, by damaging them, destroying them or suppressing them with firearms or special electronic counteraction devices;

– separate regulation of the provisions of the CPC of Ukraine and the law of Ukraine "On intelligence-gathering activities" regarding the use of UAVs as an independent technical and forensic means during investigative (search) actions, secret investigative (search) actions, and operational search measures;

– development of a unified certified register of technical and forensic means that can be used by law enforcement agencies in the performance of their functions, and would allow their use in the course of pre-trial investigation and intelligence-gathering activities;

– development of an interdepartmental Instruction "On the Procedure for Using UAVs and Applying Their Results for Forensic Purposes in the Detection, Investigation, and Prevention of Criminal Offences";

– establishment of a ban on posting photos and videos about the private life of citizens obtained by aerial photography on the Internet without their consent;

– establishment of administrative and criminal liability for violation of the established rules and prohibitions on the use of UAVs.

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Історія, сучасний стан і перспективи використання безпілотних літальних апаратів як техніко-криміналістичного засобу та об’єкта криміналістичного дослідження

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■ **Анотація**. Актуальність теми дослідження зумовлена науковою новизною та практичною значущістю використання сучасних можливостей безпілотних літальних апаратів органами правопорядку. Метою статті є дослідження історії, сучасного стану та перспектив розвитку використання безпілотного літального апарату як техніко-криміналістичного засобу та об’єкта криміналістичного дослідження. Основою методологічного інструментарію слугував діалектичний метод пізнання соціальних і правових явищ та понять. Поряд з ним застосовано такі загальнонаукові та спеціальні методи дослідження, як історичний, порівняльно-правовий, системно-структурний, соціологічний, статистичний, логічний та інші сучасні методи дослідження. На підставі вивчення історії розвитку безпілотного літального апарата виокремлено п’ять основних етапів: період кінця XIX – початку XX століття; період Першої світової війни та післявоєнний період; період Другої світової війни; період Холодної війни та локальних воєнних конфліктів того часу; сучасний період, означений впровадженням сучасних безпілотних літальних систем не лише у військову сферу, а й в різні сфери життєдіяльності людини, зокрема в злочинну діяльність, а також у діяльність правоохоронних органів з розкриття, розслідування та попередження кримінальних правопорушень. З огляду на цільове призначення, технічні характеристики та параметри наведено класифікацію безпілотних літальних апаратів, що залежить від їх типів, розмірів, ваги, силової установки та способу керування. Безпілотні авіаційні системи, які належать до мультикоптерів,

визнано найбільш перспективними безпілотними літальними апаратами для впровадження в роботу правоохоронних органів. Досліджено особливості використання безпілотного літального апарата як техніко-криміналістичного засобу та об'єкта криміналістичних досліджень. Окреслено пріоритетні напрями впровадження безпілотних літальних апаратів у діяльність правоохоронних органів. На підставі міжнародних стандартів в авіаційній сфері запропоновано напрями вдосконалення українського законодавства з питань реєстрації, ліцензування та сертифікації безпілотних літальних апаратів, а також підстав і порядку їх використання відповідними правоохоронними органами. Практична значущість статті полягає у висвітлені актуальних питань історії розвитку, сучасного стану й перспектив удосконалення національного законодавства з питань, що стосуються практичного застосування безпілотного літального апарата як техніко-криміналістичного засобу та об'єкта криміналістичного дослідження

■ **Ключові слова**: дрон; квадрокоптер; безпілотна авіаційна система; безпілотне повітряне судно; нормативно-правове регулювання

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Genesis of Counterintelligence Activities of Border Authorities and Units of Ukraine

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■ **Abstract.** The relevance of the study is conditioned by the investigation and delineation of counterintelligence powers of border authorities and units of Ukraine in different historical periods, determining the areas of their development. The paper is devoted to the study of historical aspects of the development of counterintelligence activities of border agencies, and national and state security bodies on the territory of Ukraine, in particular, the history of transformation of the relevant units and their powers. It is noted that the study of the history of the establishment and functioning of national special services is of practical importance and can become relevant when adjusting the national security strategy. The purpose of the study is to analyse the historical aspects of the development of counterintelligence activities and counterintelligence measures by border authorities and units on the territory of Ukraine in light of retrospective changes in national special services. The methodology of scientific research included a set of interrelated general scientific and historical and legal methods, namely: chronological – to periodise the development of counterintelligence authorities and units of national special services, and the border guard service; comparative legal analysis – a comparative approach to the past and modern legislation, which determines the authority to carry out counterintelligence activities or conduct counterintelligence measures; structural and functional – to classify the threat system, which is carried out by active measures of the main enemy. Features of the legal status of border authorities and divisions of Ukraine in different historical periods are highlighted. It is indicated on the main counterintelligence methods (measures) that were carried out by authorised state bodies and units, namely: the legendary method of capturing prisoners to be interrogated, first mentioned in the annals of the Kievan Rus and conducted mainly during military campaigns; perlustration (interception) of correspondence and external surveillance, their conduct is most characteristic of the period of the Russian occupation; agent measures, during the first liberation competitions, were consolidated in the legal field by the relevant provision, which specifies the main functions of the army special service of the Ukrainian People's Republic; operational surveillance, legend and operational disinformation (used by both the security service of the organisation of Ukrainian nationalists and Soviet state security agencies). Based on the studies by Ukrainian and foreign researchers, a classification of "active measures" that can be carried out by the aggressor state is presented. The areas of development of the powers of bodies and divisions of the State Border Guard Service of Ukraine to conduct counterintelligence activities are determined

■ **Keywords:** counterintelligence; active measures; national special service; agency event; legending; operative observation; Border troops of Ukraine; State Border Service of Ukraine

■ Introduction

Nowadays, the relevance of studying the genesis of counterintelligence activities by border authorities and units of Ukraine is conditioned by the need for critical use of historical experience to improve the forms and methods (measures) of counterintelligence activities of the security and defence sector of Ukraine, including the State Border Guard Service of Ukraine.

The importance of investigating the history of transformation of the relevant state bodies and their powers is determined by many factors, in particular: the importance of historical experience for professional training and patriotic education of employees of the border authorities of Ukraine authorised to carry out counterintelligence activities.

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Scientific substantiation of the priorities of organisational and legal support for the activities of the State Border Guard Service of Ukraine regarding the conduct of counterintelligence activities is impossible without investigating and considering the historical aspects of the development of organisational and regulatory bases of counterintelligence activities of border authorities, and national special services on the territory of Ukraine. Relevant here is the statement of one of the founders and directors of the Central Intelligence Agency of the United States of America, Allen Dulles, who believed that the best method of mastering the specialty is "analysis of historical precedents".

Before proceeding to the study of the historical development of counterintelligence activities of border authorities, it should be noted that the difference between such fundamental categories as measure and method, considering the retrospective, is somewhat unclear and it is advisable to identify them until the moment of historical stages when counterintelligence activities acquire clear outlines and its regulatory consolidation occurs at least at the internal level of the relevant state bodies of Ukraine. At the same time, the authors of this study fully agree with the conclusion obtained by O.V. Kozhelyanko [1], who notes that the method of counterintelligence activities is implemented in practice by carrying out a set of measures and is a broader concept in content.

The analysis of available papers on the historical development of national special services and their powers has shown that this issue has been comprehensively studied in Ukrainian legal science. At the same time, Ukrainian and foreign researchers have not sufficiently disclosed the genesis of the implementation of counterintelligence activities and the conduct of counterintelligence measures by border authorities and units on the territory of Ukraine.

In the course of analysing the results of research in this area, it was established that certain issues of counterintelligence search are covered by V.V. Polovnikov, V.O. Beletsky & Yu.A. Overchenko [2] in the research of the criminological profile of a person who committed high treason. In their study, researchers have formed a typical profile of such individuals, which will narrow the search for factual information about the intelligence and subversive activities of the special services of foreign states and will contribute to the interests of criminal proceedings, and obtaining information in the interests of the security of citizens, society, and the state [2]. The issue of profiling was also considered by S.I. Halimon, V.V. Polovnikov & P.P. Volynets [3] in the study of the socio-psychological profile of a person who confidentially provides assistance to an operational unit. The profile was created based on an analysis of the results of a survey of operational employees who have experience in cooperation with confidential informants, the characteristic features inherent in confidential informants of the State Border Guard Service of Ukraine were identified and summarised [3]. A. Krzak [4] presented a theoretical and, at the same time, doctrinal approach to the phenomenon of such a counterintelligence measure as operational disinformation. Referring to Soviet counterintelligence agents, the author claims that the main disinformation techniques developed in the early 1920s were successfully applied during the Cold War. Many techniques have evolved, and despite the technological revolution, misinformation has not been abandoned, but, on the contrary, its importance has increased, and it has become the most important measure used in operational practice. Analysing the methodological aspect of disinformation, it is quite clear that virtually no game or operational combination of Soviet intelligence and counterintelligence could have taken place without one of the many types of disinformation. Therefore, A. Krzak [4] concludes that disinformation was and remains one of the universal paradigms of Soviet operational work and its Russian heirs – intelligence and counterintelligence. S. Hosaka [5] notes that active measures, commonly known as Soviet operations of external influence, were a concept and practice in which offensive counterintelligence essentially served as foreign intelligence. In the 1960s, counterintelligence officers of the Soviet Union's State Security Committee were called upon to take active measures, instead of passive surveillance, by selecting, studying, and recruiting foreign visitors and Soviet citizens, with the aim of using them to infiltrate Western institutions and collect confidential information. The counterintelligence department occasionally oversaw foreign operations in order to introduce offensive tactics. Given the parallels between the Soviet and Russian special services, the latter continue the practice of active measures [5]. O. Bertelsen [6] highlights Soviet active measures aimed at concealing the scale and consequences of the Chornobyl disaster, which had the opposite effect to what was expected and helped American intelligence accurately predict a potential political crisis in the Soviet Union, aggravated by cover-up operations and state violence. U.S. analysts argued that public concern about the violent nature of the Soviet regime and discriminatory conscription and decontamination policies would continue, exacerbating ethnic tensions in the Soviet republics. Looking back, their analysis had deep predictive value [6]. D.V. Gioe, R. Loving, & T. Pachesny [7] point to an imbalance in scientific research that has distorted the academic understanding of active activities, considering them in terms of goal (or sacrifice).

Thus, these researchers consider one of the techniques of counterintelligence search – profiling, counterintelligence – operational disinformation, and active measures. The main problematic issue that has not been resolved remains the discussion about the

expediency of the existing counterintelligence powers of the relevant bodies and divisions of the State Border Guard Service of Ukraine, and the expansion of these powers from the level of the subject of counterintelligence measures to the subject of counterintelligence activities. In addition, the classification of active activities needs to be supplemented.

The scientific originality of this study is conditioned by the fact that the following counterintelligence measures were established most characteristic of the considered historical periods: perlustration of correspondence, external surveillance, agent measures, operational surveillance, legend and operational misinformation. The author's classification of active measures is provided. In addition, it was found out that the functions of the State Border Guard Service of Ukraine cannot be implemented without powers in the field of counterintelligence.

The purpose and objectives of the study are to conduct a retrospective analysis of the powers of border authorities and divisions, and national special services in the counterintelligence sphere on the territory of Ukraine.

Materials and Methods

The methodological basis of the research was the principles of objectivity, scientific nature, consistency, and historicism. General scientific research methods (analysis, synthesis, and comparison) allowed revealing the content and components of modern Ukrainian historiographic studies of the history of counterintelligence activities by border authorities and divisions, by National Special Services in the counterintelligence sphere on the territory of Ukraine. Methods of historical science (periodisation, historical and comparative, historical and system) contributed to the disclosure of the relevant powers of the mentioned state bodies, and to the definition of the main types of counterintelligence measures in the general context of studying the counterintelligence history of Ukraine.

The chronological boundaries of the study are determined by the first references to the conduct of counterintelligence (intelligence) activities in the Kievan Rus and Cossack period (9th-18th centuries) – from the beginning of the creation and operation of Ukrainian border bodies and units, and national special services for the period of modern Ukraine. The choice of the lower limit of research of the historiographical process is associated with the rapid growth of scientific and public interest in the previous experience of conducting counterintelligence activities on the territory of Ukraine. The upper limit allows revealing the features of the current stage of development of scientific knowledge on the history of counterintelligence activities of relevant state bodies on the territory of Ukraine.

The theoretical basis of the study consists of the studies by Ukrainian and foreign researchers in terms of retrospective identification of such fundamental categories as "measure" and "method", the main types of counterintelligence measures that were carried out in certain historical periods, the provisions of the legislation of Ukraine regarding the powers of border authorities and divisions, and national special services of Ukraine.

Results and Discussion

It is advisable to investigate the genesis of counterintelligence activities and counterintelligence measures by authorised units of the State Border Guard Service on the territory of modern Ukraine in the plane of historical and political progress of our society, including retrospective changes in national special services and border authorities and divisions. Having analysed the state of development of these aspects, it is appropriate to agree with such researchers as V.S. Sidak, T.V. Vronska, & O.V. Skrypnyk [8], who clearly defined, in the multi-volume scientific publication "Special services of Ukraine from ancient times to the present", historical periods of research: the Kievan Rus, Cossack Ukraine, wars of national liberation of 1917-1921, special service of the State Centre of the Ukrainian People's Republic in exile, intelligence and counterintelligence of the Organisation of Ukrainian Nationalists and the Ukrainian Insurgent Army, special services during the recent history of Ukraine. The period of activity of Soviet special services on the territory of Ukraine in this publication, which is prepared and published under the auspices of the National Academy of Sciences of Ukraine, the Institute of History of Ukraine, and the National Academy of Security Service of Ukraine, is considered from the standpoint of the fact that it was another state – the Union of Soviet Socialist Republics, and Ukrainian counterintelligence units at that time worked in the interests of the Soviet Union [8]. Considering the best practices of these researchers, seven periods of establishment of national special services can be distinguished.

Kievan Rus and Cossack period (9th-18th century). The secret activities of this period included both intelligence and counterintelligence, and were closely related to military intelligence and military operations. The middle ages are not characterised by an organised and purposeful structure of counterintelligence, which operated constantly and systematically, as is happening in modern time. The need to counteract the intelligence of foreign countries arose from the moment of the establishment of bodies and divisions of their special services. Therefore, the very term "counterintelligence" in relation to the times of the Kievan Rus and the era of the Ukrainian Cossacks is very conditional [9]. The chronicles indicate that the

military leaders of Kievan Rus used the method of capturing prisoners to be interrogated during a military campaign, which may indicate the actual origin of the agent method in the activities of special services (their analogues at that time) [9]. According to O.S. Peliukh [9], the capture of prisoners to be interrogated has led to the use of methods and techniques for extracting information about the state of combat readiness of the enemy army, its number, weapons, and plans for an offensive or defence. Moreover, the use of methods of collecting information in those days during military operations during the appanage fragmentation of the Kyivan Rus in the 12th century [9].

During the time of the Ukrainian Cossacks and the Zaporozhian Sich, the introduction of agents into the environment of representatives of various social strata and groups of the population, nationalities, and faiths was effectively used. There was also a reversal of agents from other countries [9].

In addition, O.S. Peliukh [9] notes that: "during the reign of Hetman Bohdan Khmelnitskyi, it was possible to create an agent network in Warsaw and the capital of the Grand Duchy of Lithuania, which delivered the necessary information of both political and military nature on time. Using the counterintelligence service, B. Khmelnitskyi began using disinformation to introduce self-doubt and panic in the enemy army. In his universals to the population and instructions, the Hetman insisted on the need to create moods of doom, tension, and uncertainty among the enemy. Thus, for the first time in the practice of Ukrainian operational art, disinformation was used for the purpose of beneficial psychological influence on the enemy. Such methods were used during the battles of Korsun, Pylyavtsi, and Berestechko. The art of capturing prisoners to be interrogated was further developed to extract the necessary information from prisoners from an enemy camp. The Cossack art of capturing prisoners, as noted in those days, was one of the best in Europe" [9].

The analysis of the identified sources describing the National Liberation War of 1648-1657 gives grounds to assert that the Hetman, the General Military Chancellery, as the highest state military and administrative institution [10], and other authorities paid great attention to the secrecy of military and political plans, successfully opposed the measures of foreign intelligence and began the process of formation of counterintelligence bodies in the Ukrainian state.

In the 1650s, control over intelligence and counterintelligence was carried out by the General Military Chancellery, which was headed by Ivan Vyhovskyi. The latter turned this state body into an effective bureaucratic institution. The General Chancellery was essentially the Ministry of Foreign Affairs and at the same time – internal ones. Military and political information was received here from all over Ukraine and foreign countries, numerous embassies were taken and sent there, important decisions were made that, along with military victories, determined the fate of Ukraine.

At the same time, there is no documentary evidence of the functioning of a clearly defined, separate intelligence or counterintelligence agency in Ukraine during the Liberation War under the leadership of Khmelnitskyi. The study suggests that the highest and operational and tactical management of the work of intelligence and counterintelligence was carried out by the relevant management bodies and troops, the command of the Ukrainian state: the Hetman as the head of state and the supreme commander-in-chief, the General Military Chancellery as the highest level of the state apparatus, the regimental and hundred petty officers.

V.S. Sidak [11] points out the existence during the reign of Khmelnitskyi of the following leading bodies and divisions that conducted activities in the field of intelligence or counterintelligence and carried out appropriate measures, namely:

– Cossack intelligence and patrol service (protected the borders of Ukraine, prevented their violation);

– intelligence service (engaged in military intelligence, organised the work of intelligence residencies on the territory of the enemy and the personal intelligence network of the Hetman, collected confidential information under the legendary cover of Cossack diplomacy);

– counterintelligence service (carried out the fight against attempts on the state system, exposing spies and intelligence and subversive activities of the enemy, ensured the secrecy of troops and political events, personal inviolability of senior officials, and counteracted subversive propaganda).

Since the above-mentioned divisions were not clearly structured, their powers were determined more by separate instructions of the general office than by well-established regulations, so, in addition, they were jointly or separately, organised:

– intelligence and subversive activities (measures to disable enemy command and control personnel, strategic and tactical objects, means of armed struggle of the enemy, sources of its combat and material supplies);

– rebel movement on enemy territory (sent Cossack detachments for conducting riots, scouts-instructors to the rebels, to help create rebel formations and coordinate their activities, expand the regions controlled by the rebels) [11].

The period of Russian and Soviet occupation (18th-20th centuries). It remains indisputable that during the Russian or Soviet occupation, in the service of the Imperial state security agencies, the enemy actually used the abilities and skills of the best representatives of the Ukrainian people to their advantage, motivating them, on the one hand, with the help of

repression, and on the other, by granting privileges and freedoms.

To some extent, this involves counterintelligence activities in the time of Peter the Great in the part concerning the fight against espionage. Since the 18th century, this function of the state was entrusted to the quartermaster general service of the army. Initially, among the duties of this service was to study the terrain, organise the location and movement of troops, and hospitals, preparation of maps, fortifications, provision of rear infrastructure. Later, intelligence and counterintelligence activities, building bridges, keeping detailed records of battles and other responsibilities were added to them.

The predecessor of the counterintelligence agencies of the Russian Empire and the Soviet Union can safely be considered the Third Department of the political police and gendarmerie, which actively introduced such methods of counterintelligence activities as agent, combination, secret surveillance, and secret inspection.

V.M. Chysnikov [12] draws attention to the fact that one of the leaders of this state body, A.H. Benckendorf, noted the effectiveness of secret inspection of postal correspondence [12]. According to him: "perlustration is one of the most important means to discover the truth, thus representing a way to stop evil at its very beginning; it also serves as an indicator of the public's thoughts and way of thinking about modern events and various government measures and regulations".

The methods used to combat political opponents, which were aimed at combating espionage, were perceived by the personnel of the Third Department as an unusual function for these units, due to their inefficiency in combating intelligence and subversive activities of opponents. Therefore, at the beginning of the 20th century, when the subversive activities of foreign intelligence agencies significantly intensified and began to be carried out on a professional basis, the political investigation bodies were unprepared for effective counteraction to the intelligence units of foreign states. The most ineffective was the so-called "provocateur" method, which consisted in inciting individuals to commit illegal actions and was usually used against political opponents, but in countering espionage it was not effective [9].

O.S. Peliukh [9] states that it is necessary to distinguish the "provocateur" method, which is now prohibited by law and is not used by special services and law enforcement agencies of Ukraine, from a combination that does not involve inciting a person to commit illegal activities, but embodies in its essence and content a hidden beneficial influence. At that time, the combination was mainly used to create conditions for the introduction of confidential sources into the sphere of activity of special services of foreign states. Not the full use of the potential of combination in practice and the preference for provocation did not allow getting the maximum effect from these methods [9].

External surveillance is the most commonly used method of the third branch of the political police and gendarmerie. The significance of this method is evidenced by the fact that in 1902, the chairman of the Council of Ministers and the minister of internal affairs P.A. Stolypin adopted and approved a special "Instruction on external surveillance", which testified to the establishment of the legal basis for counterintelligence activities at that time [9].

In 1911, counterintelligence departments were established on the basis of the "Regulations on counterintelligence departments". These were the first counterintelligence agencies and units that began operating in the non-war period. In addition, the "Instruction of the head of the counterintelligence department" was approved. These regulations actually formed the legal basis of counterintelligence activities at that time. According to the Regulation, 10 counterintelligence departments were created, two of which carried out counterintelligence activities on the territory of modern Ukraine, in particular, in the Headquarters of the Kyiv and Odesa military districts [9].

At the same time, the study disagrees with O.S. Peliukh [9] in the part concerning the conclusion of the management of counterintelligence departments on the need to change the methods of their work from passive surveillance of "suspicious" persons to active offensive methods of counterintelligence activities, in particular, the introduction of agents into intelligence centres of foreign special services, their disinformation, and the beginning of operational games. The study suggests that in terms of the method of introducing agents widely used by the third branch, employees of counterintelligence departments changed only the object: political opponents to intelligence centres of foreign special services, and the method itself has not changed and they have not invented or implemented something new [9].

From 1917 to 1921, during the War of National Liberation, Ukrainian national counterintelligence bodies and units appeared, which had to be created from scratch. On January 22, 1918, the Ukrainian Central Rada adopted the Fourth Universal, which proclaimed the Ukrainian People's Republic an independent and sovereign state. The process of forming security and defence bodies of Ukraine, including State Border Guard, has begun.

During 1918, the state borders of the Ukrainian People's Republic were recognised by international agreements with all neighbouring states, and state entities that emerged against the background of the collapse of the Russian Empire.

On March 20, 1918, at a meeting of the government of the Ukrainian People's Republic, it was decided to create a Separate Border Guard Corps.

The main tasks of a Separate Border Guard Corps were determined by:

– organisation of border protection by setting up special posts;

– control over the movement of persons across the border in the presence of relevant documents and counteraction to the illegal import (export) of goods, weapons, ammunition, etc.;

– detention of deserters and criminal elements;

– performing the duties of quarantine and police services at the border.

In the official activities of a Separate Border Guard Corps, priority was given to law enforcement, not counterintelligence activities, but the structure was built on a military model.

An administrative and political department was established under the Ministry of Internal Affairs of the Ukrainian People's Republic, which served as counterintelligence and had units under provincial and county commissars. Among the powers of the department were counterintelligence duties:

– countering the counter-revolutionary and anti-state movement;

– external surveillance of persons who were hostile to Ukrainian statehood;

– identification and elimination of counter-revolutionary uprisings.

From the research by A.V. Tymoshchuk [13], it is known that in the Ukrainian State of Hetman Skoropadskyi, state security was handled by the State Guard Department of the Ministry of Internal Affairs, namely the Informative Department (May – November 1918). Employees of this department paid attention to countering enemy intelligence, and the activities of Ukrainian opposition parties. For example, A.V. Tymoshchuk [13], in his study, notes the existence of two state bodies with parallel functions – the mentioned Informative Department of the State Guard Department and the Special Department of the Hetman's Headquarters, whose main tasks were intelligence and counterintelligence in the political sphere.

According to the historical data revealed by Yu.A. Mikhalchyshyn [14], after the retreat of the German allies of Hetman Skoropadskyi and the uprising of the Ukrainian opposition, the Department of political information of the Ministry of Internal Affairs of the Ukrainian People's Republic was created (December 1919 – December 1920) [14], whose powers included:

– counteraction to anti-state activities of opponents of the Ukrainian People's Republic;

– counteraction to espionage;

– collecting data about the enemy and their troops;

– organisation of intelligence activities in countries that could become potential opponents or allies of the Ukrainian People's Republic.

Operational work in the department was carried out by two departments – domestic and foreign information. The Department's structure included provincial and county political departments, which were mainly engaged in counterintelligence.

"Regulations on counterintelligence in the active army of the Ukrainian People's Republic" which appeared in August 1919, consolidated in the legal field the following main functions of the army special service:

– collecting information about enemy intelligence activities;

– obtaining information about specific intelligence and subversive actions of enemy agents on the territory of military operations and in the rear of an active army;

– active counteraction to enemy intelligence and counterintelligence activities in the areas of deployment of units of the army of the Ukrainian People's Republic, detention of enemy agents and their purposeful disinformation and direction on a false path;

– sending own agents to the enemy's rear to collect information about the work of its intelligence agencies.

According to V.S. Sidak [15], organisationally military counterintelligence existed as a structural element of the intelligence service of the active army of the Ukrainian People's Republic. The highest governing body of military counterintelligence was the Counterintelligence Department of the Intelligence Council of the Main Directorate of the General Staff of the Army of the Ukrainian People's Republic [15].

L.V. Borodich claims that during the Directory, in comparison with the period of the Ukrainian People's Republic and the Hetmanate, from the standpoint of forming law enforcement agencies, the government of the Ukrainian State actively attempted to create military intelligence and counterintelligence bodies, which was conditioned by objective circumstances and the situation on the fronts and in the rear of the country [16].

Yu.A. Mikhalchyshyn [14] also recalls the West Ukrainian People's Republic, which had a national counterintelligence body – the State gendarmerie of the secretariat of internal affairs, and the Field gendarmerie of the Ukrainian Galician army, which performed the functions of military counterintelligence (November 1918 – November 1919) [14]. Military counterintelligence units worked at the level of corps and brigades and were subordinate to the Intelligence Department of the Supreme Command of the Ukrainian Galician Army. Professional detectives were directly involved in counterintelligence activities.

From 1922 to 1937, during the first Soviet occupation, the establishment and development of Soviet special services based on the Russian state security agency took place the All-Russian Emergency Commission for Combating Counter-Revolution and Sabotage, which was founded by Felix Edmundovich Dzerzhinsky in December 1917.

In December 1918, the Bolsheviks created the All-Ukrainian Emergency Commission, which included:

the legal department (carried out investigations and prepared cases for transfer to the revolutionary tribunal); the Department of foreign control (fought against the activities of agents of foreign states); the operational department (carried out the prevention, suppression and detection of crimes primarily of political opponents). From 1918 to 1922, the Bolsheviks repeatedly reformed the Emergency Commission in Ukraine, created regional bodies and divisions, and also tried to achieve its maximum centralisation. Since May 1919, the Emergency Commission has become part of the People's Commissariat for Internal Affairs [17].

After the abolition of the Emergency Commission, in the period from 1922 to 1924, the state political administration operated under the People's Commissariat for Internal Affairs of the Ukrainian Socialist Soviet republic. The tasks of this special service of the Bolsheviks included: the prevention and suppression of open counter-revolutionary actions, both economic and political; the fight against banditry and armed uprisings; the disclosure of counter-revolutionary organisations and persons whose activities are aimed at undermining the economic life of the republic; the protection of state secrets and the fight against espionage in all its forms; the protection of railway and water routes, the fight against theft of goods and crimes aimed at destroying transport or reducing its legal capacity; the political protection of the borders of the republic, the fight against economic and political smuggling and illegal border crossing; the implementation of special tasks for the protection of the counter-revolutionary order [17].

In 1924, the process of merging the state security bodies and internal affairs bodies began, when the Bolsheviks expanded the powers of political departments, subordinating them in operational terms to local police and criminal investigation bodies, and later removed them from the People's Commissariat for Internal Affairs. In July 1934, the political administration bodies again became part of the People's Commissariat for Internal Affairs [17].

The study suggests that such inconsistent actions of the Bolsheviks, in relation to the unification of state security and internal affairs bodies, were dictated by a "request for repression" against their own people, on the part of their criminalised ruling elite, and the separation reflected the fear of this elite before usurpation of power in the hands of the leadership of such a united state body.

Border units, during 1937-1939, operated as part of the Main directorate of border and internal troops of the People's Commissariat for Internal Affairs of the former Soviet Union, and from February 1939 were separated into a new body of the People's Commissariat for Internal Affairs: the Main directorate of border troops. Before that, in 1918, border guards were part of the People's Commissariat for Finance, in 1919 – the People's Commissariat for Trade and Industry, in October 1922, the Ukrainian border district of the State political administration was formed with the centre in the city of Vinnytsia, from July 1934, the border troops were led by the Main Department of Border and Internal Security of the People's Commissariat of Internal Affairs of the Former Soviet Union [17; 18].

From 1938 to 1950, during the second war of national liberation, the special body of counterintelligence protection was the Security Service of the Organisation of Ukrainian Nationalists, which was assigned the following tasks:

– identification and elimination of agents introduced by Soviet special services to the Underground of the Ukrainian Insurgent Army;

– creation of agent positions in Soviet partisan detachments;

– training of agents for introduction to the Soviet authorities, state security and police.

As D.V. Vedeneyev [19] notes, the Security Service staff carried out counterintelligence support for secret communication lines. All military personnel, regardless of their official position, were obliged to cooperate with the Security Service, and commanders and guides who received new members of the Ukrainian Insurgent Army without first checking them by the Security Service were equated with "obvious enemies" [19].

According to D.V. Vedeneyev [19]: "The network of Security Service bodies was built in accordance with the structure of the military-administrative division of the Ukrainian Insurgent Army. The commandant of the rear was subject to the reference of the Security Service, the latter – references of military regions, military super-districts, and districts. Attempts were made to introduce a certain staffing table of reference centers of the Security Service of military-territorial units. To perform counterintelligence functions, "counterintelligence agents" were used, which were introduced and selected at all independent combat units, support units and headquarters at the rate of one operational source per swarm (8-10 military personnel)" [19].

It is interesting that to train its personnel, the Security Service of the Organisation of Ukrainian Nationalists used the experience of counterintelligence activities of foreign special services, primarily the experience of Soviet counterintelligence agencies, as the main likely enemy.

From 1951 to 1990, during the second Soviet occupation, the border troops, until 1953, were under the jurisdiction of the Ministry of State security, during 1953-1957 – the Ministry of Internal Affairs of the former Soviet Union. In 1957, the Main Directorate of border troops was established as part of the State Security Committee of the former Soviet

Union [20]. The Soviet period, as part of state security agencies, from 1957 to 1991, was a time for border guards to form a stable and reliable system of state border protection using appropriate technical means. In addition, authorised full-time employees of the border detachment had the right to carry out intelligence and counterintelligence activities.

At this time, the structure of counterintelligence bodies, forms, and methods of their activities were improved in accordance with the development of the operational situation associated with changes in the priorities and directions of special services of foreign states. Among the operational methods used by the Soviet state security agencies in Ukraine, the following can be distinguished: operational surveillance, deprivation of foreign intelligence officers of access to intelligence facilities, operational experiment, operational modelling, legend, operational disinformation [21].

In addition, during this period, special operations, so-called "active measures", aimed at influencing the policies of other states using measures other than espionage or counterintelligence, were widely used [22].

Despite practical activities to counteract "active measures", the very concept of "active measures" still does not have a clear outline. At the same time, D.V. Dubov, AV. Barovska, T.A. Isakova, I.A. Koval & V.P. Horbulin [22] formulated its definition, acceptable for the needs of practical use in modern, in particular Ukrainian, realities and a general assessment of the potential of modern "active measures" of the aggressor state. "Active measures" – is an activity aimed at achieving the foreign and internal political goals of the state – subject of influence, implemented with the aim of negatively influencing public opinion in the state – object of influence, changing the activities and policies of its government and undermining confidence in its political leaders and institutions, and disorienting world public opinion in assessing the activities of the state – object of influence. Negative impact means, first of all, setting the population against the current government, its institutions and the efforts that they make in the sphere of economy, diplomacy, and military affairs [22].

Current forms of active measures are largely based on models already known and described in the past. A historical perspective can help assess and identify their hidden mechanisms. The current aggressive actions of the Russian special services are improved versions of the old ones, to which new information and communication technologies have contributed.

Based on the analytical report "Active Measures" of the USSR against the United States: a prologue to hybrid warfare" by the author from the National Institute for Strategic Studies [22] and the scheme by S. Whittle [23], the study identified the main "active measures" that can be carried out by the aggressor state, and also classified them as follows:

Classic active measures:

– conducting disinformation (posting materials in the press, social networks; forgery of documents; illegal radio and television broadcasting, using various internet services);

– use/creation of "fraternal organisations", friendship and peace communities, foundations, social movements, and cover structures (organisations) ;

– initiation of mass events (demonstrations).

Operations of political and economic influence:

– use/recruitment of agents of influence (journalists, politicians, businessmen, oligarchs);

– use/creation of mass media, financial and economic structures, oligarchic clans that are not provided for by law by paramilitary or armed groups;

– support for diametrically opposed political parties, such as the left and far-right, in order to disperse the political elite and create conflicts in the power structures of other states;

– incorporation of personnel into non-governmental organisations that are part of international organisations;

– restriction/blocking of receipt by other states of foreign aid, the status of members of international associations of a political, military, or economic nature;

– creation of economic ties that are beneficial for foreign companies and opportunities for them to receive super-profits, including through "flexible" compliance with licensing and tax norms of the legislation of the aggressor state;

– situational (special) activities (misleading, blackmail, intimidation, murder, terrorist attacks).

Confrontation in the field of education, science, culture, sports, and religion:

– creation/use of educational institutions, scientific communities, cultural societies and centres, art, sports, religious organisations, and related events;

– use/recruitment of agents of influence (employees of educational institutions, scientists, cultural figures, artists, athletes, priests);

– spreading the idea of alternative civilisational development of society, the true essence of which is to appropriate the achievements of other peoples and states, and to seize their territories or take control of political elites and power structures.

Given that the "active measures" of the Russian Federation make up most of its hybrid actions, the ability of Ukraine's counterintelligence and intelligence agencies to respond to these actions should be significantly increased. This applies not only to increasing economic and technical resources, but also to strengthening the educational and regulatory component [22].

The period of the modern Ukraine. Since 1991, the establishment and development of the State Border Guard Service of Ukraine has been associated with democratic processes, defending sovereignty, territorial integrity, and democratic constitutional order

and other important national interests from real and potential threats.

The current State Border Guard Service is the legal successor of the State committee for the protection of the state border of Ukraine and was created based on the border troops of Ukraine, which inherited the Soviet structure and had in its composition an intelligence body that carried out intelligence activities to ensure the interests of the state in the areas of border and immigration policy, and in other areas related to the protection of the state border and sovereign rights of Ukraine in its exclusive (maritime) economic zone and on the continental shelf [24]. The intelligence body of the border troops of Ukraine carried out counterintelligence activities guided by internal laws and regulations, and, only in 2002, counterintelligence activities were consolidated at the legislative level by the adoption of the Law of Ukraine "On Counterintelligence Activities" [25].

In 2016, the right to conduct separate counterintelligence measures to ensure the security of certain objects of protection, receive units of internal and internal security of the State Border Guard Service of Ukraine, and in 2020, the legislator expanded the powers for all subjects of counterintelligence measures, removing the word "separate" from the law of Ukraine "On Counterintelligence Activities" [25].

Thus, the authorised bodies and divisions of the State Border Guard Service of Ukraine, in accordance with the current legislation [25-27] on the one hand, are integrated into the system of counterintelligence, search, regime, administrative and legal measures, and on the other, can only conduct counterintelligence measures in the interests of ensuring the protection of the national border of Ukraine [25; 28].

The scientific originality of the results obtained lies in the fact that counterintelligence activities were an important and necessary part of the state during the considered historical periods of development of Ukraine, and in the light of the current hybrid threats of regional and global scale, counterintelligence becomes of particular importance for ensuring the national security of Ukraine, and the protection of the state border. Along with this, the border guard service, whose main function is precisely the protection of the state border, in one form or another, was often either part of a special service or a separate body with appropriate powers to carry out intelligence and counterintelligence activities.

■ Conclusions

The result of the study on the implementation of counterintelligence activities by authorised units of the State Border Guard Service on the territory of modern Ukraine in the plane of historical and political progress of our society, and the transformation of national special services and border authorities and divisions, was the following conclusions:

1. The main counterintelligence methods (measures) that were used by the Ukrainian special services, and some of them by border guards, were the following: the legendary method of capturing prisoners to be interrogated, first mentioned in the Chronicles of Kievan Rus and carried out mainly during military campaigns; perlustration (interception) of correspondence and external surveillance, their conduct is most characteristic of the period of the Russian occupation; agent measures, during the first liberation competitions, were fixed in the legal field by the relevant provision, which specifies the main functions of the Army Special Service of the Ukrainian People's Republic; operational surveillance, legend and operational disinformation (used both by the security service of the Organisation of Ukrainian Nationalists and by Soviet state security agencies).

2. The special services of the aggressor country, in their paranoid pursuit of restoring world-class leadership, which is not aimed at improving the well-being of its own population, but only satisfies the boundless appetites of the Russian oligarchy (the main part of which are these special services), relied on the implementation of "updated Soviet active measures", as the main tool in the asymmetric confrontation with the West, the outpost and experimental platform of which Ukraine has become. Therefore, countering such forms of hybrid warfare should have the highest priority, first of all for state bodies and their units authorised to carry out counterintelligence and intelligence activities or carry out appropriate measures, including for the State Border Guard Service of Ukraine.

3. Studying the retrospective of counterintelligence activities and measures by authorised bodies and divisions of the State Border Guard Service of Ukraine, it was concluded that the functions and tasks inherent in border guards cannot be properly implemented and solved without powers in the field of counterintelligence and intelligence activities. From the time of Kievan Rus to the present day, the establishment of the Ukrainian Border Guard took place mainly, if not as part of special services, then in close cooperation with them.

Thus, the generalising conclusion is the fact that border guards occupy an important place in the national security system, being a kind of "filter" on the path of external threats, and it is quite natural that they have the right to carry out intelligence activities and conduct counterintelligence activities.

In the future, it is proposed to continue intelligence in order to find ways to improve the organisational and legal support for the activities of the State Border Guard Service of Ukraine to conduct counterintelligence activities at the internal level.

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Генезис проведення контррозвідувальних заходів прикордонними органами та підрозділами України

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■ **Анотація**. Актуальність статті полягає в дослідженні повноважень контррозвідувального спрямування прикордонних органів і підрозділів України в різні історичні періоди, визначенні напрямів їх розвитку. Висвітлено історичні аспекти контррозвідувальної діяльності прикордонних органів, а також органів національної та державної безпеки на території України, зокрема трансформації відповідних підрозділів та їхніх повноважень. Наголошено, що результати вивчення історії становлення та функціонування національних спеціальних служб мають практичне значення, адже можуть бути використані під час коригування стратегії національної безпеки. Мета статті – проаналізувати історичні аспекти розвитку здійснення контррозвідувальної діяльності та проведення контррозвідувальних заходів прикордонними органами й підрозділами на території України у контексті ретроспективних змін національних спеціальних служб. Методологія наукового дослідження охоплює комплекс взаємопов'язаних загальнонаукових та історико-правових методів, а саме: хронологічний – для періодизації розвитку контррозвідувальних органів і підрозділів національних спеціальних служб, а також прикордонної служби; порівняльно-правовий аналіз – компаративістський підхід до минулого та сучасного законодавства, що визначає повноваження на здійснення контррозвідувальної діяльності чи проведення контррозвідувальних заходів; структурно-функціональний – щодо класифікації системи загроз з боку основного противника. Виокремлено особливості правового статусу прикордонних органів і підрозділів України в різні історичні періоди. Наведено ключові контррозвідувальні методи, які використовували уповноважені державні органи й підрозділи, а саме: легендарний метод захоплення «язиків», що вперше згадується в літописах Давньої Русі (до нього вдавалися переважно під час військових кампаній); перлюстрація (перехоплення) кореспонденції та зовнішнє спостереження (є найбільш характерним для періоду російської окупації); агентурні заходи (за часів перших визвольних змагань були закріплені в правовому полі відповідним положенням, у якому зазначено головні функції армійської спеціальної служби Української Народної Республіки); оперативне спостереження, легендування та оперативна дезінформація (їх активно використовували Служба безпеки Організації українських націоналістів та радянські органи державної безпеки). На підставі напрацювань українських і зарубіжних учених здійснено класифікацію «активних заходів», які можуть проводитись державою-агресором. Визначено напрями розвитку повноважень органів і підрозділів Державної прикордонної служби України щодо здійснення контррозвідувальної діяльності та проведення контррозвідувальних заходів

■ **Ключові слова**: контррозвідка; активні заходи; національна спеціальна служба; агентурний захід; легендування; оперативне спостереження; Прикордонні війська України; Державна прикордонна служба України

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Ancient Origins of the Methodology of Modern Evidence Law

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■ **Abstract**. The course towards Ukraine's European integration provides for the harmonisation of national and European law, starting with the cultural and traditional foundations of the latter, laid down in the era of antiquity. In addition, according to the analysis of current issues in the field of modern evidence law, the main sources of methodological contradictions in approaches to its solution go back to their historical roots in this particular era. Accordingly, it seems appropriate to study the ancient origins of both the methodology of legal argumentation itself and the modern technique of its effective application. Moreover, these issues are still insufficiently investigated. Therefore, the purpose of the study is to identify those logical foundations of evidentiary reasoning that are the property of ancient thought and can be effectively used in the development of modern methods of legal evidence. Hermeneutical and comparative analysis methods were used to critically evaluate classical and modern methodological concepts in the field of evidence law, and to identify fundamental differences in the interpretation of goals, means, and methodological approaches to the construction of evidentiary procedures. When searching for ways to resolve contradictions between alternative methodological paradigms, each of which reveals both its own constructive points and some functional limitations, the method of dialectical synthesis is applied, which provides for rational integration of oppositely oriented approaches based on the principles of their relevant involvement and complementarity. Methods of deductive and logical analysis, as well as inductive generalisation, probabilistic and statistical estimates, and analogy were used to substantiate the results and formulate the conclusions of the study. Scientific originality. It is proved that the appeal to the logical and methodological foundations of rational thinking, formulated and systematised by ancient Greek scholars and technically used in the system of Roman law, opens up wide opportunities in terms of solving a number of topical problems of modern theory and practice of legal evidence. To solve the actual problems of the modern methodology of evidence law, it is advisable to retrospectively analyse its previous historical development, since this makes possible, first, to find out the essential causes of such problems from their very origins. Second, the proposed approach, being aimed at studying the logical and methodological foundations of the theory of legal argumentation, provides for the search for solutions to these problems at a fundamental level. In particular, turning to ancient sources of proof methodology will help solve many debatable issues of its modern development, among which the dilemma of the deductivist or probabilistic and statistical paradigm, the problem of criteria for the sufficiency of evidence, etc., are distinguished. The use of argumentative strategies based on basic logical criteria of rationality and evidence will help increase the degree of objectivity in the practice of making legal decisions, being an effective means of countering subjectivism in the course of their development

■ **Keywords**: evidence; methodology of law; legal argumentation; criteria of evidentiary value; sufficiency of evidence

■ Introduction

The determining influence of ancient culture on the vector of development of the entire European civilisation has long been considered an indisputable scientific fact. Therefore, the study of the historical dynamics of any socio-cultural phenomenon in the context of this development involves, first of all, tracking its ancient sources, where its primary foundations and basic guidelines for further evolution were laid. In this regard, the legal culture, of course, is no exception. Accordingly, when investigating the directions of reforming Ukrainian jurisprudence in line with the European integration measures, priority should be paid to finding ways to harmonise Ukrainian and European law as closely as possible, starting from

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historical traditions to modern forms of their normative consolidation and mechanisms of functioning.

As even a cursory analysis of modern scientific literature shows, this problem is the subject of numerous and multidimensional studies aimed at studying the genetic connections of European legal institutions with the conceptual foundations established in ancient Greek philosophy and Roman law. At the same time, there is an extremely small number of studies devoted to the identification and effective application of the fundamental foundations of legal evidence developed in ancient times, in particular, by scholars of Ancient Greece. This circumstance is mainly conditioned by the fact that Athenian democracy, admittedly, did not have what is now associated with the concept of "evidence law": court decisions were made exclusively by voting. However, the logical and methodological foundations of the theory of argumentation in general and legal in particular were quite carefully formulated and systematised by Aristotle [1], and their "spontaneous" use was quite clearly traced in the analytical reasoning of sophists, Protagoras, Socrates, Plato [2] and many other prominent representatives of this historical era. Therefore, the main purpose of the study is an attempt to identify those logical foundations of evidentiary reasoning that are the property of ancient thought and can be effectively used in the development of modern methods of legal argumentation and solving some topical problems of the theory of evidence (in particular, criteria for the sufficiency of evidence [3-5], contradictions in the concept of standards of evidence [6; 7], competition of alternative methodological paradigms in evidentiary practice [3; 8], etc.).

■ Materials and Methods

During the preparation of the paper, the authors worked out both some primary sources that indicate the genesis of the foundations of evidence-based methodology in Ancient Greece (in particular, in the works of Plato, Aristotle, etc.), and the latest publications of Ukrainian and foreign authors that investigate the influence of the ancient intellectual tradition on the development of European legal culture and legal methodology [1-3]. The main attention was focused on the paper devoted to the investigation of the role of the logical foundations of rational analysis initiated by ancient Greek scholars for the further development and improvement of the methodology of legal evidence. Hermeneutical and comparative analysis methods were used to critically assess the conceptual content of such studies, and to identify fundamental differences in the interpretation of the goals, means, and methodological approaches to the construction of evidentiary procedures.

When searching for ways to resolve contradictions between alternative methodological paradigms, each of which reveals both its own constructive points and some functional limitations, the method of dialectical synthesis is applied, which provides for rational integration of oppositely oriented approaches based on the principles of their relevant involvement and complementarity. This allows, on the one hand, compensating for the disadvantages of each of them, and on the other – to optimally using their advantages in such an integrated application.

In addition, methods of deductive and logical analysis, inductive generalisation, probabilistic and statistical estimates and analogies were used to substantiate the results and formulate the conclusions of the study.

■ Results and Discussion

Ancient Greek philosophy as a source of European legal methodology, describing in the most general and concentrated terms the worldview of the ancient era, can be called cosmocentric, which, in turn, determines its ontological and mainly rationalistic orientation. This refers to the fact that the main cognitive object in this era was the universe as a single, integral system with universal laws inherent in it, from which the fundamental principles of organisation and functioning of all its subsystems and elements (including human society and any human individual) were derived. Accordingly, in the ideological sphere, there is a transition from myth to logos, which implies a strict distinction between real and imaginary, knowledge and fiction, truth and fiction. The explanation and justification of certain phenomena can no longer be reduced to anthropomorphic or zoomorphic mythological interpretations: "logos" is based on the idea of explaining the world by its own means, without resorting to any fantastic images and "intermediaries" between the subject and the object, since only in this way can the objectivity, "impartiality" of human knowledge about the world be ensured. In the plan under consideration, it is not what seems possible can be considered true, but only what is *proven*, that is, logically derived from the fundamental laws of universal world existence (Cosmos). That is why ancient philosophy is marked by a dominant ontological orientation, and its rationalism is conditioned by the priority of the logos – the justification of knowledge based on the laws of reason that correlate with the laws of being. Just as nothing can be recognised as true without logical proof, nothing can be dismissed as false without a corresponding logical refutation. It is precisely in these features that a rational (philosophical) worldview primarily differs from a mythological and religious one.

At the same time, despite the mentioned progressive changes in the field of philosophical worldview and its logical and methodological foundations, at these times there is a rather contrasting dissonance

between philosophical and legal culture: if the former, as noted above, acquired the features of objectivist and rationalistic orientation, the latter remained "captive" of subjectivist and emotional and psychological paradigms. For example, already in the 6th-5th centuries BC, Pythagoras and Parmenides used strict logical schemes to prove their positions, not relying solely on intuition or arguments such as "majority opinion" or "authoritative position" [9]. For example, people are unlikely to still use the famous Pythagorean theorem, if the latter was recognised as true on the basis of the results of voting of the People's Assembly (Ecclesia) – the highest authority in the system of Athenian democracy or the Council of Five Hundred (Boule), elected by simple drawing lots from men at least 30 years old and intended to conduct current affairs in between the convocation of the People's Assembly. After all, Pythagoras proved that the square of the hypotenuse of any right triangle is equal to the sum of the squares of its legs, demonstrating that, regardless of the dimensions of such a triangle, the area of a square with a side equal to the mentioned hypotenuse, *with necessity* it will be equivalent to the sum of the areas of two squares constructed on the basis of these legs. The guarantee of this necessity was that Pythagoras did not consider a specific right triangle, showing on it the validity of his guess (since in this case the proof procedure would never have been completed due to the infinity of potential options for constructing this type of triangle), but by abstracting from the specific values of the length of its sides and justification *universal* (and, consequently, the natural) nature of their correlation due to the independence of the latter from the values of variables. Therefore, despite the fact that at that time there was no logical theory of argumentation, Pythagoras, so to speak, "spontaneously" applied a strict logical scheme for direct proof of general judgments, formulated much later in this theory. The mentioned scheme involves obtaining a constant inference based on the variables of the initial bases, without introducing any assumptions (for example, how to prove the universality of the equation: $a^2–b^2 = (a+b)\ (a–b)$ by opening parentheses and reducing similar terms on the right side of this equation, as a result of which it will be reduced to the left side of it, which will prove their identity regardless of the values of variables).

Similarly, long before the formulation of the logical scheme of argumentation by the method of reducing to absurdity, Parmenides refuted the thesis of atomist philosophers that the world consists of a combination of atoms (as the smallest particles of matter) and emptiness (that is, the position on the unity of "being" and "non-being") [10]. Based on the argument that "non-existence" is something that does not exist, which is absent in reality, even a hypothetical assumption about the existence of "non-existence" leads reasoning to an insurmountable logical contradiction (that is, to the absurd), namely, to the conclusion that "the existence of the non-existent". Hence, he made a well-founded conclusion about the impossibility of the existence of a void that is not filled with matter. This conclusion was empirically confirmed more than 2500 years later by modern research in the field of quantum physics, according to the results of which the basic form of existence of matter is a continuous quantum field, and the particles of matter represent only certain perturbations of the latter [11].

As for the ancient Greek legal culture, in particular, the methods of legal argumentation, they were usually reduced to formal voting procedures, which were preceded not so much by a competent discussion aimed at finding a rational solution to the case, but by an appeal to the emotional and psychological inclinations of the voters in the direction of maintaining a verdict corresponding to certain lobbied subjective interests. Admittedly, this paradigm turned out to be quite tenacious. Its application is still quite common today, since the desire for objective truth, unfortunately, is not always competitive in relation to the subjective interest and mood of the persons authorised to make such decisions.

Quite significant in this respect is the trial of Socrates, accused of corrupting young people by warning his students against blind faith in socially recognised gods and contributing to the formation of their skills of independent intelligent thinking, thereby "erasing" the authority of state rulers and official laws. According to the results of voting by the Council of five hundred with a slight margin of votes, an initial decision was made on the application of the death penalty in relation to the defendant. But after Socrates, refusing to defend himself, easily and convincingly refuted all the accusations against him, stating in the end, according to Plato's memoirs, that 'the will of the law or the court must be tolerated in the same way as the will of his parents; it can be unfair, but it is subject to unconditional execution" [12, p. 784], the number of supporters of his execution, paradoxically, increased significantly during the final vote. This was conditioned, firstly, by a surge of envy on the part of judges in relation to mental, analytical, and argumentative abilities of Socrates, and, secondly, the prosecution applied tactics of influencing the parental emotions of members of the judging panel, while appealing to the argument that Socrates, inclining young people to independent thinking, instilled in them the idea of disobedience to parental will (which quite obviously contradicted the last words of Socrates before he, confirming their sincerity, drank poisonous hemlock).

Such extreme subjectivism in the resolution of this court case caused widespread indignation, which went far beyond the borders of Athens and for quite a long time stimulated the area of cognitive activity in the communities of the intellectual elite to develop methodological foundations and criteria for rational thinking. At the same time, only such thinking was considered rational, the fundamental organisation of which was consistent with the universal laws of being. Only under this condition could its results claim to be objective truth and be called *knowledge*, and not just a subjective opinion. As Plato emphasised, only "the knowledge that is built according to nature deserves to be called wisdom" [2, p. 117]. Accordingly, "prudence" in relation to thinking to natural existence "is similar to a certain consonance and harmony" [2, p. 119].

The first attempts to generalise and systematise the logical and methodological foundations of evidentiary reasoning were made by Aristotle. They set universal criteria for the rationality of both human thinking and any systematic organisation of its results (be it a system of knowledge, legal laws, social norms, etc.) and were based on two axiomatic principles: 1) "prohibition of contradiction" and 2) "excluded third". These principles appeared as basic rational restrictions on the freedom of thought, adhering to which humanity will not fall into the inherent mythological thought arbitrariness and keep their thinking in line with the ordering of real existence.

The first of them, in the formulation of Aristotle, is as follows: "it is impossible that the same thing simultaneously was and was not inherent in the same thing in the same relation" ("Metaphysics", IV, 1005 b 19) [13, p. 22]. That is, rational thinking cannot contain contradictions, since reality does not imply the possibility of the simultaneous presence and absence of any state of affairs; accordingly, the simultaneous affirmation and denial of the same thought will always be a mistake. By the way, in modern textbooks on logic, the Aristotelian reservation about the prohibition of contradictory statements is quite often omitted, *taken in the same relation*. However, it is very significant, since it is taken from the *different* in relation to a moving train, contradictory judgments can be simultaneously true: for example, in relation to a moving train, its passenger does not move; at the same time, in relation to the platform, it moves with the train. However, relative to the same coordinate system, "move" and "do not move" are not possible at the same time.

The second is the principle of the "excluded third", which provides: "in the same way there can be nothing in the middle between two judgments that deny each other, because something must be affirmed or denied about one" (Metaphysics, IV, 7, 1011 b 23) [13, p. 22-23]. In other words, two contradictory judgments (thesis and antithesis) cannot be false at the same time; therefore, the refutation of one of them is the basis for recognising the validity of the other. It was this axiom that formed the basis for formulating the principle of bivalence, on which almost all legal systems are based, starting with Roman law. According to this principle, any court verdict can be either guilty or acquitted; the third is not given.

The mentioned axiomatic laws are also the logical and methodological basis for such criterion measurements of the rationality of constructing scientific theories and normative systems (including legal ones) as consistency and completeness. These criteria are also applicable to the assessment of any systems of arguments (in particular, the evidence base for all types of legal argumentation). Therefore, the adoption of rationally justified legal decisions on the basis of a particular legislation and the available set of evidentiary materials in the case provides that both the system of this legislation itself and the mentioned materials meet the above-mentioned criteria. This means, firstly, that the system of legislative norms should not contain mutually exclusive provisions (according to the criterion of consistency) and should ensure that the lawful or illegal nature of any action is determined (according to the criterion of completeness). As for the evidence base, these criteria provide for the absence of incompatible evidence in it and the ability to prove or refute the existence of the composition of the offense under consideration on its basis. At the same time, the completeness of the regulatory system is usually guaranteed by the principles: "everything that is not prohibited is allowed" (for private law), or, conversely, "everything that is not allowed" is prohibited (for public law). The completeness of the evidence base (that is, its sufficiency for making one of the two alternative decisions) is ensured by the presumption of innocence: a person is considered innocent until the opposite is proved [13].

Although Aristotle does not find the formulation of the laws of identity and sufficient basis as fundamental axioms of rational thinking (and, accordingly, the principles of certainty and validity), he nevertheless outlined them as technical means of constructing evidentiary reasoning. Thus, for example, describing the laws of prohibition of contradiction and the excluded third, the ancient Greek scholar also notes that it is impossible to think anything if you do not think one thing every time, which actually corresponds to the principle of certainty reproduced in the law of identity (according to which any thought should be fixed in a logically unambiguous language form and not change its logical content during reasoning [14, p. 225]). It is in order to comply with this criterion of rationality that modern legislation formulates not only regulatory prescriptions, but also regulatory definitions, which must be strictly observed in all legal procedures. As for the law of sufficient

reason and the principle of validity of thought fixed by it, it is known that Aristotle, without formulating them in a general form, instead proposed the first system of very specific logical rules, on the basis of which the evidentiary value of reasoning is ensured. In other words, such rules are criteria for the sufficiency of available grounds for a reasonable conclusion on the subject of analytical research. And these rules are still used to distinguish between evidentiary and unsubstantiated arguments.

Intellectual tradition of antiquity and topical issues of modern evidence law. Thus, modern evidence law (that is, a law based not so much on the results of subjective expression of will by voting, but on the logical justification of legal decisions made, based on verified evidence and factual materials) has its origins in the ancient intellectual tradition. At the same time, it is worth noting that there are still very heated discussions about some aspects of the application of the described logical and methodological foundations.

First of all, this concerns the question of the meaningful relationship between the concepts of "proof" (adopted in exact theoretical sciences) and "evidence" (used in relation to argumentative procedures in legal practice). "If the term "proof" refers to a strict logical operation that provides for justifying the truth of a certain thesis (hypothesis, theory, version, etc.) by demonstrating its necessary inference from existing arguments (grounds whose truth is either actually obvious or proved earlier), then the content of the term "evidence" generally provides for *beliefs* participants of the discourse in the expediency of making a particular conclusion. In the latter case, it is not just about *objective data* grounds for a final decision, but above all about the possibility's *subjective* declension of the parties to it" [15, p. 6]. The difference between logical proof and legal evidence is also that the latter is not always intended to establish the truth. Often, for example, a judicial process is aimed at resolving disputes between conflicting parties; "at the same time, the verdict of the court provides not so much for identifying the "true picture" of the conflict (objective conditions, causes and mechanisms of its occurrence and deployment), but for making a decision in favour of one of these parties. Although such a decision must be justified, its reasoning is usually based on the principle of competition, according to which the case can be won not only by providing sufficient and irrevocable evidence, but also because of the comparable weakness of the opponent's position" [15, p. 8-9]. Therefore, such conceptual differences between "proof" and "evidence" often lead to mutual distancing of the logical foundations of argumentation, on the one hand, and legal evidentiary procedures, on the other. Moreover, it is even quite common that in the current conditions "in the process of investigating crimes, instead of past archaisms such as dialectics, analytics, evidence-based syllogism, modern specialists use technical innovations, including chemistry, biology, genetics, fingerprinting, automatic facial recognition system, spectral and other analyses. The object of interest is broad databases, analogue comparisons, that is, what gives not philosophy, but chemistry, biology, genetics, computer technologies, etc." [16, p. 81]. Accordingly, new specialised methods and techniques of investigative and forensic activity are being developed [17-19].

Indeed, to date, the importance of these investigative tools cannot be overestimated. However, these funds are exclusively a source of facts, which, firstly, despite their obvious nature, can be ambiguously interpreted (for example, the fact that a murder weapon was found during a search of a suspect's home can mean not only that he is the culprit of the crime under investigation, but also that someone benefits from such a version). Secondly, the facts themselves do not prove or refute anything. It is only on their basis that the relevant authorised person should build their argument, the evidentiary value of which is determined precisely by the logical and analytical criteria that the cited author attributed to the "archaisms of the past".

Also, quite controversial in modern jurisprudence is the question of criteria for the sufficiency of evidence (especially if we dissociate ourselves from the logical and methodological foundations that were laid in ancient times). Thus, Article 79 of the Criminal Procedure Code of Ukraine provides for: "1. Sufficient evidence is evidence that, in its entirety, allows for the conclusion that there are or are not circumstances of the case that are included in the subject of proof; 2. The question of the sufficiency of evidence to establish the circumstances relevant to the case, the court decides in accordance with its internal belief" [20]. At the same time, however, many key issues remain open. First, it is a question of what exactly is there *objective*; secondly, the conclusion about the presence or absence of the circumstances of the case that are included in the subject of proof should also not be the result solely of the subjects' own discretion of the evidentiary process, but should be based on certain general criteria, regardless of anyone's will or interests. Thirdly, in the above normative provisions, it is not difficult to identify a "circle in justification" that is unacceptable from the standpoint of the logical foundations of argumentation: it turns out that the court can make a certain decision *justified* the solution is only provided that *sufficiency* evidence, while the latter is considered sufficient if they allow the court to make a particular decision on the case. At the same time, the court itself is authorised to qualify evidence as sufficient or insufficient at its own discretion (in the absence of clearly defined criteria

for measuring such an assessment) [3]. Thus, the form of normative determination of the conditions for the sufficiency of the evidence base in a case presented in the current Code of Criminal Procedure of Ukraine implies an almost unlimited range of subjective freedom in making court decisions. Therefore, "without solving this problem, the very idea of justice can be very easily replaced by the idea of judicial arbitrariness. Moreover, judicial practice increasingly certifies cases of such an opportunity" [3, p. 63].

Analysing possible ways to solve this problem, A. Khmyrov [21, p. 211] comes to the conclusion that there are no other grounds to consider the evidence sufficient, except that "sufficiency of evidence is determined by the possibility of making an appropriate decision in criminal proceedings based on their available totality". However, as already mentioned, the decision in the case under consideration is made in any case: if there is sufficient evidence, it will be accusatory, and if there is insufficient evidence, it will be acquitted [4, p. 239]. Therefore, according to this criterion, the study comes to a somewhat paradoxical conclusion: if a decision on a case must necessarily be made, then the evidence is always sufficient, even if it is insufficient.

Moreover, it is hardly possible to agree with such proposed criteria for the sufficiency of evidence as "the possibility of obtaining a correct decision based on them" [22, p. 126-127], "the subject's conviction in the reliability of justified circumstances" [5, p. 72], etc., since "correctness", "conviction", etc. are too subjective characteristics. As for the objective factors of "inner conviction" in making exactly the "correct" conclusion, they are precisely predetermined *logical unambiguity* inference of such a conclusion from the existing system of evidence. Only such schemes of reasoning since the time of Aristotle are considered "correct" (evidentiary, demonstrative), which provide for no more than one version of the conclusion acceptable on the basis of available arguments. After all, if there are more than one such options, then the "source of doubt" about the truth of any of them will be the non-exclusion of the possibility of confirming alternative versions of the conclusion. It follows that "evidence sufficient to justify the intended conclusion must be just as sufficient to refute all its other alternatives" [3, p. 65].

The above information should not be understood in such a way that we must first anticipate all possible scenarios for the development of the events under study, and then, alternately checking them for compatibility with the available evidence, "filter out" the only one among them that will not be excluded by this evidence. This would be too cumbersome and irrational procedure. But by recalling two trivial Aristotle axioms, this criterion can be simplified as much as possible. If, for example, it is necessary to establish the sufficiency of the available evidence to support version V, then since its statements and its objections cannot be simultaneously false (according to the law of the excluded third), if it is possible to establish the falsity of the denial of this version (i.e., its antithesis), this evidence will be considered sufficient to recognise the truth of V. In turn, the establishment of the falsity of the antithesis of the considered version is carried out by the method of its "reduction to absurdity" (that is, to mutually exclusive logical consequences), since, according to the law of prohibition of contradiction, such consequences are a universal logical "detector of falsity" of the hypotheses from which they follow. If, on the contrary, the assumption about the truth of V gives contradictory consequences at the output, but the assumption about its falsity does not, then the evidence will be sufficient to refute this version. If neither the statement nor the denial of V is irreducible to the point of absurdity (that is, when neither the assumption of the truth of this version nor the assumption of its falsity can be rejected as incompatible with the existing system of evidence), then the latter will be considered insufficient to prove or refute V. Ultimately, the refutation of both of these alternative assumptions will mean that there is false information among the evidence collected.

However, it is worth noting that the described criteria for the sufficiency of evidence "work" exclusively in deductive models of argumentation, where the most basic grounds must be unquestioningly true and provide for an unambiguous conclusion. At the same time, "legal argumentation has its own specifics. It is conducted in conditions of incomplete information, unclear wording, clash of interests of the parties, conflict of views" [23, p. 39], which significantly narrows the possibilities of applying such a model in legal practice. Accordingly, in modern research of the problem under consideration, an alternative branch is clearly outlined, aimed at developing a probabilistic and statistical approach to determining evidence-based standards [6, 8, 24]. The latter are based on the established "threshold" values of probabilistic coefficients for evidence in various branches of procedural law. For example, in civil procedure disputes, the standard is the "probability balance" (or "preponderance of evidence"): each proof must be "true rather than false" (i.e., cross the 50% probabilistic threshold). In criminal cases, this index should be significantly higher than 50% (that is, it should be "beyond reasonable doubts") [25, p. 1193].

The described approach is often quite fairly criticised. After all, first of all, the dubious point that can hardly be considered evidence of a certificate whose truth is less than 100% is striking, since this means that it is improperly verified and cannot claim the status of a confirmed legal fact. In addition, this

approach is subject to a number of insurmountable paradoxes related to determining the probabilistic value of a set of several proofs. Thus, for example, if the probability of an "eagle" falling out when tossing a coin is 0.5 (50%), then the "eagle" falling out twice in a row will be 0.5 x 0.5 = 0.25 (25%). Similarly, when a civil claim contains elements A and B, each of which has a "pass-through" probabilistic indicator of evidence for this sphere of law (for example, 0.6 and 0.7), then the probability of their simultaneous confirmation will be 0.6 x 0.7 = 0.42, which is below the "pass-through threshold" [7, p. 267-268].

It seems that the way to resolve such contradictions in determining the criteria for the sufficiency of evidence is to turn to the very logical and semantic foundations of the concept of "sufficient foundation", studied by Aristotle. In general, the basis A is sufficient for inferring B if the scope of definition a (i.e., the set of cases in which A is a true opinion) does not extend beyond the scope of definition B (i.e., it is either a subset of it or identical to it) [3]. Why, for example, is knowing that a person works as a lawyer (A) sufficient to conclude that they have a higher legal education (B)? Because the set of all existing lawyers is a subset of lawyers; therefore, it is impossible to fall into the set A and be outside the set B. But not the other way around: the fact that a person has a higher legal education is not sufficient to conclude about his legal activity, since, being a lawyer by training, a person can find themself both within and outside the set of lawyers.

Thus, the logical condition for the sufficiency of evidence for a certain conclusion is that the cross-section of the regions of their definition does not extend beyond the scope of the definition of this conclusion. At the same time, each individual proof may not be sufficient for such justification, but in their totality (determined by the cross-section of the areas of confirmation of each of them), the sufficiency condition may become met. Therefore, in the context of evidence law, it is more appropriate to develop deductive models of argumentation, since only they have evidentiary power; while probabilistic and statistical approaches are quite effective in investigation, since they allow rationalising the procedures for formulating and evaluating investigative versions. For this purpose, computer programmes are currently being actively developed (in particular, the so-called "Bayesian networks") designed for algorithmic estimates of the dependencies of the developed versions on the available factual information in the case [26].

Conclusions

Summarising the above, it can be reasonably argued that to solve the actual problems of the modern methodology of evidence law, it is often advisable to retrospectively analyse its previous historical development, since this makes possible, first, to find out the essential causes of such problems from their very origins. Secondly, the proposed approach, being aimed at studying the logical and methodological foundations of the theory of legal argumentation, laid down by ancient Greek scholars, involves the search for solutions to these problems at a fundamental level, and not by "superficial smoothing" them. In particular, turning to ancient sources of proof methodology would help solve many debatable issues of its modern development, among which the dilemma of the deductivist or probabilistic and statistical paradigm in this area, the problem of criteria for the sufficiency of evidence, and so on are distinguished.

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Античні витоки методології сучасного доказового права

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■ **Анотація**. Актуальність статті полягає в тому, що курс на євроінтеграцію України передбачає гармонізацію національного та європейського права, починаючи з культурно-традиційних основ останнього, закладених ще в епоху Античності. На підставі вивчення проблематики у сфері сучасного доказового права констатовано, що методологічні суперечності в підходах до її вирішення сягають своїм історичним корінням саме цієї епохи. Досліджено античні витоки як власне методології юридичної аргументації, так і сучасної техніки її ефективного застосування. Метою статті є виявлення логічних підвалин доказового міркування, які є надбанням античної думки та можуть бути ефективно використані під час розроблення сучасних методів юридичного доказування. Для критичної оцінки класичних і сучасних методологічних концепцій у сфері доказового права, а також для виявлення кардинальних розбіжностей у тлумаченнях цілей, засобів і методологічних підходів до побудови доказових процедур використано методи герменевтичного та порівняльного аналізу. У межах пошуку шляхів подолання суперечностей між альтернативними методологічними парадигмами застосовано метод діалектичного синтезу, що передбачає раціональне інтегрування протилежно орієнтованих підходів на засадах їх релевантного залучення та взаємодоповнення. Для обґрунтування результатів і формулювання висновків проведеного дослідження використано методи дедуктивно-логічного аналізу, а також індуктивного узагальнення, ймовірнісно-статистичних оцінок та аналогії. Доведено, що звернення до логіко-методологічних засад раціонального мислення, сформульованих і систематизованих давньогрецькими мислителями й технічно використаних у системі римського права, відкриває широкі можливості для розв'язання низки актуальних проблем сучасної теорії та практики юридичного доказування. Зазначено, що вирішенню актуальних питань сучасної методології доказового права сприятиме ретроспективний аналіз її попереднього історичного розвитку, що уможливлює з'ясування сутнісних причин виникнення таких проблем. Запропонований підхід спрямований на дослідження логіко-методологічних першооснов теорії юридичної аргументації, а отже, передбачає пошуки шляхів розв'язання цих проблем на фундаментальному рівні. Наголошено на тому, що звернення до античних джерел методології доказування сприятиме вирішенню багатьох дискусійних питань її сучасного розвитку, серед яких – дилема дедуктивістської чи ймовірнісно-статистичної парадигми, проблема критеріїв достатності доказів тощо. Практична значущість дослідження полягає в тому, що застосування аргументаційних стратегій, побудованих на базових логічних критеріях раціональності й доказовості, сприятиме підвищенню ступеня об'єктивності в практиці прийняття правових рішень, слугуватиме дієвим засобом протидії суб'єктивізму в процесі їх вироблення

■ **Ключові слова**: докази; методологія права; юридична аргументація; критерії доказовості; достатність доказів

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Experience of Individual European Countries in Building a System to Prevent Money Laundering

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■ **Abstract.** Ukraine as a European state implements a set of strategic measures for economic development on a global platform, collecting, processing and analysing information about suspicious financial transactions that may be related to money laundering, but the prevention mechanisms are not effective enough and the ranges of such crime pose a real threat to the national security of the country, which determines the relevance of this study. The purpose of the study is to comprehensively analyse foreign strategies to prevent money laundering and, accordingly, consider the possibility of implementing certain measures in the legal plane of the Ukrainian state. In the course of the entire study, a group of general logical methods was used – comparison, analysis, synthesis, and generalisation, which allowed objectively assessing the level and effectiveness of national and legal phenomena to prevent illegal legitimisation by foreign states, which is carried out both on the territory of the country and abroad. The theoretical basis of this study is the investigations of Ukrainian and foreign researchers on aspects of preventing money laundering, and government websites created for the purpose of storing public information in the form of open data and ensuring access to it to a wide range of people. Based on the conducted research in the context of the existing foreign system of combating money laundering, its normative, organisational, and to some extent, socio-cultural aspects were considered. In particular, the activities of the central office represented by the inspector general of financial information of the Polish anti-money laundering system are described. The system of preventing the money laundering of the main financial intelligence unit within the Ministry of Economy, Finance and Industry of France is investigated. The analysis of measures to prevent money laundering carried out by the federal agency for supervision of the activities of financial institutions of the Federal Republic of Germany is carried out. The study considers the practice of preventing money laundering by a professional unit operating as part of the organised crime group in Austria. The state system of measures implemented by the commission for combating money laundering of the Kingdom of Spain is analysed. The preventive activities of the anti-money laundering service of the monetary and financial administration in Italy are described. Attention is focused on effective legal means that have a significant positive impact on the activities of economic processes in the global market economy and proposals were made to supplement the current national legislation regulating the sphere of money laundering prevention. The practical significance of the study is conditioned by the fact that the studied scientific provisions, generalisations, conclusions, and recommendations have both theoretical and applied significance, which can later be used in research activities and the educational process

■ **Keywords**: division financial intelligence, money laundering, prevention, financial services market, group for the development of financial measures to combat money laundering, strategy

■ Introduction

The global community recognises that the laundering of proceeds from criminal or other illegal activities has become a global threat to economic security, and therefore, states are required to adopt, implement, and use coordinated measures to prevent and combat this socially dangerous phenomenon both at the national and international levels.

Conducted in 2016 and 2019, the National Risk Assessment identified as a high-level threat – improper detection and improper levelling of shadowing (elimination of economic activities that function

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outside of state accounting and control) of the Ukrainian economy [1].

Notably, the State Financial Monitoring Service pays special attention to investigating the facts of money laundering. In particular, in 2019, 893 materials were transferred to law enforcement and intelligence agencies, including 503 generalised materials and 390 additional generalised materials. State Financial Monitoring Service sent 12.981 request files to 69 banking institutions to provide additional information [2].

In January – March 2020, the level of the shadow economy, according to preliminary calculations of the Ministry of Economy, amounted to 31% of the official Gross Domestic Product (GDP). At the same time, the level of the shadow economy in 2019 amounted to 28% of the official GDP [3].

In 2020, the State Financial Monitoring Service sent to law enforcement agencies 204 materials (61 generalised materials and 143 additional generalised materials) related to suspicion of corruption. In these materials, the amount of financial transactions that may be related to money laundering, and to the commission of another crime defined by the Criminal Code of Ukraine [4], is UAH 8.1 billion. Participants in suspicious financial transactions in these 204 materials were persons authorised to perform the functions of the state or local self-government and equated to them [5].

During May 2020 – September 2021, the State Financial Monitoring Service of Ukraine received 37.728 (in 2020 – 11.465 and in 2021 – 25.763) reports of suspicious financial transactions from primary financial monitoring entities [1]. After analysing the available data, it was found that in both 2020 and 2021, more than 50% of suspicious activities and "cases" were received with the mark "other signs". Thus, operations by management entities that are characterised by the attributes of "fictitiousness" have a "transit character", which later leads to tax evasion, using various schemes with the subsequent transfer of non-cash funds to cash. In addition, in 2021, there were a large number of suspicions about "conversion of non-cash funds into cash", "financial transactions with assets that do not correspond to the client's profile", "fictitious entrepreneurship", "fraudulent actions" using tax and fee evasion schemes [1].

Many researchers are interested in the problem of preventing money laundering. The study will consider research papers of the last few years. Thus, O.V. Baranetska & A.V. Khomyak [6] briefly analysed the activities of the International Group on combating dirty money laundering FATF (Financial Action Task Force) and offered its own priority measures in the fight against illegal income. V.S. Ponomarenko, O.M. Kolodizev & O.V. Lebid [7] identified a complex of the most important elements of the system of preventing and countering money laundering and using a methodological approach proposed standard stages for evaluating the system of preventing and countering money-laundering in Ukraine. N.V. Moskalenko cites [8] the construction of an international system for countering and preventing money laundering, in particular, the basic principle of functioning of financial intelligence units of some FATF member countries, and examines the determinants of occurrence and describes the main activities of subjects of the prevention system. A.O. Zolkover & S.V. Minenko [9] described international general legal and specialised institutions and the significance of their activities in the context of the anti-money laundering system, and analysed the system at the international and national levels in modern conditions. I.M. Kopytsia & O.V. Smaglo [10] investigated and analysed the systems of preventing and countering the legalisation (laundering) of proceeds from crime in foreign countries, and considered the general and distinctive features of the organisation of financial monitoring in foreign countries.

The purpose of the study is a description of foreign experience in the existing state systems for preventing the legitimisation of property obtained by criminal means and consideration of the possibility of changes and additions by productive mechanisms of national legislation.

Materials and Methods

In the course of the study, considering the purpose and objectives, the following methods were used: *analysis*, since the systems of the EU countries to prevent the legitimisation of property obtained by criminal means have been comprehensively investigated, for a qualitative interpretation of this issue, in the process of studying a single whole it was divided into separate parts. In addition, the study used *dialectical method* to analyse the socio-legal phenomena of states, patterns, and determinants of the chosen illegal act; *comparison*, since the national and foreign legislation in the field of preventing money laundering was compared, and gaps in the system that currently exists were analogised; *formal and logical method*, with the help of which elements of the legal mechanism for preventing such a crime were identified; *modelling*, since the identification of essential signs of phenomena and processes was carried out using the model, the purpose and objectives of the study were determined.

These methods were used at all stages: setting a scientific problem, determining its relevance, formulating the purpose and objectives of the study, presenting the main material, and during the process of generating conclusions, etc. The theoretical basis of this study was the works by the following researchers: O.V. Baranetska & A.V. Khomyak [6], V.S. Ponomarenko, O.M. Kolodizieva & O.V. Lebid [7], N.V. Moskalenko [8], A.O. Zolkover & S.V. Mynenko [9], I.M. Kopytsia & O.V. Smagl [10], who investigated

the existing system of preventing money laundering in individual countries of the world and official pages of government bodies on the Internet, which contain general information about departments that implement measures to prevent money laundering at the legislative level, and statistical data on their work.

However, the study conducted a general brief analysis, so it is appropriate to consider the prevention system more broadly, using official laws, in particular the Law of Ukraine of 02/06/2019 No. 361-IX "On Preventing and Countering the Legalisation (Laundering) of Proceeds from Crime, Financing of Terrorism and Financing of Proliferation of Weapons of Mass Destruction" [11], the Law of Poland of 03/01/2018 "On Countering Money Laundering and Terrorism Financing" [12], German Law of 08/08/2002 "On Improving the Fight Against Money Laundering and Combating the Financing of Terrorism" [13], Decree of the Cabinet of Ministers of Ukraine No. 435-R of 05/12/2021 "The Main Directions of Development of the System of Preventing and Countering the Legalisation (Laundering) of Proceeds from Crime, Financing of Terrorism and Financing of Proliferation of Weapons of Mass Destruction in Ukraine for the Period up to 2023" [14], and Government Websites in Their Own Translation and Interpretation from the Original Language, Which Will Have Scientific Originality for the Established Community of Researchers, Students of Specialised Universities, Citizens of Ukraine, Other Persons Interested in the Chosen Problem.

To achieve this goal, the authors performed the following tasks: analysed and described the statistics of preventive measures for suspicious transactions linked to money laundering related to predicate crimes by the State Financial Monitoring Service, as a body authorised by Ukraine to perform the functions of a financial intelligence unit; investigated the management and legal system for preventing property laundering in six countries that are part of the European Union; isolated from the analysed crime prevention systems provided for in Article 209 of the Criminal Code of Ukraine [4] several aspects that should be implemented in Ukrainian legislation, which can further improve the prevention and counteraction of crime at both the general and special criminological levels.

Results and Discussion

M. Shepitko [15, p. 282] noted that criminal policy provides an opportunity to more deeply investigate the strategic counteraction to criminal offences by means of public and state influence on the systemic reform of criminal justice and its bodies in an archaic perspective.

The system of preventing and countering money laundering within the framework of United Nations documents, international conventions ratified by Ukraine, standards of the group for the development of financial measures to combat money laundering (FATF) and standards equivalent to those adopted by the EU is recognised as a mandatory element of the economic security of a modern state [14].

At the national level, the Law of Ukraine "On Preventing and Countering the Legalisation (Laundering) of Proceeds from Crime, Financing of Terrorism and Financing of Proliferation of Weapons of Mass Destruction" [11] identifies subjects of financial monitoring at the primary and state levels, which are tens of thousands of employees of the private and public sectors.

The Ukrainian system of preventing money laundering represented by supervisory authorities, except for the Ministry of Justice and the National Bank, had restrictions in the implementation of activities for a certain period of time. From the summer of 2014 to January 2017, a moratorium on supervision was in effect on the territory of the state. However, the impact of this moratorium on the National Securities and Stock Market Commission and the National Commission for State Regulation of Financial Services Markets was only partial, since these two supervisory authorities have been able to monitor major licensees since the summer of 2015. The intensity of supervision of non-bank licensees changed very rarely or did not change at all.

Most oversight bodies have conducted outreach to facilitate understanding of obligations and risks. Especially effective and positive activities were carried out by the financial intelligence units of the National Bank of Ukraine (for banks) and the National Commission for State Regulation of Financial Services Markets (National Financial Services Committee). The activities of financial intelligence units in this context extended to all categories of subjects of primary financial monitoring [16].

In the European Union, legislation on money laundering was formed under the authority of US policy, considering the traditions of the Romano-Germanic legal system. The rule of law of this legal system is a cross between dispute resolution – a specific application of the rule – and general principles of law [16]. Legal systems of the European continent have exhaustive patterns of development and similar features of sources of law with appropriate legal force, important social significance, and mass prevalence.

First, the study considers the neighbouring state of Ukraine – Poland. The form of the Polish system of countering money laundering and terrorist financing is determined primarily by the laws and regulations of both Poland and European Union. The main legal enactment in this area is the Polish Law of 03/01/2018 "On Countering Money Laundering and Terrorist Financing" [12]. This legal enactment defines the numerous obligations of the General Inspector of Financial

Information (GIFI) – as the central element of the Polish anti-money laundering system; obligated institutions and institutions that cooperate, especially in the field of cooperation and information exchange.

First of all, the required institutions recognise and assess the risk of money laundering and terrorist financing associated with economic relations concluded with clients or with accidental transactions that they carry out by informing the GIFI of circumstances that may indicate suspicion of the crime of money laundering or terrorist financing, and reasonable suspicions that a particular transaction or a specific value of property may be related to one or another of the above-mentioned crime. Moreover, the required institutions provide GIFI with information about so-called "over-threshold" transactions, i.e., transactions whose value exceeds the value of PLN 15.000 and these are deposits or withdrawals (i.e., cash transactions), money transfers, purchase or sale of currency valuables, etc. Based on this risk and its assessment, to prevent the commission of unlawful acts, GIFI applies financial security measures aimed at obtaining information about its clients and their ultimate purpose of using the services and products offered by the obligated institutions. The inspector has the right to delay all suspicious transactions for 48 hours and transfer documents related to them to the prosecutor's office, where the prosecutor has the right to delay the transaction if it does not meet the requirements of the law [12].

In addition, to prevent the possible commission of a criminal offence, the Border Guard Service and heads of customs and tax authorities provide GIFI with information about the declaration of cash transportation across the EU border.

In addition, GIFI checks suspicions of money laundering or terrorist financing contained in the messages sent for consideration, and information provided by foreign financial intelligence units (FIUs) in order to prevent money laundering. If a crime has already been committed and there is a reasonable suspicion of money laundering or terrorist financing, GIFI notifies the competent prosecutor, who, in cooperation with law enforcement agencies, takes steps to bring charges against the suspects. In turn, the prosecutor is obliged to inform GIFI about: making a decision to block the account or withhold the transaction; starting proceedings; suspending proceedings; starting suspended proceedings; filing charges; filing an indictment; making a decision to charge with a crime [12].

In case of suspicion of a crime or tax offence other than the offence of money laundering or terrorist financing, GIFI will provide information substantiating that suspicion to the competent authorities (i.e., law enforcement agencies, special services, and the Head of the KAS) at the disposal to take measures arising from their statutory tasks. In addition, if he becomes aware of a reasonable suspicion of violating the rules regarding the functioning of the financial market, GIFI submits information justifying this suspicion to the Polish Financial Supervision Authority (PFSA) [17].

Due to the international aspect of money laundering and terrorist financing crimes, GIFI shares information with foreign financial intelligence units (i.e., foreign FIUs). At the reasonable request of a foreign FIU, GIFI may allow the disclosure of information provided by it to other authorities or foreign FIUs, or the use of this information for purposes other than those of the FIU. Similarly, GIFI may also ask a foreign FIU to give consent to transfer the information received from it to the courts, prosecutor's offices, and other cooperating units of other foreign FIUs, or to use such information for purposes other than performing its tasks. In addition, GIFI may require suspension of the transaction or blocking of the account at the reasonable request of a foreign FIU, "which implies suspicion of money laundering or terrorist financing" [17].

Thus, the Polish money laundering prevention system has a peculiar algorithm of actions in the person of the General Inspector of Financial Information of Financial Intelligence, who carries out intermediary activities for the collection, analysis, evaluation, and transmission of data, and coordinates interaction between various financial institutions and law enforcement agencies.

In a state whose territory consists of a metropolis in Western Europe and a number of overseas possessions – in France, the central body of the system for preventing money laundering and combating terrorism financing is TRACFIN (Traitement du renseignement et action contre les circuits financiers clandestins). The director of the Treasury serves as chairman of the body, while the Secretariat functions are performed by the staff and director – general of the office for customs and indirect rights, which is the secretary – general of TRACFIN. The financial intelligence unit consists of the information collection centre, the financial expertise department, and the operations department and is controlled by the French Ministry of Economy, Finance, and Industry. TRACFIN is a body that provides information about the accounts of individuals and legal entities opened in banks [18].

In February 2020, a 5th directive was introduced into French law – EU Directive No. 2018/843 of 30 May 2018 [19] with the aim of strengthening transparency in the operations of legal entities and complex legal structures by expanding access to registers of beneficial owners [20].

A characteristic feature of French legislation is that it does not require providing information about financial transactions if the amount of a financial transaction exceeds a certain limit.

The financial intelligence service collects and processes a variety of information, including suspicious transaction reports received from financial institutions and requests received from its foreign partners. It carries out active international cooperation, which is the key to an effective fight against money laundering. And can also exchange information with the central office for combating serious financial crimes, customs, control authorities in areas where employees are required to submit applications, and with foreign services with the same competence. In case of obvious non-compliance with the requirements or serious negligence, following the example of the functioning of the anti-money laundering mechanism, TRAKFIN, which does not have the authority to apply sanctions, notifies the supervisory authority or federal body [18].

Signs for financial monitoring entities to provide data on financial transactions are a motivated suspicion that money laundering is being carried out. If the person of the owner or beneficiary of a legal entity is in doubt about a trust fund or a deliberately created asset management organisation, in which the person of the beneficiary or the person of the principal is unfamiliar, then such information must be reported to TRACFIN for verification [18].

In addition, one of the activities carried out by the authority is the development of an annual control plan together with the banking commission, which, for example, is followed by the National Directorate of Customs Intelligence and Investigations.

Thus, TRACFIN conducts only verification in connection with suspicions that initially arose, assessing the economic validity of financial flows and trying to find out whether or not there is an alleged connection with the criminal environment, while using partnerships with the banking network and public financial institutions.

As for the Federal Republic of Germany, the Gesetzzur Verhinderungder Geldwäschevom was adopted on August 14, 2002 (the Law on prevention of money laundering of 08/14/2002) defines that the German financial intelligence unit belongs to the police, and the priority areas of work of this unit are: collection and analysis of reports on suspicious financial transactions; transmission of analysis results to law enforcement agencies; statistical analysis of reports on suspicious financial transactions; publication of annual reports; providing institutions that are required to carry out financial monitoring with information on typologies and methods of money laundering; cooperation with other financial intelligence units [13].

The central bank of this state is the Bundesbank, but it does not perform regulatory and supervisory functions in the field of preventing the laundering of proceeds from crime and the financing of terrorism. The Bundesbank carries out commercial financial transactions – currency exchange, and repayment of Bundesbank cheques, since according to German law it is a financial institution that provides banking services and, thus, has an obligation to report on operations [21].

The body that oversees the activities of financial institutions in Germany is the Federal Financial Supervisory Authority – BaFin. If an institution maintains business relations with any listed persons and entities and, in particular, maintains accounts in the name of such individuals or entities, it is obliged to notify BaFin immediately by sending a detailed report. Under the constant supervision of BaFin is the financial institution VPE Wertpapierhandelsbank AG, which has a permit in accordance with 32th Banking Act [22].

As a federal body, BaFin has the right to impose penalties on companies. In addition to reviewing these general reports, BaFin, a second-tier institution, takes action only when its intervention is necessary. BaFin must intervene when the group finds a violation or when the company under review refuses to cooperate. At the request of supervisors, law enforcement agencies, and courts, BaFin can provide them with relevant data. This measure is intended to help identify financial flows that contribute to money laundering.

Thus, the German regulator for supervision of financial services markets – the BaFin – effectively performs its supervisory function, regulating the banking and non-banking sectors.

Activities to counteract the legalisation (laundering) of criminal proceeds in Austria are carried out by a special unit created as part of the group for Combating Organised Crime (EDOK – the Central Department for Combating Organised Crime, Reporting Office). This financial intelligence unit regularly meets with employees of credit and financial institutions on combating money laundering. All lists of accounts of entities that may be related to laundering are sent to EDOK, the National Bank of Austria, credit institutions, and the Austrian Chamber of Commerce. This special unit reviews reports of suspicious transactions sent by credit and financial institutions. At the legislative level, EDOK has the right to find out the legal status and detailed data about a foreign client in credit institutions and financial institutions regarding clients who have open and closed accounts, loans received, etc. [23].

Banks and credit institutions are required to provide the EDOC with data on all suspicious transactions, and employees of the National Bank and the Ministry of Finance of Austria, who have monitoring functions and, accordingly, have information about the facts of money laundering. EDOC officials have the right to stop the implementation of a suspicious transaction for 24 hours, and to conduct a check on the fact of money laundering [23].

A special task force has been formed within the Federal Ministry of the Interior, which, together with the Counter-Terrorism Unit and the Organised Crime Unit, is taking the necessary measures at the national level. But there is no identical understanding of risks between these government agencies, who are entrusted with the function of supervising the sector of primary financial monitoring entities, so these institutions are based more on the requirements established by law, rather than on an appropriate risk analysis. Moreover, the financial penalties imposed by the financial intelligence unit are not significant. There is also no understanding of whether all these authorities can apply sanctions of the same level, and whether they apply them on a permanent basis to achieve compliance in the economic sector [16]. Thus, EDOK financial intelligence has broad powers to control economic crimes, but there are certain shortcomings in the prevention system.

Spain has established an Executive Service of the Commission for the Prevention of Money Laundering and Monetary Offenses – SEPBLAC (Servicio Ejecutivo de la Comision), which is assigned a specific task to prevent and investigate cases of money laundering, including analysing incoming information and sending it to other competent authorities. The office of the deputy director-general supports the chairman in their work, prepares working documents, monitors prevention policies on a daily basis, and represents Spain in international organisations involved in the combating money laundering and terrorist financing [24].

An example of the results achieved through efforts to streamline structures and procedures is the development and approval of review plans at Commission headquarters, which result in an orderly selection of entities to be reviewed by SEPBLAC. Subjects of financial monitoring include: auditors, accountants, tax consultants, and organisations engaged in the sale of antique items of historical and artistic value and works of art. The supervision process on a regular basis makes it possible to identify, eliminate, and impose sanctions in time, since the existing violations in the ML/FT management processes (legalisation (laundering) of proceeds from crime, financing of terrorism and/or financing of terrorism) are risks.

Subjects of financial monitoring should inform the financial intelligence unit about transactions if they are related to the transfer of cash, cheques, or other documents, currency exchange, and about transactions with residents of offshore jurisdictions in the amount of more than EUR 30 thousand [24].

The Central Bank of Spain has improved guardianship in the field of preventing and combating legalisation (laundering) [24]. Reciprocal relationships with obligated entities are, for the most part, sufficient in most sectors where suspicious transaction reports are repeatedly filed. Spain demonstrates the ability of its systems, financial supervision, and monitoring to effectively control the financial institutions of criminals and their accomplices. Systematically, the service identifies, eliminates, and imposes sanctions for violations in the risk management processes for money laundering.

However, SEPBLAC should also work to improve oversight of the legal department. Spain should review the existing risks in the real estate sector and the sector of foreign criminal networks and reflect this in the methodology for combating money laundering, because this is an important aspect [16]. Overall, Spain has a strong surveillance system. The types and scope of corrective measures and sanctions applied in the relevant areas are satisfactory.

In Italy, financial institutions must report all suspicious transactions to the Ufficio Italiano dei Cambi (UIC), a special body of the Bank of Italy that performs financial intelligence functions. The functions of the FIU used to receive and investigate reports of suspicious activity are performed by the anti-money laundering service of the Italian Monetary and financial authority. Thus, the Italian Monetary and financial authority may, at the request of investigators, on the basis of Section 6 of Law 197/91 [25], suspend financial transactions for up to 48 hours, if this does not interfere with investigations and does not lead to the curtailment of current operations of intermediaries. Another document appears to be an order from the Italian Ministry of Environment to transfer funds to Ufficio Italiano dei Cambi bank.

First of all, the Italian Monetary and financial authority (MFA) and the Italian financial intelligence unit (FIU) are not two different government agencies.

Eventually, through its Permanent Mission, the Italian government was informed of what needed to be done to search for the missing contribution, after which it contacted its Ufficio Italiano dei Cambi Bank, which provided the required information directly to Chase on 10 September 1999 [25]. In the event of any serious deviation indicating the possibility of money laundering, the Italian Monetary and financial authority conducts formal financial investigations and, by general agreement with the relevant supervisory authorities, notifies the investigative authorities.

The management of criminal capital in Italy and timely control over it is carried out due to an effective prevention mechanism, but the existing model is more directed towards indicators of law enforcement agencies and does not attract sufficiently indicators that are more significantly coordinated with the risk of legalisation (laundering) of proceeds from crime [16].

Conclusions

As a result of the conducted study, the legislation and systems of organising actions to prevent money laundering to ensure high-quality economic security of individual countries of the European Union were investigated. Each country has both successful indicators and a low level of compliance with its obligations in this area, so there is still a need for moderate improvement in the process of oversight of money laundering.

Thus, the Polish system operates in the person of the General Inspector of Financial Information – GIFI, which acts as an intermediary between financial institutions, law enforcement officers, and provides such structural divisions with information about the existing riskiness of planned financial transactions. The key body of the French system for preventing money laundering is TRACFIN, which in its professional activity performs the main function – checking financial flows and further determines their belonging to the criminal stratum based on comparative analysis of information provided by banking and public financial institutions. The federal agency BaFin, the supervisory authority that controls the German financial services market, if necessary, imposes penalties on companies that intend to carry out criminal laundering. Austria's financial intelligence unit EDOK oversees high-risk credit institutions, which is based more on statutory requirements than on detailed risk analysis. Austrian supervisors of financial institutions and specially defined primary financial monitoring entities should strengthen their influence to promote a better understanding of the risks of money laundering among controlled entities and their prospects for implementing a risk-based method for managing the risks of preventing and countering legalisation (laundering) in the financial and non-financial sectors. The executive service of the Commission for the prevention of money laundering and money offences in Spain – SEPBLAC, as a surveillance system, works powerfully, because it regularly detects, eliminates, and imposes penalties in connection with violations committed during the laundering of proceeds from crime. The Financial Guard of Italy has legally established responsibilities for supervision of most specially defined subjects of primary financial monitoring, and carries out its activities using a risk-based approach.

Nowadays, Ukrainian legislation mainly meets the modern requirements of international organisations for combating money laundering. Over the years, the methods used by "money launderers" and financial criminals have evolved in response to government and institutional countermeasures. Therefore, some strategic actions of the State Financial Monitoring systems of foreign countries in certain aspects can be introduced in Ukraine, in particular, it is necessary to strengthen cooperation between authorised financial departments with banking institutions, customs, control bodies in areas where employees are required to submit applications, and with foreign services with the same competence.

Thus, in today's conditions, all measures that are carried out by both Ukrainian and foreign countries to prevent the legitimisation of income/property are not exhaustive and do not canonise restrictions on the implementation of the latest promising measures in the economic sphere to effectively fulfil their obligations in the financial monitoring system.

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Досвід окремих країн Європейського Союзу з побудови системи запобігання легалізації доходів, отриманих злочинним шляхом

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■ **Анотація**. Україна як європейська держава реалізовує комплекс стратегічних заходів з розвитку економіки на світовій платформі, здійснюючи збір, обробку й аналіз інформації щодо підозрілих фінансових операцій, які можуть бути пов'язані з відмиванням доходів, проте механізми запобігання є недостатньо дієвими, а ступінь поширення такої злочинності становить реальну загрозу для національної безпеки країни, що визначає актуальність дослідження вказаного питання. Метою статті є всебічний аналіз зарубіжних стратегій із запобігання відмиванню доходів, одержаних злочинним шляхом, та розгляд можливості імплементації окремих заходів у правову площину української держави. У процесі дослідження використано групу загальнологічних методів – порівняння, аналізу, синтезу й узагальнення, які дають змогу об'єктивно оцінити рівень та ефективність державно-правових явищ із запобігання іноземними державами незаконній легалізації, що вчиняється як на території країни, так і за її межами. Теоретичним базисом слугували публікації українських та іноземних учених, присвячені аспектам запобігання відмиванню доходів, а також урядові вебсайти, створені з метою зберігання публічної інформації у формі відкритих даних і забезпечення надання доступу до неї широкому колу осіб. На основі проведеного дослідження в контексті наявної зарубіжної системи боротьби з відмиванням доходів розглянуто її нормативні, організаційні та певною мірою соціально-культурні аспекти. Описано діяльність центрального апарату в особі генерального інспектора фінансової інформації польської системи запобігання відмиванню грошей. Досліджено систему запобігання легалізації незаконних доходів основного підрозділу фінансової розвідки в складі Міністерства економіки, фінансів та індустрії Французької Республіки. Проаналізовано заходи із запобігання легалізації злочинних доходів, що проводяться Федеральним відомством нагляду за діяльністю фінансових установ Федеративної Республіки Німеччини. Розглянуто практику запобігання відмиванню злочинних доходів фаховим підрозділом, що провадить свою діяльність у складі Групи боротьби з організованою злочинністю Республіки Австрії. Розглянуто аналогічну систему заходів Королівства Іспанії. Описано превентивну діяльність Служби боротьби з відмиванням грошей Валютно-фінансового управління Італійської Республіки. Акцентовано увагу на дієвих правових засобах, що позитивно впливають на економічні процеси в умовах світової ринкової економіки. Висловлено пропозиції стосовно доповнення сучасного національного законодавства, що регулює сферу запобігання легалізації доходів, отриманих злочинним шляхом. Практична значущість наукової праці полягає в тому, що досліджувані наукові положення, узагальнення, висновки й рекомендації надалі можуть бути використані в науково-дослідній діяльності та освітньому процесі, а також у межах оптимізації механізму запобігання злочинам вказаної категорії

■ **Ключові слова**: підрозділ фінансової розвідки; відмивання доходів; ринок фінансових послуг; Група з розробки фінансових заходів боротьби з відмиванням грошей; стратегія

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