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Criminal and Legal Counteraction to the Activities of Criminal Authorities: The Ukrainian Model

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■ **Abstract**. The problem of countering organised crime in Ukraine has always been in the centre of attention of both law enforcement officers and researchers. It became particularly relevant in connection with the creation of a new division of the National Police of Ukraine – the Department of Strategic Investigations and providing it with new tools to improve the effectiveness of bringing criminal figures to justice. As a result of amendments to the Criminal Code of Ukraine, the model of criminal and legal counteraction to the activities of criminal authorities has changed significantly. In particular, such concepts as "criminal community", "code-bound thief", "criminal influence", "criminal activity", "person who carries out criminal influence", and "person who is in the status of a subject of increased criminal influence" have been introduced into the legislative circulation, new acts have been criminalised – establishing or spreading criminal influence, applying for the use of criminal influence, and also organisation and assistance in holding or participating in a criminal meeting (sit-down) were separated into an independent section. The purpose of the study is to investigate the essence and content of the modern model of criminal law counteraction to the activities of criminal authorities, identify its conceptual shortcomings, and formulate proposals for improvement. During the research, a complex of scientific methods was applied – systemic, formal and dogmatic (legal and technical), comparative and legal, analysis, synthesis, induction and deduction. Special literature, provisions of the Criminal Code of Ukraine and judicial practice of their application were considered, and consultations with experts were held. Based on the findings, a holistic view of the Ukrainian model of criminal law counteraction to the activities of criminal authorities is presented, and its content is revealed. Recommendations have been developed on the interpretation and further application of Articles 255, 255-1, 255-2, 255-3 of the Criminal Code of Ukraine. The conceptual shortcomings of the model under study are identified and ways to improve it are outlined, including: 1) rejection of the criminal community as an independent form of complicity; 2) clarification of the definition of criminal influence by specifying its features and excluding unnecessary ones; 3) legislative consolidation of the term "criminal activity"; 4) rejection of the term "code-bound thief" primarily due to the fact that it concerns a person who is in the status of a subject of increased criminal influence; 5) changing the emphasis in the definition of a criminal meeting from its subjects to the purpose of this meeting

■ **Keywords**: organised crime; criminal organisation; criminal community; "code-bound thief"; criminal influence

■ Introduction

Organised crime poses a serious threat to the rights and freedoms of citizens around the world (Italy, China, Germany, USA, Turkey, Japan, etc.). Ukraine is no exception, where organised crime is a common phenomenon. Ukrainian researchers have repeatedly proved the public danger of creating and operating organised criminal associations, in particular, associated with its deep penetration into the economic and political spheres of the state [1-4]. It is no coincidence that the concept of organised crime is considered to be characterised by the idea of "serious danger" that it causes (from the standpoint of reasonableness, the restriction of fundamental human rights in criminal proceedings is particularly noticeable) [5, pp. 2116-2117].

Participants of modern organised criminal associations are mastering new technologies for committing criminal offences. For example, technologies of raiding, cybercrime, financial pyramids, the use of

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electronic money and cryptocurrencies [6-10]. "The modern criminal environment has a steady tendency to improve criminal skills, internal organisation, professionalism, technical equipment, etc." [11, p. 400]. On the other hand, a significant part of the members of organised criminal associations continue to adhere to the established rules, customs, and traditions characteristic of the criminal community of countries native to the USSR.

One of the trends of modern transnational crime is the desire of criminal structures to penetrate and succeed in the economy, politics, and management of large companies and enterprises. In the process of a fierce struggle for the right to control the profitable spheres of the economy and territory, the criminal environment is organised, the state is involved in its activities, and it penetrates the structures of power and management [11, p. 390]. In some regions of the country, a whole system of illegal relationships and relations has been formed that can compete with the legal institutions of society [12, p. 175-176].

During 2015-2019, the positions of representatives of organised crime significantly deteriorated due to miscalculations in the reform of criminal justice bodies and a significant level of corruption in the state. This has been repeatedly noticed in the studies by V.S. Batyrgareieva, A.M. Babenko [13], B.M. Holovkin [14], Yu.V. Lutsenko [15], A.A. Dudorov [16] et al. [17; 18]. It is no coincidence that a particularly dangerous form of corruption is the one that is carried out by organised crime [19].

It is impossible to ignore the changes in the Criminal Code of Armenia [20] and Georgia [21] related to the creation of special grounds for criminal liability of "code-bound thieves" and other criminal figures, which caused, among other things, the movement of these subjects of criminal influence from these countries to the territory of Ukraine. In this regard, there is a need to improve criminal legal tools for countering national forms of organised crime, and adequate forms and methods of their activities.

The purpose of the study is to investigate the modern Ukrainian model of criminal law counteraction to the activities of criminal authorities, in particular, disclosure of its essence, content, identification of shortcomings, and formulation of proposals for improvement on this basis.

■ Materials and Methods

To achieve these goals, a set of scientific methods was used: systematic – in the process of a comprehensive study of the system of elements of the current model of criminal law counteraction to the activities of criminal authorities in Ukraine; formal and dogmatic (legal and technical) – during the analysis of legal constructions of crimes provided for in Art. 255, 255-1, 255-2, 255-3, 256, 257 the Criminal Code of Ukraine, and the definition of the content of legal terms used in the work; comparative and legal – within the framework of comparing the signs of the criminal community as one of the modern forms of organised crime in Ukraine with the signs of various forms of organised crime in other states.

Consultations were held with experts (5 operatives of the Department of Strategic Investigations and 4 investigators of the Main Investigation Department of the National Police of Ukraine in Kyiv during February-October 2021) to ascertain the current state in the field of combating organised crime in Ukraine.

The application of methods of analysis, synthesis, induction and deduction allowed building a logical structure of the study, which includes the following blocks: 1) a brief description of the criminal community as one of the national forms of organised crime in Ukraine and the place of criminal authorities in it; 2) the main additions to the grounds for criminal liability of criminal figures; 3) the need for new criminal law tools; 4) the basic elements of the Ukrainian model of criminal law counteraction to the activities of criminal authorities; 5) conceptual flaws of criminal law tools in countering the activities of criminal authorities. The study used publicly available special scientific literature, materials of judicial practice from the Unified State Register of Court Decisions, and provisions of the Criminal Code of Ukraine.

■ Results and Discussion

Criminal community as a national form of organised crime in Ukraine and the place of criminal figures in it

Modern organised crime operating in Ukraine has different forms of manifestation, among which a special place is occupied by the *criminal community*, characterized by certain features of organised, recidivist, and professional criminal activity. Its participants have formed certain rules, adhere to established traditions, created an extensive infrastructure, and also carry out effective cooperation with representatives of organised criminals in other countries. A special danger of such a community is that bringing individual members and their associations to criminal responsibility does not entail its liquidation, since one criminal figure is replaced by another, which continues to organise, coordinate or facilitate criminal illegal activities in a certain territory. In part, this can explain the fact that, despite the efforts of the authorities to eliminate this form of organised crime, it continues to operate successfully outside the post-Soviet states.

The criminal community, as the most well-known national form of organised crime in Ukraine (for comparison, in Japan it is the Yakuza, and in America and Italy it is the mafia), has several special features that allow identifying it among other forms of organised crime. Firstly, at the top of the hierarchy of the criminal

community are "code-bound thieves" (literally called "thieves in law" or "thieves", "criminals covered by the code"). They are subject to "enforcers" ("polozhentsy", "smotryaschie") and other criminal figures. A criminal figure is a person who is trusted in the criminal environment, enjoys respect among criminals and has a significant influence on them. This can be either a "code-bound thief", "enforcer" or a person who is not in such informal statuses. Secondly, the main function of the criminal community is to organise, control, and coordinate criminal and illegal activities in a certain territory and/or in a certain area. Control of ordinary crime is a specific feature of the mafia, and not of other forms of organised crime [23]. Representatives of the criminal community try to control various types and forms of crime in a certain territory. Thirdly, the economic basis of this form of organised crime is the presence of a "common fund", which is formed by appropriate contributions from both legal and illegal activities and is used for the needs of the criminal world (for example, support for convicts in detention centres). Fourthly, the criminal world has established certain customs and traditions that have undergone a significant transformation over time, but are mostly observed among representatives of the community and other criminal offenders. Many "code-bound thieves", like chameleons, were able to adapt to the new business situation, but for a significant part of them, the traditional thieves' code and concepts remain important [24]. Fifthly, the criminal community has a collegial management body – the meeting, which resolves the most important issues related to criminal and illegal activities.

Substantiation of the need for new criminal legal instruments

Regarding the need to find new legal tools to counteract criminal authorities, it should be noted that on the one hand, the Criminal Code of Ukraine has grounds for bringing them to criminal responsibility both for creating a criminal association and participating in it (for creating a gang, criminal organisation, leading these criminal associations, participating in them), and for participating in crimes committed in complicity or alone. Therefore, in the conditions of high-quality criminal and criminal procedure legislation, as well as the absence of corruption in judicial and law enforcement agencies, it is possible to implement this. At the same time, unfortunately, researchers have repeatedly focused on the shortcomings of certain provisions of the criminal procedure legislation, which allow delaying the investigation of criminal proceedings, and ultimately closing them or passing acquittals [25-29]. The provisions of the Criminal Code of Ukraine also have certain shortcomings, but they are not critical. The level of corruption in the state is also significant, as already noted.

On the other hand, even in the absence of these legislative shortcomings and corruption of state bodies, there are certain gaps in the criminal law regulation of countering organised crime. Since the entry into force of the Criminal Code of Ukraine (September 1, 2001), it has always had grounds for criminal liability of members of organised criminal associations that generally met international standards. However, they were not sufficient for a complete and objective criminal an dlegal assessment of the activities of "code-bound thieves", "enforcers" and other criminal figures, related not to the commission of a certain crime, but to the influence on criminal activity in a certain territory or in a certain area. Until the criminalisation of the establishment and dissemination of criminal influence (Article 255-1 of the Criminal Code of Ukraine), there were no grounds "for bringing them to criminal responsibility for coordinating, facilitating, or inducing criminal activity. "For example, a "code-bound thief" or another criminal figure could not be brought to criminal responsibility for resolving disputes that arise between persons from the standpoint of unwritten "laws", "concepts", when he acted as a "justice of the peace", and determined the validity of claims, and made decisions on punishing the perpetrators, etc. Admittedly, if his actions did not contain elements of another criminal offence (extortion, coercion to performance or non-performance of civil obligations, etc.), there were no grounds to bring to criminal responsibility persons who contribute to criminally illegal activities by maintaining and ensuring the filling of the "common fund", persons who coordinate the commission of criminal offences in a certain territory (for example, grant permission to individual subjects and criminal associations to engage in illegal activities). The latter may not even know who, when, where, in what way, and against whom will commit a crime or criminal offence, which actually makes it impossible to bring them to justice as accomplices" [30, p. 268-269].

Therefore, the new criminal law bans have significantly strengthened the arsenal of law enforcement officers in countering organised crime. However, they should not be idealised, because the "community of code-bound thieves" can adapt to a changing environment. Even the harshest state repression is not enough to eliminate the mafia. Mussolini failed to destroy the Sicilian Mafia, just as Stalin failed to eliminate the "code-bound thieves". An effective policy against organised crime should go beyond repression and address the elimination of social and economic reasons for the existence of such organisations" [31]. "It is no coincidence that the emergence of criminal organisations is conditioned by the inability of weak states to ensure the safety of their citizens and provide them with the necessary services" [32].

Main additions to the grounds of criminal liability of criminal authorities and basic elements of the Ukrainian model of criminal law counteraction to the activities of criminal authorities

In order to improve the grounds for criminal liability of criminal authorities, amendments were made to the Criminal Code of Ukraine [22]. Firstly, a new form of complicity has been introduced – a criminal community (an association of two or more criminal organisations), its creation and management have been criminalised. Secondly, the following persons are recognised as special subjects of crime: "1) a person who carries out criminal influence; 2) a person who is in the status of a subject of increased criminal influence; 3) a "code-bound thief". Thirdly, the deliberate establishment or dissemination of criminal influence in society is criminalised (Article 255-1 of the Criminal Code of Ukraine), in particular, in temporary detention centres, pre-trial detention centres, or penitentiary institutions (qualifying feature). Fourthly, it criminalises the appeal to a person who can deliberately exert criminal influence for the guilty person, in particular, to a person who is in the status of a subject of increased criminal influence, including in the status of a "code-bound thief", for the purpose of applying such influence (Article 255-3 of the Criminal Code of Ukraine)." Fifthly, illegal actions in relation to a criminal meeting (sit-down) are singled out in a separate Article 255-2 of the Criminal Code of Ukraine, and participation in it is criminalised.

The Ukrainian model of criminal law counteraction to the activities of criminal authorities includes the following components:

1. Recognition of organised group, gang, criminal organisation, and criminal community as independent *forms of complicity*, and *criminalisation in certain types of crimes of creation of these criminal associations and participation in them.* The Criminal Code of Ukraine [22] criminalises such actions related to organised criminal associations as the creation and management of a gang, criminal organisation, and criminal community, and participation in a gang and a criminal organisation (participation in a criminal community is not recognised as a separate form of the objective side of the crime). Such a step by the legislator provides an opportunity to bring criminal authorities to responsibility not only for committing criminal offences as part of a criminal association (for example, robbery or extortion) but also for actions in relation to such an association (creation, leadership, participation). This is a very important tool in cases where it is impossible to prove the participation of criminal figures in individual crimes committed by a gang, criminal organisation, or criminal community. To bring a person to criminal responsibility for participating in a criminal association, it is not necessary to prove his participation in certain crimes committed by this association. After all, a member of a gang, criminal organisation or criminal community can provide other accomplices with tools and means, remove obstacles, ensure the life of the association, but not take part in specific crimes. In such circumstances, there are grounds to bring him to criminal responsibility for participating in a criminal association.

2. Identification of qualified crimes in the relevant structures *special subjects* – a person who carries out criminal influence, a person who is in the status of a subject of increased criminal influence, a "code-bound thief", an official. These also include "enforcers" and criminal figures who do not have the above-mentioned informal statuses. "A person who carries out criminal influence is a person who, through authority, other personal qualities or capabilities, promotes, encourages, coordinates, or exercises other influence on criminal activities, organises or directly distributes funds, property, or other assets (proceeds from them) aimed at ensuring such activities. Under a person who is in the status of a subject of increased criminal influence, including in the status of "code-bound thief", "it is necessary to understand a person who, due to authority, other personal qualities or capabilities, carries out criminal influence and coordinates the criminal activities of other persons who carry out criminal influence (Note 2 to Article 255 of the Criminal Code of Ukraine)" [22]. To recognise a person as being in the status of a subject of increased criminal influence, including in the status of "code-bound thief", it is necessary to prove: 1) the implementation of criminal influence by this subject; 2) the coordination of criminal activities by this subject of other persons who carry out criminal influence.

3. Criminalisation of *socially dangerous acts related to criminal activity* – "Establishing or spreading criminal influence" (Article 255-1 of the Criminal Code of Ukraine) and "Applying for the use of criminal influence" (Article 255-3 of the Criminal Code of Ukraine) [22]. "Criminal influence should be understood as any actions of a person who, due to authority, other personal qualities or capabilities, contributes, encourages, coordinates or exerts other influence on criminal activities, organises or directly distributes funds, property or other assets (income from them) aimed at ensuring such activities (Note 1 to Article 255 of the Criminal Code of Ukraine)" [22]. Criminal influence may consist in the following actions: appointment of "enforcers"; resolution of conflicts between convicted, previously convicted, and other persons; distribution of funds or other material goods between convicted persons; organisation and holding of meetings in penitentiary institutions; establishment of protection for persons committing criminal offences, etc. Criminal influence is combined with the commission of crimes against property (theft, robbery, extortion), illegal deprivation of liberty or abduction of a person, actions that disorganise the work of a penitentiary institution, illegal actions with narcotic drugs, etc.

It is important to pay attention to the fact that the legislator criminalised both the deliberate establishment or spread of criminal influence in society (Article 255-1 of the Criminal Code of Ukraine) [22], and the appeal to a person who knowingly for the guilty can carry out criminal influence, in particular to a person who is in the status of a subject of increased criminal influence, including in the status of a "code-bound thief", in order to apply such influence (Article 255-3 of the Criminal Code of Ukraine) [22]. In fact, the latest criminal law ban is designed to prevent the facts of turning to criminal authorities to solve personal problems. As commonly known, solving the problems of citizens within the legal framework is the prerogative of state bodies. Therefore, such appeals for help to subjects of criminal influence contribute at least to the popularisation of the criminal world, increase its profits and level the purpose of the state, and discredit it in the eyes of citizens. Researchers are right that the criminal world competes with the state, and the state should have absolute hegemony in the arena of law and order [33]. Some researchers identify the weakness of the national state as a key reason for the spread of organised crime [34; 35].

4. Criminalisation of *assistance to members of criminal organisations and concealment of their criminal activities* (Art. 256 of the Criminal Code of Ukraine). This assistance must necessarily not be promised in advance. By its nature, it is involvement in a crime under Article 255 of the Criminal Code of Ukraine. Assistance to members of criminal organisations and concealment of their criminal activities can only be committed in a certain way: by providing premises, storage facilities, vehicles, Information, documents, technical devices, money, securities (for example, providing a storage facility for storing firearms and ammunition or money received from the sale of narcotic drugs, providing information about the presence or absence of law enforcement officers on the territory to avoid exposing persons engaged in illegal amber mining).

The implementation of other actions that are not promised in advance to create conditions that contribute to their criminal activities is to provide assistance to members of criminal organisations in carrying out their criminal activities in any other way. This act in practice was manifested in the storage of documents of the organiser of a criminal organisation, providing assistance in the creation and operation of a fictitious legal entity. Art. 256 of the Criminal Code of Ukraine [22] most often qualify the actions of persons who provide assistance to representatives of the "DPR" and "LPR" (for example, provide information about the movement, location, fortifications and weapons of the armed forces, personal data of military personnel, information about the dead and wounded among military personnel; provide construction equipment for the construction of fortifications; serve at roadblocks; provide illegally detained people with work and food; hold certain positions in the authorities of the "DPR" and "LPR"; transport armed members of these formations).

5. Criminalisation of *organisation, assistance in holding or participating in a criminal meeting (sit-down)* (Article 255-2 of the Criminal Code of Ukraine) [22]. The specified meeting with the participation of representatives of criminal organisations, organised groups, and persons engaged in criminal influence is held for the purpose of planning crimes, material support or coordination of criminal activities, including the distribution of proceeds from crime, or spheres of criminal influence. A criminal meeting (sit-down) is a kind of collegial management body of criminal associations and individual criminals, whose participants periodically meet to make a decision on punishing violators of "thieves' codes", considering disputes, appointing "enforcers", distributing spheres of criminal influence, proceeds from crime, "coronation" of criminal authorities, deprivation of rank of "code-bound thieves", etc. This meeting can be held under the cover of an anniversary, wedding, funeral, etc.

6. Installation of *a special type of exemption from criminal liability for participation in criminal organisations* in case of voluntary notification of the creation of a criminal organisation or participation in it and active assistance in its disclosure (Part 6 of Article 255 of the Criminal Code of Ukraine) [22]. This rule provides an opportunity to involve in cooperation with law enforcement agencies participants of a criminal organisation who provide assistance in uncovering and investigating the creation of a criminal organisation, leading it, participating in it, including participation in certain criminal offences of its participants in exchange for exemption from criminal liability.

7. Recognition of *a circumstance aggravating the punishment of committing a criminal offence by a group of persons by prior agreement* (Part 2 or 3 of Article 28 of the Criminal Code of Ukraine) [22]. Its consolidation in the law on criminal liability is probably conditioned by the fact that the commission of a crime in these forms of complicity usually indicates a greater degree of public danger of the committed crime. A similar circumstance exists in foreign criminal legislation, in particular in the CIS countries, Vietnam, Lithuania, Norway, the Czech Republic, Sweden, Finland, etc. This is quite natural, because Part 2 of Article 3 of the EU Council Framework Decision on combating organised crime of October 24, 2008, states that each member state takes the necessary measures to ensure that the commission of crimes provided for in Article 2 within a criminal organisation can be recognised as an aggravating circumstance [36]. Interpretation of Part 2 of Article 67 of the Criminal Code of Ukraine [22] indicates that the court must always take this circumstance into account when assigning a sentence

as aggravating the punishment. This circumstance is applied to each participant of a criminal association, considering the nature and degree of public danger of the crime committed.

Therefore, the modern criminal law model of countering the activities of criminal authorities provides an opportunity to carry out a fairly complete and comprehensive criminal law assessment of the acts committed by them, including the actions of persons who apply to these subjects to solve certain problems. There is also the possibility of using individual participants of criminal organisations to expose the organisation as a whole and bring to criminal responsibility its organisers and ordinary participants. As of January 1, 2022, the Unified State Register of Court Decisions for the period 2020-2021 contains: 8 sentences under Article 255 of the Criminal Code of Ukraine, 1 sentence under Article 255-1 of the Criminal Code of Ukraine, 1 sentence under Article 255-3 of the Criminal Code of Ukraine, and not a single sentence under Article 255-2 of the Criminal Code of Ukraine [22]. Given the above, it is worth paying attention to some problems that to a certain extent affect the effectiveness of the application of this model, related to the unsatisfactory quality of new criminal law norms. It is necessary to agree that "the lack of the rule of law and legal gaps encourage organised criminal groups to thrive" [37].

Conceptual shortcomings of criminal law instruments in countering the activities of criminal authorities

The analysis of the literature indicates that there are serious flaws in the relevant grounds for criminal liability:

1. Certain components of new criminal legal instruments are *impractical and too difficult to use.* This refers to *the criminal community* given the difficulties of documenting it, the excessive burden on the work of law enforcement agencies, and the possibility of involving its participants for creating a criminal organisation, leading it, or participating in it. In addition, A. Kvasha draws attention to the potential difficulties in qualifying the actions of members of the criminal community [38]. The design of *a subject of increased criminal influence is too complex to use.* In order to bring to criminal responsibility a person who is in the status of a subject of increased criminal influence, including in the status of "code-bound thief", it is necessary to document and bring to criminal responsibility two or more persons who carry out criminal influence, and then prove the fact of coordinating their criminal activities [39, p. 185].

Participants of the meeting are recognised as *representatives of criminal organisations or organised groups and persons engaged in criminal influence*. The use of the term "representative of a criminal organisation or organised group" means that in order to prove the existence of representation, first of all, it will be necessary to prove the existence of a criminal organisation or organised group. But the existence of such associations can be confirmed if their members are convicted.

2. Separate terms are *clearly vague and inaccurate.* This will lead to different interpretations of them and complicate the application of relevant criminal prohibitions. At the very least, this refers to the concept of criminal influence, based on which the person who carries out criminal influence is also determined. It contains not only evaluative, but also indefinite terms – "due to authority, other personal qualities or capabilities", "other influence on criminal activity". Admittedly, researchers are right that such an approach, despite the unsatisfactory state of law enforcement and judicial activity, leads to arbitrariness and unlimited judicial discretion [38, p. 398].

3. *There is no definition of such terms as "criminal activity" and "code-bound thief".* There is no unity in the views of researchers on their content and in the theory of criminal law. If the criminal law category "code-bound thief" is actively discussed in scientific circles [40-43], then the concept of "criminal activity" is less developed in the theory of criminal law. In addition, the terms "code-bound thief" and "criminal activity" before the amendments to the Criminal Code of Ukraine had a more criminological meaning than criminal law.

4. *The possibilities of a special type of exemption from criminal liability under Part 6 of Article 255 of the Criminal Code of Ukraine are limited* by participation in a criminal organisation. The prerequisite for this criminal legal incentive can only be such a form of the objective side of the crime as participation in a criminal organisation. However, in practice, such participation is almost always combined with the commission of other criminal offences, and therefore, full exemption from criminal liability based on Part 6 of Article 255 of the Criminal Code of Ukraine is out of the question. Although, the question arises whether it is advisable to talk in such situations about the complete exemption from criminal liability of participants in criminal organisations.

■ Conclusions

Based on the study results, an idea of the essence of the Ukrainian model of criminal law counteraction to the activities of criminal authorities is formulated, its potential opportunities and vulnerabilities are revealed.

1. This model includes the following elements:

1) recognition of such organised criminal associations as an organised group, gang, criminal organisation, and criminal community as independent forms of complicity;

2) establishment of criminal liability for such acts: a) creating an organised criminal association (criminal

organisation, gang), leading it, participating in it; b) establishing or spreading criminal influence; c) applying for the use of criminal influence; d) organising, assisting in holding or participating in a criminal meeting (sit-down); e) assisting members of criminal organisations and concealing their criminal activities;

3) recognition as special subjects of crimes of an official and representatives of the criminal world – a person who carries out criminal influence, a person who is in the status of a subject of increased criminal influence, a "code-bound thief";

4) establishment of a special type of exemption from criminal liability of participants of a criminal organisation for participation in it in the event of positive post-criminal behaviour (voluntary notification of the creation of a criminal organisation or participation in it and active assistance in its disclosure);

5) provision of the possibility of imposing a more severe punishment in the event of committing a criminal offence by an organised group due to the recognition of this circumstance as aggravating the punishment.

This model covers the maximum possible range of subjects who carry out organised criminal activity, contribute to its development or are otherwise involved in it; includes a detailed differentiation of criminal liability for their committed acts; contains grounds for criminal law incentives to cooperate with law enforcement agencies in solving a criminal organisation.

2. In addition to its absolute advantages, the model of criminal law counteraction to the activities of criminal authorities has serious drawbacks, which, although, allow it to be applied in practice, do not allow it to be done effectively enough. Among them:

1) inappropriate and too complex for use of provisions on the criminal community, a person who is in the status of a subject of increased criminal influence and participants in the meeting (representatives of criminal organisations or organised groups and persons who carry out criminal influence);

2) clear uncertainty, inaccuracy, and vagueness of the terms "due to authority, other personal qualities or capabilities", "other influence on criminal activity", underlying the definition of criminal influence and a person who carries out criminal influence;

3) uncertainty of the terms "criminal activity" at the legislative level;

4) limitation of a special type of exemption from criminal liability by participation in a criminal organisation provided for in Part 1 of Article 255 of the Criminal Code of Ukraine.

3. Considering the above, it is possible to predict certain difficulties in using the studied criminal legal tools when proving the illegal activities of criminal authorities as the elite of the criminal world (they have considerable experience, try not to leave traces of crime, skillfully disguise them, know the techniques and methods of law enforcement agencies, have corrupt connections in public authorities, etc.).

4. Among the promising areas of improvement of the Ukrainian model of criminal and legal counteraction to the activities of criminal authorities, the study highlights the following:

1) exclusion from the Criminal Code of Ukraine of the provision on the criminal community;

2) improvement of the definition of criminal influence by specifying its features and excluding unnecessary ones;

3) addition of the Criminal Code of Ukraine with the definition of criminal activity;

4) exclusion from the Criminal Code of Ukraine of the term "code-bound thief";

5) improvement of the regulation on the criminal meeting by changing the emphasis from its subjects to the purpose of this meeting.

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Кримінально-правова протидія діяльності кримінальних авторитетів: українська модель

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■ **Анотація**. Проблема протидії організованій злочинності в Україні завжди перебувала в центрі уваги як правоохоронців, так і вчених. Особливої актуальності вона набула у зв'язку зі створенням нового підрозділу Національної поліції України – Департаменту стратегічних розслідувань та наданням йому нових кримінально-правових інструментів для підвищення ефективності притягнення до відповідальності кримінальних авторитетів. Унаслідок внесення змін до Кримінального кодексу України суттєво змінилася модель кримінально-правової протидії діяльності кримінальних авторитетів. Зокрема, у законодавчий обіг введено такі поняття, як «злочинна спільнота», «вор у законі», «злочинний вплив», «злочинна діяльність», «особа, яка здійснює злочинний вплив», «особа, яка перебуває у статусі суб'єкта підвищеного злочинного впливу», криміналізовано нові діяння – встановлення або поширення злочинного впливу, звернення за застосуванням злочинного впливу, а також виокремлено в самостійну статтю організацію, сприяння в проведенні або участь у злочинному зібранні (сходці). Метою статті є дослідження сутності та змісту сучасної моделі кримінально-правової протидії діяльності кримінальних авторитетів, виявлення її концептуальних вад і формулювання пропозицій щодо вдосконалення. Під час дослідження застосовано комплекс наукових методів – системний, формально-догматичний (юридико-технічний), порівняльно-правовий, аналіз, синтез, індукція та дедукція. Вивчено спеціальну літературу, положення Кримінального кодексу України та судову практику їх застосування, проведено консультації з експертами. За результатами дослідження представлено цілісне уявлення про українську модель кримінально-правової протидії діяльності кримінальних авторитетів, розкрито її зміст. Напрацьовано рекомендації щодо тлумачення та подальшого застосування ст. 255, 255-1, 255-2, 255-3 Кримінального кодексу України. Виявлено концептуальні недоліки досліджуваної моделі та окреслено шляхи її вдосконалення, серед яких: 1) відмова від злочинної спільноти як самостійної форми співучасті; 2) уточнення визначення злочинного впливу шляхом конкретизації його ознак і виключення зайвих; 3) законодавче закріплення терміна «злочинна діяльність»; 4) відмова від терміна «вор у законі», передусім з огляду на те, що він стосується особи, яка перебуває в статусі суб'єкта підвищеного злочинного впливу; 5) зміна акцентів у визначенні злочинної сходки з її суб'єктів на мету цього зібрання

■ **Ключові слова**: організована злочинність; злочинна організація; злочинна спільнота; «вор у законі»; злочинний вплив

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The Impact of Globalisation on Legal Conduct

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■ **Abstract**. One of the adverse consequences of globalisation is the spread of illegal conduct in the world and an increase in crime rates. This circumstance determines the relevance of the subject under study. It is argued that the causes of illegal conduct are determined by the contradictions of social development, ideological confrontation, economic, political, social inequality of the world's countries and the deformation of legal consciousness. The globalisation of the shadow economy, the emergence of new tax evasion schemes, including through offshore companies, laundering of proceeds from crime, piracy, raider seizures of other people's property, arms trafficking, aggressive globalism in the foreign policy of a number of states, regional wars, domestic conflicts, information wars, arbitrary interpretation of certain religions, distortion of their principles by extremist organisations – all this causes the crisis state of the economy, politics, socio-cultural and spiritual spheres of society and crime in many countries of the globalised world. The purpose of this study is to highlight the understanding of illegal conduct through the lens of the adverse impact of globalisation processes on it. The methodological framework of this study comprises a system of philosophical and ideological, general scientific and special scientific principles and methods, namely principles of objectivity, concreteness, complexity; Aristotelian, systemic, structural-functional, formal legal, and comparison methods. The study found that illegal conduct in a globalised world is promoted by social contradictions generated by globalisation or stimulated by this process. It is noted that globalisation is contradictory. It has both positive and negative, anti-criminogenic and criminogenic properties, and criminogenics dominate – it is a peculiar consequence of both political, economic, and cultural expansion, and a significant stratification among the extraordinarily rich and poor not only at the national level, but also at the international level. Deformation of legal consciousness, extreme individualism, illegal conduct, crime, corruption affects the standard of living of society, contributes to the violation of human rights and forces us to independently search for numerous ways to realise legitimate interests, including illegal ones. The limitation of certain managerial capabilities of the state, which is necessarily the case in a globalised society, also has a negative impact on solving problems of human rights protection and crime prevention. It is proved that in general, globalisation contributes to inequality, injustice, the destruction of traditional values of society, people's uncertainty about the future, the growing threat of illegitimate use of armed forces and aggression in the face of growing competition and imperial aspirations of individual governments. The scientific novelty of the article is an attempt to find all the globalisation factors that affect the deformation of legal conduct and stimulate the growth of crime rates. The results of the study contribute to finding ways to influence persons prone to illegal conduct, improving the means and methods of combating criminal organisations and individual criminals. This is the practical significance of the article

■ **Keywords**: illegal conduct; globalisation processes; crime; corruption; legal awareness

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Introduction

At present, the world is living in an era of globalisation. This term refers to an objective process and a natural stage in the development of the economy that initiates integration and unification in the political, social, ideological, humanitarian spheres, and manifests itself both at the level of the international community as a whole and at the level of each individual community. A characteristic feature of globalisation is the uneven development of individual countries, a combination of trends, rapprochement, and distance. Unevenness leads to instability. Accordingly, the entry of humanity into the era of globalisation leads to a situation where there is a threat of transition of the transforming system to a chaotic state, a threat to international security. Internal changes in a transforming country are usually actively stimulated from the outside to determine the main direction and ensure the manageability of the transformation itself. On the one hand, globalisation facilitates interaction between states, creates conditions for all countries to access the advanced achievements of Humanity, Saves resources, stimulates world progress; on the other – there is a consolidation of the peripheral model of the economy, unjustified loss of their resources by countries that do not belong to the most developed countries of the world, turning them into raw materials appendages of such countries, impoverishment of the population, its discontent and growing tension in the world.

Globalisation can lead to very contradictory consequences for national and international security, create new, unprecedented opportunities for the development and prosperity of various countries, as well as new, extremely dangerous challenges and threats. One of these challenges is the decline of morals and the deformation of legal awareness, which affects legal conduct. As you know, legal conduct covers both lawful and illegal conduct. Lawful behaviour is the activity of individual and collective entities that follows the norms of law, is carried out in the forms of compliance with legal prohibitions, performance of legal obligations, use of subjective rights, law enforcement, which is guaranteed and protected by the state. Legitimate behaviour is normative, and its consequences are usually favourable for the subject.

Illegal conduct is anti-normative, it violates a prohibitive or binding rule of law, is socially harmful, and is dangerous for personal and public interests protected by law. Illegal conduct (offence) is the opposite of lawful behaviour, a type of antisocial behaviour.

An offence can be considered as an illegal, guilty, socially harmful act (action or inaction) of a tort-capable person, which entails legal liability. This behaviour has become widespread in the world at the same time as the success of globalisation. Globalisation creates new, extremely dangerous challenges and threats both for society and for an individual, often creating conditions for violating their rights [1]. This leads to the spread of illegal conduct and an increase in crime rates. This circumstance determines the relevance of the subject under study.

The problems of a globalised society, including the causes of illegal conduct, were studied by well-known foreign and domestic scientists who analysed the goals, means, concepts, mechanisms and consequences of globalisation in the legal, economic, political, cultural and other spheres, identified the essential characteristics of illegal conduct, studied the signs of crime, its causes, dynamics, structure and nature of crimes [2]. In particular, Ya. Hylynskyi proved that globalisation is fraught with threats to all mankind, one of them is the globalisation of deviant manifestations, which is especially noticeable in the example of organised crime and terrorism [3]. V. Luneev studied the features of globalisation that contribute to the commission of crimes, as well as its positive aspects that will contribute to the prevention or prevention of criminal deviations. In the structure of these features, a significant place is occupied by the problems of employment, financial speculation markets, loss of sovereignty by national States, and others [4].

I. Matskevych justified the opinion that globalisation not only does not solve the problem of crime, but also creates conditions for its transformation into new types and forms. Globalisation processes provide a qualitatively different state of crimes in the field of communications, cyberspace, crime related to migration, and most importantly – crime of a terrorist and extremist profile [5]. L. Shelley draws attention to the fact that modern achievements of science and technology correlate with the emergence of similar novelty and audacity phenomena of the criminal world and terrorism, and the latter are increasingly inclined to combine, creating a certain terrible "conglomerate". If earlier criminals had their own niche in all social systems without exception, this turned them into a natural opponent of terrorism, now crime and terrorism gravitate towards each other, since "they have a common ecosystem". This ecosystem is a new, understudied phenomenon, a product of globalisation [6].

These authors usually considered a certain problem and did not focus on the study of all the globalisation factors affecting the deformation of legal conduct that stimulate the growth of crime rates [7]. However, such a study would be useful, it would help to understand how it is necessary to influence people who are prone to illegal conduct, how to improve the means and methods of combating criminal organisations and individual criminals to be able to act ahead of time, and not eliminate the consequences. Admittedly, such a study cannot be limited to one article. However, certain aspects of this complex issue require immediate

resolution, at least within the framework of this article.

Purpose of this study is an analysis of the adverse impact of globalisation on legal conduct and determining the possibilities of its neutralisation.

■ Materials and Methods

The choice of research methods is determined by the tasks that the authors set for themselves. The methodological basis of the article is a system of philosophical and ideological, general scientific and special scientific principles and methods, in particular: principles of objectivity, concreteness, complexity; methods of formal-logical, systematic, structural-functional, formal-legal, comparison.

Guided by the principle of objectivity, the authors proceeded from the fact that factors of legal conduct often exist independently of the subject of knowledge, that they should be considered not only at the moment, but also take into account possible transformations in the future. The principle of concreteness stimulated authors to realise that there is no abstract truth, the truth is always concrete. For example, illegal conduct is not any behaviour, but one that violates a prohibitive or binding rule of law. The principle of complexity provided an opportunity to study various aspects of the problem of globalisation factors of legal conduct, namely: the essence of lawful and illegal conduct, its causes and consequences, the causes of corruption, crime, etc.

The formal-logical method was used to define the concepts of "globalisation", "globalisation factors", "corruption", and "legal conduct". The system method is applied in considering the criminogenic consequences of globalisation as a system of elements that manifests itself in various spheres: economic, political, legal, religious, etc. The structural and functional method is used to describe and explain all the globalisation factors of legal conduct, to study the relationship between them within a single whole, to determine the function of each of them in an integral structure. The formal legal method is used to formulate the concepts of "legal conduct", "criminogenic consequences", and "transnational crime". Using the comparison method, all globalisation factors of legal conduct (primarily illegal) were compared with individual consequences of globalisation.

■ Results and Discussion

The transformational processes of globalisation lead to changes in all spheres of society. The mutual dependence of the world's leading countries is increasing, and at the same time there is an aggravation of contradictions between them. The reason is the intensification of the struggle for profit, for influence in the world, for minerals, sales markets, for territories and transport communications, labour, etc. Contradictions are growing simultaneously with the growing needs of humanity and the onset of negative global climate changes, which result in a shortage of vital resources. With increasing tension in the world, the risks of new wars and conflicts increase [8].

The era of globalisation affects the boundaries that previously defined the natural rights of each person, their personal sovereignty and private life. Recently, restrictions on human rights have been significantly expanded and introduced to: ensure state and public security or the economic well-being of the country; prevent riots or crimes; protect health and morals; ensure the rights and freedoms of others; protect national security, territorial integrity; prevent the disclosure of confidential information; to maintain the authority and impartiality of the judicial authorities [9]. It is clear that the restriction of rights cannot be perceived positively by everyone.

Globalisation is a test of national and cultural identity, and tolerance and dialogue of cultures are the main means of overcoming contradictions in such conditions. In the context of globalisation, with the strongest influence of global culture, it is exceedingly difficult for individuals to maintain their own identity, which leads to mental illnesses and an increase in feelings of abandonment and insecurity. People are increasingly turning to primitive forms of self-realisation, because under the influence of manipulative technologies, it is much easier to accept a ready-made primitive identity than to build your own. In addition, legal consciousness, both individual and public, loses the usual moral guidelines that were formed in the past. At the same time, the need for universalisation and unification of legal regulators in connection with globalisation runs into a defensive reaction of national-oriented traditions of legal systems. The reaction to the tension that arises in this regard may be illegal conduct, a type of which is criminal behaviour.

The increase in crime rates is a response to political and economic expansion, on the one hand, and to the progressive stratification into "rich" and "poor" not only at the national level, but also at the interstate level – on the other. The collapse of crime has become one of the most acute problems of our time [10]. In particular, in Ukraine, criminal processes have become total in nature. The crisis state of society, the war unleashed by Russia, the decline in morals led to the fact that people began to take for granted not illegal conduct, but illegal. Furthermore, the population has long been accustomed to corruption, does not hope to protect their legitimate interests in the courts and, as a result, is inert nostalgic for the past, or tries to realise their legitimate interests in all available ways, not always considering their legality. Without a doubt, global globalisation problems affect the demanding situation in Ukraine.

Delinquency (misdemeanour, guilt) is a behaviour, understood as the actions of a particular person that

deviate from the current laws, threaten the well-being of other people or social order and are criminally punishable in their extreme manifestations. A person who demonstrates illegal conduct is considered as a delinquent person (delinquent), and the acts themselves are considered as torts. Delinquent behaviour is a form of deviant behaviour. Under deviant behaviour (lat. *deviatio* – deviations) understand the actions of a person and social phenomena that do not meet the officially established or actually established norms (standards, templates) in a given society, violate them. The deviation can be either positive or negative. Negative deviations are dysfunctional, they disorganise the system. This is a social pathology: crimes, alcoholism, drug addiction, suicide, etc. [11]. It is precisely such deviations that require the attention of legal Science. They indicate the existence of a conflict between the individual and society, between individual and public interests. These conflicts are stimulated and worsened by various factors, including the consequences of globalisation, primarily criminogenic ones.

Geopolitical conflicts are of particular concern. The violation of the geopolitical balance caused by the destruction of the bipolar system of international relations is a condition for increasing social instability in the world and increases the risk of geopolitical conflicts that have unpredictable dire consequences for the world community and stimulate both illegal conduct and crime.

The consequences of globalisation in the economic sphere are dangerous. These are the globalisation of the shadow economy, the emergence of new tax evasion schemes, including through offshore companies, laundering of proceeds from crime, piracy, Raider seizures of other people's property, trade in weapons, low-quality goods, counterfeit medicines, etc. In the political sphere: aggressive foreign policy of several states, regional wars, internal conflicts, information wars, indirect wars, that is, the complex use of methods of economic and informational influence on the enemy in combination with operations of special services, military threats and demonstration of military power, including threats to use nuclear and bacteriological weapons. In the legal sphere-the use of legal instruments to influence the policies of sovereign states. In the religious sphere: arbitrary interpretation of certain religions, distortion of their principles by extremist organisations. In the socio-cultural sphere: destruction of national systems of education, health, social protection, culture, marginalisation and degradation of the population, formation of a criminal market for Cultural Property, promotion by the mass media of the cult of violence and cruelty [12]. Each country brings its own cultural characteristics to the World Environment. Often, deep cultural differences lead to many problems related to contradictions in the system of values, which can significantly affect the legal consciousness of the population and its legal conduct. The main criminogenic consequence of globalisation is the globalisation of crime, including transnational organised crime, international terrorism, and global corruption.

Transnational crime as a set of crimes that, according to international legal instruments, are recognised as transnational and are naturally repeated in more than one state over a certain period of time and cause damage to two or more states or the interests of legal entities or individuals of two or more states, has received a powerful impetus for development due to the opportunities provided by globalisation. In the structure of transnational crime, three elements are traditionally distinguished: international crimes; crimes of an international nature; crimes related to foreigners. Now its destructive capabilities are increasing due to the erosion of state borders, increased transparency, and the expansion and interpenetration of economic markets that were previously closed or tightly controlled by states. This creates conditions for the emergence of new, previously unknown forms of international crime and its professionalisation.

Transnational crime is often organised. The characteristic features of transnational organised crime and the ways of its functioning are: the presence of a complex structure; ignoring state borders, International and national legislation; the struggle for new spheres of criminal influence in one or more countries; the presence of a powerful material and financial base; the implementation of their intentions through bribery of officials, violence, extremism and terrorism; conspiracy, intelligence and counterintelligence, penetration into state authorities and management, primarily bodies and institutions engaged in foreign economic activity, border and customs control; exit from the shadow sector of the economy, money laundering, the use of modern information and computer technologies, scientific and technological achievements in the commission of crimes; the commission of criminal acts as a business to obtain maximum benefits; the use of significant differences in the criminal justice systems of different countries.

The transformation of organised crime in a particular country into transnational crime is due to socio-economic factors. However, a prerequisite for the development of already formed organised criminal ties in the criminal environment of different states, their international integration and transformation into transnational organised crime should be recognised as the corruption of the governments of individual national territories, the low level of countering crime by law enforcement agencies, technological progress and globalisation processes.

International criminal organisations are both the cause and consequence of the changes that have taken place in global politics and the economy: the

collapse of the Soviet Union and the formation of a number of independent, but economically very weak and unprotected states with transparent borders that are not always properly protected; the establishment of the European Union, which led to the weakening of customs procedures, passport and currency controls in Europe; changes in China's policy, which gave impetus to the active growth of economic relations in this country. It is the combination of these factors, according to some scientists, which has become a condition for the formation and strengthening of Transnational Organised Crime [13].

National Crime in the context of globalisation is becoming a concentration of primitive, mostly self-serving, general criminal offences that border on a marginal lifestyle and can be controlled by criminal justice authorities.

In the last decade, the international community's concern has increased over the changing types of crime and the emergence of new types of crimes, such as cybercrime, maritime piracy, crimes against wildlife and the illicit trafficking of Cultural Property, human organs, and counterfeit medical products. To a certain extent, this is due to the significant amount of illegal income that can be obtained, as well as using modern technologies and loopholes in national and international legal documents.

Global changes that ambiguously affect the course of World Development are one of the causes of corruption [14; 15]. Corruption is deeply rooted in the public administration system and is purposefully supported by Ukraine's internal and external opponents.

Among scientists, there are different approaches to defining the concept and main characteristics of corruption. The definitions discussed in the scientific literature differ in that the authors refer corruption to an offence or only a crime or consider it as a multidimensional social phenomenon.

In the scientific literature, an interesting idea has been substantiated that corruption is a natural form of adaptation of an undeveloped person to the conditions of a developed civilisation. Focusing on the standards of living of a "modern developed society", a person does not seek to meet the requirements of this "modern developed society". Thus, according to European fashion, 99% of the population is accustomed to the fact that everyone should live with dignity, but they must live according to their condition. In a progressive economy, people who are more responsible survive. Having acquired a tendency to refrain from crimes, meanness, impudence, a person thereby loses the means of survival in conditions of lack of resources. If a person had to live under the conditions of economic standards that came from outside, it is likely that he will use new opportunities according to the old rules (look for ways to steal under new conditions) [16].

Intellectual degradation is a dangerous consequence of corruption. Constant life in conditions of violations cannot but deform the individual, and this applies to both sides of a corrupt act. In the moral aspect, there is a discrediting of important attitudes and values for society and replacing them with others corresponding to corruption, but extremely dangerous [17, p. 502].

Intellectual degradation leads to the degradation of professionalism and the spread of profanity, primarily in education and science. Corruption in education is dangerous, because citizens who take part in this process get used to the acceptability of corrupt actions from childhood. As a result, a favourable ground is automatically created for further corruption arbitrariness and degradation of the moral norms of society. However, the paradox is that only through education, in principle, can the growth of corruption in society be stopped, while reducing its danger. As a result, we have such an ironic "cycle of corruption in nature" [18, p. 65].

A long-standing and urgent problem is the quality of Ukrainian science and its compliance with the urgent needs of the state. In other words, this refers to the "sanctum sanctorum" for everyone who crosses the threshold of a scientific or educational institution – scientific products, personal results of theoretical or applied research. At all times and socio-political formations, it was the quality of these products, their relevance, novelty, expediency and usefulness for the common cause that depended not only on the authority of the researcher, his further official or professional career, but also on the place of a scientific or educational institution in the hierarchy of non-material values of a certain community. And on a national scale, this is both its prestige and place in the world civilisation [19].

However, now, because of numerous additions to the ranks of corrupt pseudo-scientists, science is becoming a means of making money. The pinnacle of wisdom was wealth, and the question "If you are so smart, then why are you poor?" was perceived as a credo of life philosophy. According to this credo, the crowd of "merchants" in science has long defeated all other layers in terms of number and dictates its own rules of behaviour.

However, this is not only a problem for Ukraine. Fundamental science has been in a state of acute crisis since the second half of the twentieth century and has not discovered a single new law, has not created a single new fundamental direction. Qualitative development in science has stopped and survival on the principle "what do you want?". Applied science has defeated fundamental science, although it cannot exist without it. Those applied branches of science that are somehow connected with the manipulation of the masses and serve the cause of their subordination are developing. These are computer science, telemetry,

genetic engineering, biotechnology, and Social Psychology. All of them serve the needs of social management in the direction of strengthening the manipulative component [20]. The only exception is the rapid development of science in the countries of Southeast Asia, which will go down in the history of human civilisation as evidence of the great opportunities of states that have embarked on the path of independent development. This applies to Japan, China, Hong Kong, Korea, Singapore, Malaysia, Taiwan, Thailand, Indonesia, and the Philippines, which have achieved impressive success in all areas of public life.

A characteristic feature of the era of globalisation and a significant factor in crime is active migration of the population, including illegal migration, when millions of people are forced to move from one state to another in search of work, Shelter, Security, and a better life. People find themselves on the edge of various social systems, ideologies, and religions that are unusual for them and that are not always easy for them to join. Migrants often become outcasts of society [3].

At the same time, with the increase in the volume of illegal importation of migrants observed in recent years, the degree of sophistication of this type of crime is sharply increasing. Persons involved in the smuggling of migrants use the latest communication technologies to obtain information about changes in border control measures and adapt to them; in response to restrictions, they quickly change their routes. Social networks and digital communications provide such offenders with unprecedented ways of supply: the ability to carry out direct sales and attract customers through modern social networks; and to a lesser extent depend on local intermediaries.

On the other hand, the introduction of digital technologies clearly reduces information gaps that can be exploited by persons engaged in illegal importation of migrants. Mobile and network technologies can be used to help migrants connect on popular social networks for support and information. Furthermore, the proper use of technology can help governments, businesses, and non-governmental organisations prevent and mitigate the effects of this disaster [21].

The share of migrant criminals in the commission of serious crimes is usually consistently high. Most often, they commit theft, fraud, robberies, robberies, terrorist acts, murders, evade customs duties, are involved in the smuggling of narcotic drugs, weapons, military supplies and explosives, special technical means of secretly obtaining information, etc.

The main factors determining the increase in crime of foreign citizens and stateless persons are: the illegal nature of their stay on the territory of another country; employment of migrants mainly in the shadow sector of the economy, where wages are low, the employee is deprived of social guarantees, and often simply disenfranchised; negative attitude towards migrants of the local population, interethnic, interreligious and interfaith conflicts; low prestige of their social role, discomfort that they experience as a result of being in a culturally foreign space, the presence of a marginal environment. The change in the priorities of the legal consciousness of migrants caused by globalisation can lead to illegal conduct. Thus, the massive flow of migrants to the European Union and the increase in crime are directly related. A significant role is played by the demographic composition of migrants: migrants and refugees are mainly young men, and it is this category of the population that most often commits crimes. Foreign migrants of this age group, as a rule, do not have a higher education, and the motives for crimes are material difficulties. Furthermore, they are socially isolated, lonely, and live side by side with people who are in the same conditions and under the influence of the same risk factors. Most of them are in places similar to refugee camps, where it is almost impossible to be alone, which increases the risk of committing crimes. A significant part of the crimes committed in this environment, especially of a violent nature, are committed by refugees and are directed against refugees like themselves [22].

Globalisation factors of illegal conduct are directly related to the contradictions of social development, ideological confrontation and economic, political, and social inequality of the world's countries, and therefore to different degrees of their participation in globalisation processes. On a global scale, the policy of globalisation increases the gap between poor and rich countries, social and economic inequality, worsens the already deplorable situation of the population of the world's poorest countries, can lead to armed conflicts, the destruction of individual peoples' cultures, their physical extermination and create conditions for the disappearance of entire nations. At the domestic level, the contradictions generated by globalisation lead to the curtailment of social programs, limiting the role of the state in solving social problems, including the protection of human rights and crime prevention. The personal level of contradictions is associated with a worldview crisis, loss of identity, anxiety, and extreme individualism, which pushes a person to solve their own problems in any way, even illegal. This situation has criminogenic potential. Now globalisation processes have not only activated the dynamics of all types of crime and caused their interpenetration, but also limited the possibilities of social control over crime both by limiting the resources of individual states and by lagging the opportunities for international cooperation with the objective needs of crime-fighting practice.

The inconsistency of globalisation is influenced by the riskogenics of modern communities, which are characterised by instability and uncertainty. The entire

social reality, all social strata and groups are at risk, which threatens the development of countries and peoples both at the global, local and regional levels. The underdevelopment of civil society and its institutions, economic instability, changing political, cultural, moral values, and awareness of social insecurity make modern society a "risk society". All these processes, combined with the ambiguity of globalisation itself, lead to unpredictable consequences.

Under the influence of the processes of globalisation, there is a devaluation of traditional legal values, a decrease in the level of moral guidelines, which leads to a loss of legal orientation and the formation of legal nihilism. As a result, certain legal and moral norms become unable to influence the legal consciousness of subjects of legal relations. At the same time, democratic values themselves, including rights and freedoms, are used as a means of geopolitical influence, which calls into question the basis for their universalisation and legitimacy [23]. Society should realise that the construction of a democratic state governed by the rule of law and Ukraine's entry into the European system of human rights protection should take place in reality, as well as be supported by the relevant domestic and foreign policy of the country regarding human rights, a harmonised system of legislative acts and real mechanisms for guaranteeing fundamental freedoms [24].

Globalisation completely allows for inequality and even implies the division of the world into a "centre" and "periphery". The main goal of relations between the Western "global over society" and the rest of the world is to dominate other countries. The Westernisation that it is carrying out is aimed at the total dissemination of market values of Western civilisation and increasing the role of international financial and economic organisations. This is a planetary-oriented expansion carried out by individuals, collectives, States and Interstate associations in various spheres and is accompanied by the convergence of various civilisational systems, the erasure of differences between them, the subordination of all national cultures to a single cosmopolitan cultural standard. Westernisation is aimed at bringing certain victims (countries capable of uncritically borrowing models of public life that the West imposes on them) to such a state that they lose the ability to exist independently, and aims to make them an appendage, a donor of the "global community". It can provide economic assistance to a "reformed" country, but only to the extent that it contributes to control over its economy, loss of economic independence and security. In particular, one of the factors of Western globalisation is the rapid entry of the English language into our lives. But English-language expansion cannot be positively perceived by most of the population, which does not speak this language and does not understand the need for such innovations. Such processes often cause hostility towards western culture, social protest, they do not contribute to legitimate behaviour and improve the criminal situation in the country and in the world.

The scientific novelty of the publication lies in the fact that it proves that the globalisation factors of illegal conduct consist in social contradictions that are generated by globalisation or stimulated by this process. Illegal conduct is promoted by the following factors: ideological contradictions, economic, social, political inequality of individual countries involved in globalisation processes; the development of local economic crises into global ones; the restriction of certain managerial capabilities of the state, which negatively affects the solution of problems of human rights protection and crime prevention.

Conclusions

Globalisation is accompanied by incredibly significant transformations of the socio-psychological state of the individual, in particular, it contributes to the deepening of contradictions associated with the ideological crisis of the individual, loss of identity, extreme individualism and deformation of legal consciousness. Globalisation leads to inequality, injustice, the destruction of many established forms of existence, the erosion of traditional values of society, creates a state of uncertainty of a person before challenges, contributes to the growing threat of illegitimate use of armed forces and aggression in the face of growing competition and imperial aspirations of individual governments. Globalisation creates conditions for optimising interstate cooperation in the fight against crime, while at the same time contributing to the spread of crime. The spread of crime to a certain extent becomes a response to political, economic and cultural expansion, on the one hand, and to the progressive stratification into very rich and too poor, not only at the national level, but also at the interstate level, on the other.

In a globalised society, criminal threats cannot be considered outside the context of globalisation and humanitarian processes. Crime is one of the factors that affect social life, violate human rights, and force us to independently search for any ways to realise legitimate interests, including illegal ones. Crime and terrorism are present-day factors of insecurity and, in some cases, political instability. One of the determinants of transnational crime is the liberal migration policy of several states, based on the absolutisation of human rights. In crime prevention, restrictions on human rights are unavoidable, but they must be consistent with the requirements of extreme necessity.

The processes of globalisation should be accompanied by the universalisation of criminal legislation, which will support the existence of common principles

for the formation of a system of criminal prohibitions for all countries. However, the universalisation of criminal legislation should not contradict the national interests of the country, which support the preservation of each state's natural opportunities to include in its legislation norms that correspond to the peculiarities of national traditions, legal culture, religion, and objective living conditions of the population. Reducing the manifestations of corruption requires a change in the system of values and behaviour, moral and ethical norms, primarily in the upper echelons of power. A comprehensive approach to neutralising the globalising factors of illegal conduct requires the implementation of social policies aimed at eliminating the causes of offences.

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Вплив глобалізації на правову поведінку

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■ **Анотація**. Одним з негативних наслідків глобалізації визнано поширення у світі протиправної поведінки та зростання показників злочинності, що підтверджує актуальність статті. Зазначено, що причини протиправної поведінки детермінуються суперечностями суспільного розвитку, ідеологічним протистоянням, економічною, політичною, соціальною нерівністю країн світу та деформацією правової свідомості. Глобалізація тіньової економіки, поява нових схем ухиляння від податків, зокрема за допомогою офшорів, відмивання доходів, отриманих злочинним шляхом, піратство, рейдерські захоплення чужої власності, торгівля зброєю, агресивний глобалізм у зовнішній політиці низки держав, регіональні війни, внутрішньодержавні конфлікти, інформаційні війни, довільне тлумачення деяких релігій, спотворення їх принципів екстремістськими організаціями – усе це зумовлює кризовий стан економіки, політики, соціально-культурної та духовної сфер суспільства, злочинність у багатьох країнах глобалізованого світу. Метою статті є висвітлення розуміння протиправної поведінки крізь призму негативного впливу на неї процесів глобалізації. Методологічною основою дослідження слугувала система філософсько-світоглядних, загальнонаукових та спеціально-наукових принципів і методів, зокрема: принципи об'єктивності, конкретності, комплексності; методи формально-логічний, системний, структурно-функціональний, формально-юридичний, порівняння. Встановлено, що протиправну поведінку в сучасному світі значною мірою зумовлюють соціальні протиріччя, що породжені глобалізацією або стимулюються нею. Констатовано суперечливий характер глобалізації. Зауважено, що їй притаманні як позитивні (антикриміногенні), так і негативні (криміногенні) властивості, причому криміногенність домінує, оскільки слугує своєрідним наслідком політичної, економічної та культурної експансії, а також істотного розшарування на дуже багатих і злиденних не лише на рівні національному, а й на рівні міжнародному. Деформація правосвідомості, крайній індивідуалізм, протиправна поведінка, злочинність, корупція впливає на рівень життя суспільства, сприяє порушенню прав людини та змушує до самостійного пошуку різних способів реалізації законних інтересів, у тому числі способів незаконних. Обмеження певних управлінських можливостей держави як обов'язкова риса глобалізованого суспільства також негативно позначається на розв'язанні проблем захисту прав людини й попередженні злочинності. Доведено, що глобалізація в негативному контексті сприяє нерівності, несправедливості, нищенню традиційних цінностей суспільства, невпевненості людей у завтрашньому дні, зростанню загрози нелегітимного застосування збройних сил та агресії за умов зростаючої конкуренції та імперських прагнень урядів окремих держав. Наукова новизна статті полягає в спробі визначення всіх глобалізаційних факторів, що позначаються на деформації правової поведінки та стимулюють зростання показників злочинності. Результати дослідження сприяють визначенню способів впливу на осіб, схильних до протиправної поведінки, удосконаленню засобів і методів боротьби зі злочинними організаціями та окремими злочинцями, у чому й полягає практична значущість статті

■ **Ключові слова**: протиправна поведінка; процеси глобалізації; злочин; злочинність; корупція; правова свідомість

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Problems of Legal Regulation of the Use of Artificial Intelligence Technologies by the National Police of Ukraine

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■ **Abstract**. The introduction of modern information technologies, such as artificial intelligence, in the activities of the National Police of Ukraine simultaneously caused a number of legal problems regarding compliance with the rule of law during the use of such technologies, in particular, intelligent video surveillance systems, collection and analysis of information about personal life, etc. This necessitates the investigation of the current state of legal regulation of the use of artificial intelligence in police activities to identify and further eliminate gaps in legislation. The purpose of the study is: 1) to analyse laws and regulations on the establishment of information resources by the National Police of Ukraine, and information and analytical support for the activities of its divisions and territorial bodies; 2) to identify legal norms that are subject to additional regulation in connection with the use of AI technologies in police activities; 3) to develop proposals for laws and regulations to eliminate identified gaps in legislation. The methodological basis of the study is the following methods: comparative legal, legal modelling, system analysis, logical and legal, system and structural methods. Based on the findings, the main areas of using AI technologies in law enforcement activities of foreign countries and in Ukrainian practice were established, which later allowed determining and analysing the norms of current legislation for the regulation of the use of such technologies by the police. The authors of this study proposed appropriate changes to the current legislation, which should resolve the identified shortcomings, in particular, in terms of simplifying police access to video surveillance cameras and conducting information-retrieval work on the Internet

■ **Keywords**: law enforcement; security; offences; crime prevention; legislation; information technology

■ Introduction

Achievements in the field of artificial intelligence (AI) have attracted a lot of attention of researchers and opened up a wide range of useful opportunities for its use in various spheres of public relations. The introduction of AI technology is becoming an integral part of the development of socio-economic, technical, defence, legal, law enforcement, and other types of activities of national significance. In recent years, due to the development of human progress, many new information technologies have appeared in law enforcement activities, which function independently thanks to the use of AI. AI is becoming an area of strategic importance and a key driver of national development, as it can help implement a significant number of social issues, in particular in the law enforcement sphere [1]. The need for the use of AI technologies by the police is associated with the process of urbanisation, the concentration of crime in large cities, and its acquisition of more and more organised and professional forms.

Analysis of foreign and Ukrainian experience by law enforcement agencies revealed the effectiveness of the use of AI technologies in countering various forms of offences, in particular: in the field of road safety [2]; for the prevention, detection, and recording of committed offences [3; 4]; during the analysis of the criminal situation and forecasting the crime rate in a certain area [5] or in relation to a certain category of persons [6]; during the investigation of criminal proceedings, identification of persons, and the search for persons who have committed offences, hiding from pre-trial investigation bodies, the court of serving sentences, and missing persons [7; 8]; during expert examinations and expertise [9], and in other areas [10-12].

Thus, the use of PredPol AI software by the Los Angeles Police Department (USA) allowed preventing

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twice as many crimes, which is more effective than the existing modern skills used by practical units. Detection of crimes after the use of this technology increases from 10% to 50%. As for certain types of offences, the use of predictive police activity reduces the level of robberies to 50%, and thefts combined with penetration into housing – to 70% [3]. The use of PredPol forecasting technologies and the Geolitica system in Kent (Great Britain) reduced street violence by 6% in just four months [3].

In the city of Vinnytsia, the situation centre of the Headquarters of the National Police in the Vinnytsia region and units of the Vinnytsia police are being introduced into the "Vezha" security project, which is based on the use of neural networks and AI for video stream analytics from more than 600 video surveillance cameras that work both on the streets and inside public institutions: in particular, in schools and "Transparent offices". At the same time, the system contains 15 video analytics modules that automatically recognise faces, license plates, and type of vehicle to track people by various parameters. About "13,000 offences were detected during the year, and the situation centre provided more than 400 videos at the request of the courts. As a result, out of about a UAH 1 million of losses that the situation centre found, 750 thousand have already been reimbursed to the budget. For the second year in a row, the patrol police department ranks first in Ukraine in identifying cars and drivers who fled the scene of an accident. The percentage of road accident participants found is 94%" [13].

Thus, agreeing with H.M. Shorokhova [14, p. 300] the study notes that based on the tasks and functions of the National Police of Ukraine, which are aimed at ensuring the protection of human rights and freedoms, countering crime, maintaining public security and order, this law enforcement agency, like no other, needs the constant introduction of modern information technologies, in particular, related to AI, to ensure high efficiency of its divisions and territorial bodies to prevent the commission of criminal and administrative offences, identify persons who commit such offences, and ensure their effective investigation.

Various problems of regulatory and legal support for the formation of information resources by the police, and issues of information and analytical support for the activities of divisions and territorial bodies of the National Police of Ukraine were covered by V.O. Bayov [15], K.L. Bugaychuk [16], S.M. Knyazev, S.S. Chernyavsky, M.L. Gribov [17], Ya.L.Kovalchuk [18], D.K. Kozar [19], O.V. Kostenko [20]. At the same time despite the fact that the above studies revealed the problems of the activities of the police of Ukraine in the information and analytical sphere and contained solutions to a number of problems of regulating the processes of informatisation of the activities of police bodies and their practical implementation, the issues of regulatory support for the use of AI technologies by the police have been rather neglected.

As noted by O.V. Kostenko [20], the development of a competitive information environment using AI technologies is impossible without proper regulation, which requires the analysis of the regulatory framework for the use of AI technologies, in particular in law enforcement, primarily by units and territorial bodies of the National Police, which emphasises the relevance of this study.

The purpose of the study is to define problems of legal regulation of the use of AI technologies by the National Police of Ukraine. To achieve this goal, it is necessary to perform the following tasks: 1) analyse the legal norms regulating the development of information resources by the National Police of Ukraine, including information and analytical support for the activities of its territorial divisions to determine their ability to regulate the use of AI technologies by the police; 2) develop proposals for improving laws and regulations on the use of AI technologies by the police.

Materials and Methods

The methodological basis of the study was the specific methods of scientific knowledge, the key of which is comparative legal. The study also used the method of legal modelling and the logical method, system analysis, the content and purpose of which are disclosed in the paper.

The system analysis determined the main areas of application of AI technologies by law enforcement agencies of foreign countries and the police of Ukraine, which allowed formulating the content of norms that are subject to further analysis and regulation. The comparative legal method summarised the legal acts [21-32] regulating the development of information resources of the National Police of Ukraine, and the information and analytical support of the activities of its subdivisions and territorial bodies, and identified direct regulations that can ensure the use of AI technologies by the police. In addition, based on the tasks formulated above, the study applied legal modelling, which established the shortcomings of current legislation based on the correlation between the practice of using AI technologies by the police and the analysis of existing norms [22-24], and used the logical and legal method to formulate proposals to eliminate the identified contradictions. The use of the system and structural method helped define laws and regulations [20-31], which were necessary for a comprehensive investigation.

The normative basis of the study is the Constitution of Ukraine [21], laws of Ukraine "On the National Police" [23], "On Operative Investigation Activity" [23], the Criminal Procedure Code of Ukraine (hereinafter – CPC) [24] and other laws and regulations [25-32], on the use of information resources by

the National Police of Ukraine, as well as information and analytical support for its activities.

The empirical basis of the study consists of the developments of a number of Ukrainian [9; 12; 14-20; 33-34] and foreign legal experts[1; 4; 6; 7; 10; 35], materials of the practice of law enforcement agencies of foreign states and the police of Ukraine on the use of AI technologies to prevent the commission of criminal and administrative offences, identify the perpetrators of such offences, and effectively investigate them, and the problems encountered during such activities.

■ Results and Discussion

Content of the legal mechanism for police use of AI technologies

First, it is necessary to note that the fundamental legislative act that establishes the principles of the National Police of Ukraine is the Basic Law of the state – the Constitution of Ukraine [21]. M.V. Kovalev, S.S. Yesimov and Yu.R. Lozynsky [33, p. 169], specify that the norms of the Constitution of Ukraine are norms of direct action, respectively, any law, bylaw, or regulation must comply with the provisions of the Constitution of Ukraine and not contradict them. The study agrees with B. Verheij and [1] and S. Greenstein [35], who noted that the preservation of the rule of law in the era of the spread of AI, is the main criterion of the rule of law, where only the basic principles of information legislation are consolidated, and any branch or institution of law, on which all other laws, decrees, resolutions, and other regulations are based, defining the basis for regulating a certain sphere of public relations, including the use of AI by the National Police of Ukraine. Part 2 of Article 19 [21] states that "state and local self-government bodies, their officials are obliged to act only on the basis, within the limits of their powers and in the manner provided for by the Constitution and laws of Ukraine".

The regulatory basis for the use of IT by the National Police of Ukraine, which, in particular, include AI technologies, for the purpose of preventing and countering offences, is a system of legislative acts that determine the permissibility, procedure, and conditions for using these technologies in law enforcement activities. This system can be divided into two categories:

– the first one contains legislative and other regulatory acts that establish general requirements for IT systems, which include, in particular, AI technologies, and regulate the circulation of information, in particular, in the National Police of Ukraine [25-31];

– the second one defines the grounds and areas of information support for the National Police of Ukraine, the establishment and use of information resources of various types, the use of information technologies, that is, AI technologies, in countering offences [22-24].

Regarding the first category of legislative acts, on December 2, 2021, the Order of the Cabinet of Ministers of Ukraine No. 1556-R approved the concept of development of artificial intelligence in Ukraine [31], due to which the definition of the concept of "artificial intelligence" at the legislative level will open access to the latest technologies in new areas, including in law enforcement. This concept defines the term "artificial intelligence" as "an organised set of information technologies, with the use of which it is possible to perform complex tasks by using a system of scientific research methods and algorithms for processing information obtained or independently created during work, as well as create and use own knowledge bases, decision-making models, algorithms for working with information, and determine ways to achieve the tasks set". However, the content of the above concept [31] does not define legal recommendations for the use of AI in the activities of the National Police of Ukraine. Therefore, the study suggests that it si necessary to focus on the analysis of legislative acts of the second category regarding their ability to regulate the use of AI technologies by the police at the present stage.

Article 23 of the Law of Ukraine "On the National Police" [22] provides police officers with a number of powers, some of them allow AI technologies to be used, in particular: "carries out preventive activities aimed at preventing the commission of offences (paragraph 1); identifies the causes and conditions that contribute to the commission of criminal and administrative offences, takes measures within its competence to eliminate them (paragraph 2); takes measures to identify criminal and administrative offences; stops identified criminal and administrative offences (paragraph 3); takes measures aimed at eliminating threats to the life and health of individuals and public safety that have arisen as a result of committing a criminal or administrative offence (paragraph 4); searches for persons hiding from pre-trial investigation bodies, investigating judges, courts, evading the execution of criminal sentences, missing persons, and other persons in cases defined by law (paragraph 7); takes measures to ensure public safety and order in streets, squares, parks, squares, stadiums, train stations, airports, sea and river ports, and other public places (paragraph 10); regulates road traffic and monitors compliance with traffic rules by its participants and the legality of operation of vehicles on the road network (paragraph 11); protects objects of state property rights in cases and in accordance with the procedure established by law and other regulations, and also participates in the implementation of state protection (paragraph 19); performs contractual protection of individuals and objects of private and communal property rights (paragraph 20); identifies personal vehicles temporarily imported into the customs territory of Ukraine by citizens for more than 30 days and not registered in Ukraine within the time limits established by law (paragraph 29); takes measures to

detect illegal driving of vehicles in respect of which the restrictions established by the Customs Code of Ukraine [36] are violated, namely: the terms of their temporary import and/or movement in the customs transit regime are violated; vehicles are used for business purposes and/or income generation in Ukraine; vehicles are transferred to the possession, use, or disposal of persons who did not import them into the customs territory of Ukraine or did not place them in the customs transit regime, as well as measures to detect illegal disassembly of such vehicles (paragraph 30)". Thus, the above list indicates that there are sufficient grounds and areas of law enforcement activity in which AI technologies can be used by the National Police.

The next element to be analysed is the legally regulated ability to collect and process information using AI technologies and its tools. Thus, according to Part 2 of Article 25 of the Law of Ukraine "On the National Police" [22], the police within the framework of information and analytical activities: forms databases (banks of data) included in the unified information system of the Ministry of Internal Affairs of Ukraine; uses databases (banks of data) of the Ministry of internal affairs of Ukraine and other state authorities; carries out information-search and information-analytical activities; carries out information interaction with other state authorities of Ukraine, law enforcement agencies of foreign states, and international organisations".

In addition, Article 27 of the above Law [22] provides for the possibility for the police to have "direct operational access to information and information resources of other state authorities with strict compliance with the Law of Ukraine "On Protection of Personal Data" [30]. Information about access to the database (bank of data) should be recorded and stored in an automated data processing system, including information about the police officer who received access and the amount of data that was accessed. Each action of a police officer to obtain information from information resources provided for in Articles 26 and 27 of this Law is recorded in a special electronic archive, the maintenance of which is entrusted to the information technology service of the Ministry of Internal Affairs of Ukraine. The electronic archive records the surnames, first name, patronymic, and the number of the special police badge, the type of information received, the register from which the information was obtained, the time of receiving the information, and other data necessary to identify the police officer who received information from the registers" [30].

Use of AI technologies in crime prevention

Analysis of the provisions of Articles 25 and 27 of the Law of Ukraine "On the National Police" [22] indicates that they do not fully provide an opportunity to use AI tools for collecting and further processing information. In particular, these norms do not provide for the possibility of obtaining data from video cameras belonging to local self-government bodies, enterprises, organisations, institutions of non-state ownership, and from individuals with their consent.

Article 27 of this Law [22] does not specify or provide an interpretation of the term "operational access" to information and information resources of other state authorities, namely, how it is carried out.

Article 25 does not provide for the procedure for obtaining information from other legal entities that do not belong to the authorities, and from individuals. For example, the concept of "Safe City" [37] provides for the use of a set of software and hardware and organisational measures to ensure video protection and technical security, as well as to manage housing and communal services and other distributed objects in a single information space, using a single video surveillance system with decentralised user access control.

To ensure the performance of the functions of ensuring public safety and order, road safety, property protection, etc., the National Police of Ukraine provides for the use of hardware complexes of video surveillance systems that record what is happening in public places: stadiums, inside and outside public and/or private premises, transport highways, airports, train stations, etc.

However, in Ukraine, many hardware complexes of video surveillance systems are on the balance sheet of municipal bodies, associations of owners of residential and non-residential premises, municipal enterprises, etc. It is well known that local self-government bodies, as an organisationally independent element of the local self-government system and municipal enterprises do not belong to state authorities. As a result, access is complicated and the efficiency of analysis by law enforcement agencies of the information video stream that comes from the above-mentioned video surveillance cameras in real-time is lost, and this, in turn, negatively impacts the effectiveness of preventing and countering offences.

Nowadays, there are various algorithms for exchanging and accessing police information servers and video surveillance systems that do not belong to state authorities, as a rule, these are memoranda, various forms of agreements and contracts. In some cases, the procedure for police officers' access to video data is established by acts of local self-government bodies, while in others it is not regulated at all [34]. Therefore, legally defined access to video surveillance devices and information processing in the work of the National Police of Ukraine is of great importance in preventing and solving offences, as well as identifying the persons who committed them, etc.

Another area of legal regulation of the use of

AI technologies by the National Police is countering cyber threats. The fight against cybercrime requires high-tech tools, and it is AI that is ideally suited for solving such an extremely complex problem, since it is able to effectively detect, recognise threats, and respond effectively to them than conventional software approaches. At the same time, the Law of Ukraine "On the National Police" [22] practically does not contain provisions regulating the use of various software products, in particular AI technologies, to search for illegal information on the Internet.

Thus, paragraph 3) of Part 2 of Article 25 of the Law of Ukraine "On the National Police" [22] is proposed to be set out in the following wording:

"3) The police in the framework of information and analytical activities forms information databases, carries out information-retrieval and analytical activities, in particular on the Internet, and through online access to video surveillance cameras, information resources belonging to state authorities, and legal entities, regardless of their ownership forms, individuals, local self-government bodies (communities). Access to video surveillance cameras, information resources of legal entities that do not belong to state authorities, individuals, local self-government bodies (communities) is carried out only with their consent or in accordance with the procedure provided for by criminal procedure legislation".

Regulation of the use of AI technologies in countering criminal offences

Analysis of the provisions of the Law of Ukraine "On Operative Investigation Activity" [23] reveals that it establishes the fundamental legal norms regulating the permissibility of conducting operative investigation activities, respect for human rights and freedoms, interaction with government bodies and the population, and the legislative regulation of all operative investigation activities, as a result of which the materials obtained in the process of its implementation have the value of data obtained in accordance with the procedure provided for by law.

Article 6 of the Law of Ukraine "On Operative Investigation Activity" [23] defines the grounds for conducting operative investigation activities, while Article 7 of this Law states that "units that carry out operative investigation activities are obliged, within the limits of their powers, in accordance with the laws that form the legal basis of operative investigation activities, to take the necessary operational search measures for the prevention, timely detection, and suppression of criminal offences and exposing the causes and conditions that contribute to the commission of criminal offences, to carry out prevention of offences. In the case of the identification of signs of a criminal offence, the operational unit that carries out investigation activities is obliged to immediately send the collected materials, which record the actual data on the illegal acts of individuals and groups, to the appropriate pre-trial investigation body to start and carry out a pre-trial investigation in accordance with the procedure provided for by the Criminal Procedure Code of Ukraine" [23]. Thus, these norms can serve as grounds for the use of AI technologies by units of the National Police of Ukraine engaged in operative investigation activities.

In Article 8 of the above-mentioned Law [23], to obtain information, the legislator grants units engaged in operative investigation activities exclusive rights, which, in particular, in accordance with PP. 6, 7, 9, 11, 12, 15, 18, 21 it is possible to use AI technologies, namely the right to: "collect information about the illegal activities of persons in respect of whom verification is being carried out; secretly identify and record traces of a serious or especially serious criminal offense; carry out audio, video monitoring of a person, removing information from electronic communication networks, electronic information networks in accordance with the provisions of articles 260, 263-265 of the Criminal Procedure Code of Ukraine [24]; monitor a person, thing or place, as well as audio, video monitoring of a place in accordance with the provisions of articles 269, 270 of the Criminal Procedure Code of Ukraine [24]; establish the location of a radio-electronic vehicle in accordance with the provisions of Article 268 of the Criminal Procedure Code of Ukraine [24]; receive information from legal entities or individuals free of charge or for remuneration about criminal offenses that are being prepared or committed, and about a threat to the security of society and the state; create and apply automated information systems; directly conduct or initiate criminal analysis" [14, p. 302; 23].

At the same time, the use of AI technologies by the police allows circumventing the Law of Ukraine "On Operative Investigation Activity" [23] and the Criminal Procedure Code of Ukraine [24]. This phenomenon can be demonstrated in the following example: an AI programme, by analysing information, independently determines the places where a criminal offence is likely to be committed and begins to record such places in real-time. If certain actions are performed, the AI programme independently recognises by certain algorithms that the actions of certain persons contain signs of a criminal offence, and investigation using AI tools based on video surveillance. In the future, the AI programme begins monitoring the further actions of persons who leave the place of committing a criminal offence. At the same time, the AI takes measures to identify persons who may be involved in such an illegal act.

Thus, the process of detecting a criminal offence, collecting information about illegal activities of persons, recording traces of a serious or especially serious criminal offence, and monitoring a person, item,

or place using AI technologies can be carried out without practical intervention by employees of operational units and an investigator, which already contradicts the current legislation. Considering the use of AI technologies for countering criminal offences in their structure go beyond the current Law of Ukraine "On Operative Investigation Activity" [23] and the Criminal Procedure Code of Ukraine [24], it is proposed to regulate such activities of the National Police of Ukraine by a separate regulation.

As for the bylaws regulating the use of information technologies in the National Police of Ukraine, today the Order of the Ministry of Internal Affairs of Ukraine dated August 03, 2017 No. 676 approved the "regulation on the information and telecommunications system "information portal of the National Police of Ukraine", which defines the main tasks, purpose, subjects, and structure of the information and telecommunications system "information portal of the National Police of Ukraine", and the conditions of its operation" [32]. Analysis of this provision shows that it does not contain norms that would fully regulate the use of AI technologies by the National Police of Ukraine, in particular: general standards or rules for the use of AI technologies, ways to implement decisions made using AI technologies, preventing violations of fundamental human rights related to the use of AI technologies in the work of law enforcement agencies. Along with this, it is necessary to develop new or make changes to existing regulations [32] on the use of AI technologies in the process of:

– introduction of geoinformation systems for spatial placement of objects using maps or plans, the possibility of using information and telecommunications systems of the Ministry of Internal Affairs of Ukraine and the National Police of Ukraine for the purpose of analytics and criminal analysis of offences;

– creation of specialised information intelligence systems for operational search purposes to ensure the conduct of operative investigation activities and secret investigative (search) actions in public telecommunications networks;

– implementation of intelligent video surveillance systems for the purpose of recognising and classifying video surveillance objects and tracking their path of movement;

– use of certain types of vehicles, including those moving on or under the surface of the water, unmanned aircraft, etc.;

– protection of objects of various forms of ownership;

– establishment of the location of persons hiding from pre-trial investigation bodies, investigating judges, courts, evading the execution of criminal sentences, missing persons, and other persons in cases defined by law;

– determination of the legal status of AI technologies in the criminal procedure legislation of Ukraine, including during forensic examinations and research, in particular, during the investigation of criminal offences committed using AI technologies.

In addition, it requires the adoption of departmental regulations of the Ministry of Internal Affairs of Ukraine and the National Police of Ukraine, which would:

– define general standards (rules and restrictions) for the use of AI technologies in the National Police of Ukraine;

– the procedure for using tools for obtaining information by divisions and territorial bodies of the National Police when using AI technologies, primarily during the use of video cameras capable of recognising faces that do not belong to state authorities;

– methods of implementation by a police officer or other authorised person of a division or territorial body of the National Police of Ukraine of decisions taken by AI systems;

– neutralise risks of violation of fundamental human rights associated with the use of AI technologies in the work of the National Police of Ukraine.

Conclusions

Analysis of usage practice materials of AI technologies by law enforcement agencies of foreign countries and in Ukrainian practice provided an opportunity to formulate areas of possible application of AI technologies in Ukraine, in particular: road safety; prevention, detection, and recording of committed offences; during the analysis of the criminal situation and forecasting the level of crime in a certain area or in relation to a certain category of persons; during the investigation of criminal proceedings, identification of persons, and the search for persons who have committed offences, are hiding from the pre-trial investigation bodies, the court of serving sentences and missing persons; during expert research and examinations, and in other areas.

Having analysed the current state of legal regulation of the development of information resources by the National Police of Ukraine, including information and analytical support for the activities of its divisions and territorial units, it is concluded that the provisions of the Law of Ukraine "On the National Police" do not exhaustively provide for the possibility of effectively regulating the use of AI technologies by the police, in particular, there are no provisions on the use of various software products, in particular AI technologies, to search for illegal information on the Internet.

In addition, the analysis of the norms of the law of Ukraine "On Operative Investigation Activity" and the Criminal Procedure Code of Ukraine in terms of the possibilities of using AI technologies by the police showed that the process of detecting a criminal offence, collecting information about illegal activities of persons, recording traces of a serious or especially

serious criminal offence, monitoring a person, item, or place using AI technologies can be carried out without practical intervention by employees of operational units and an investigator, which already contradicts the current legislation. This requires the development of common standards and rules for the use of AI technologies by the police, and ways to implement solutions that are made thanks to such technologies, to prevent violations of fundamental human rights in the work of law enforcement agencies.

Areas of legal regulation of the use of AI by the National Police of Ukraine are proposed, in particular, by adopting separate regulations.

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Проблеми нормативно-правового регулювання використання технологій штучного інтелекту Національною поліцією України

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■ **Анотація**. Упровадження сучасних інформаційних технологій, таких як штучний інтелект, у діяльність Національної поліції України зумовило виникнення низки правових проблем щодо дотримання законності під час використання таких технологій (інтелектуальні системи відеоспостереження, збір та аналіз відомостей про особисте життя особи тощо). Вказане обумовлює необхідність проведення наукових досліджень сучасного стану нормативно-правового регулювання використання штучного інтелекту в діяльності поліції з метою виявлення та подальшого усунення прогалин у законодавстві. Метою статті є: 1) здійснення аналізу нормативно-правових актів, які регламентують формування інформаційних ресурсів Національною поліцією України, а також інформаційно-аналітичне забезпечення діяльності її підрозділів і територіальних органів; 2) виявлення правових норм, які підлягають додатковому врегулюванню у зв'язку з використанням технологій штучного інтелекту в діяльності поліції; 3) вироблення пропозицій до нормативно-правових актів для усунення виявлених прогалин у законодавстві. Методологічною основою дослідження стали такі методи: порівняльно-правовий, правового моделювання, системного аналізу, логіко-юридичний і системно-структурний. За результатами дослідження встановлено основні напрями використання технологій штучного інтелекту в правоохоронній діяльності іноземних країн та в українській практиці, що дало змогу визначити і проаналізувати норми чинного законодавства стосовно врегулювання використання вказаних технологій поліцією. Запропоновано відповідні зміни та доповнення до чинного законодавства, що мають усунути виявлені недоліки, зокрема в частині спрощення доступу поліції до камер відеоспостереження та проведення інформаційно-пошукової роботи в мережі Інтернет

■ **Ключові слова**: правоохоронна діяльність; безпека; правопорушення; запобігання злочинності; законодавство; ІТ-технології

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Forensic Examination of Documents Made Using Computer equipment

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■ **Abstract**. The relevance of the study is conditioned by the presence of problems of forensic analysis of documents and the great importance of practical application of computer technology for the production of such documents. The purpose of the study is to investigate the prospects of using modern computer technology in the production of special documents and to assess the prospects for studying such documents using modern forensic methods. The basis of the methodological approach is a qualitative combination of methods of system analysis of modern criminalistics in the field of document research with an analytical investigation of the prospects for the use of computer equipment for the production of documents for their further criminal use. The results obtained should be considered the definition of the main types of forgery of documents and criteria for the use of modern computer equipment for the production of documents for the purpose of their further use in criminal intentions; the formulation of the main goals and objectives of performing methods of forensic analysis of documents made using computer equipment. The findings and the conclusions formulated on their basis are of significant importance for employees of modern forensic institutions, whose duties include performing a forensic analysis of documents produced using computer equipment, which is essential for solving crimes committed using modern computer and electronic equipment and preventing computer and electronic terrorism in everyday life

■ **Keywords**: handwriting and signature forgery; criminalistics; electronic equipment; forensic science; scientific research in criminalistics; crime detection

■ Introduction

The development of theoretical foundations for forensic analysis of documents produced using modern computer technology is essential from the standpoint of solving crimes committed using modern computer equipment. In addition, in this context, it is important to define the subject area of research from the standpoint of assessing its limitation to the analysis of documents using special forensic knowledge, or to include topical issues related to the analysis of documents in a broad sense, for example, including the features of document review by investigative units [1].

When searching for ways to effectively solve this problem, it is necessary to consider general approaches to defining the concept of a document and the main provisions in the field of forensic research of letters and documents. The introduction of such restrictions would help to determine the key types of research work reasonably, including the range of special knowledge necessary for the gradual establishment of a general characteristic of the research process [2]. At the same time, without considering the fact of insufficiency of some theoretical provisions of forensic analysis of documents, until now, a very serious problem was that a significant part of research activity in the field of modern forensic science was aimed exclusively at the investigation of theoretical provisions without practice, despite the fact that in this way the issues of general provisions of criminalistics are mainly raised, in particular, towards clarifying the subject, goals, and key tasks of modern criminalistics [3]. In this context,

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a wide range of issues related to the forensic analysis of documents that were produced using modern computer technology is essential from the standpoint of the need to continue research on the use of modern computer tools to commit various crimes aimed at document forgery [4].

Despite the need to continue research in this line, it is worth noting that modern criminalistics should qualitatively contribute to solving a wide range of existing issues that occur in the activities of law enforcement agencies, and create conditions for the progress of forensic science, toward conducting research aimed at improving the cooperation between law enforcement officials and representatives of modern forensic institutions.

Nowadays, there are certain difficulties in making distinctions in the areas of responsibility of modern experts, who conduct research in the field of forensic analysis of documents made using computer equipment, and employees of investigative units who are obliged to use the information obtained efficiently to solve crimes committed. However, the gradual creation of a qualitative basis for conducting qualified research on the use of modern computer technology to create various documents contributes to obtaining the results necessary for assessing the existing prospects for using modern computer tools to commit crimes aimed at forgery of documents with their subsequent criminal use [5]. It is also important to investigate the prospects of using computer technology to create man-made signatures, especially if these documents were created by electrophotographic method.

The main problem of earlier studies was the almost complete absence of factual material regarding the existing means of forensic analysis of documents produced using modern computer tools. *The purpose* of this study is the definition of modern means and existing prospects for forensic analysis of documents made using computer technology, which is important in the context of the development of modern forensic science and the qualitative understanding of the capabilities of modern computer technology in matters of forgery of documents and their further criminal use.

■ Materials and Methods

The methodological approach consists of a qualitative combination of methods of system analysis of modern criminalistics in the field of document research with an analytical investigation of the prospects for the use of computer equipment for the production of documents for their further use. This study involves the search for effective ways to use computer technology to forge handwriting and signatures, which are important aspects in creating high-quality copies of documents. The research was conducted on the basis of a pre-compiled theoretical framework, which acts as a qualitative foundation for conducting all further studies.

The theoretical basis consists of the findings of a number of Ukrainian and, mainly, foreign researchers who investigated problematic issues related to the forensic analysis of documents produced using modern computer technology. All materials presented in this research paper have been translated into English to facilitate the understanding and maximise the comprehension of the information presented therein.

The study included three main stages.

At the first stage, the theoretical basis was prepared, which is later used as the main foundation for further research. A systematic analysis of the methods of modern criminalistics used in the field of document analysis is performed. The main issues that can be effectively and efficiently solved through the practical use of modern methods of preparing expert assessments in the field of analysis of documents produced using modern computer technology are outlined.

At the second stage, an analytical investigation of the prospects for using computer equipment for the production of documents and their further practical use was performed. In addition, an analytical comparison of the results obtained with the findings and conclusions of other researchers was performed. This contributes to clarifying the results obtained, expanding the prospects for further analysis of the capabilities of computer technology in the production of documents and conducting forensic analysis of similar documents produced using modern computer technologies.

At the final stage, the final conclusions were formulated based on the findings, which determine the main trends in forensic analysis of documents produced using modern computer technology.

■ Results

The study of the prospects for conducting a forensic analysis of documents made using computer equipment has yielded the following results. Numerous issues related to the use of modern computer technology for the production of documents require a thorough investigation to determine the main areas of using computer technology for the production of documents and the possibilities of effectively stopping this phenomenon. An important aspect in this issue is the identification of the main methods of computer forgery of handwriting and signatures, which are essential from the standpoint of conducting further forensic research of these documents [6].

In general, forgery of handwriting and signatures using computer equipment involves:

1. Use of printers and other technical copying tools. They are necessary for scanning the document, which allows editing its main text if necessary. At the next stage, it is printed out while preserving the required content. In this case, it is necessary to establish an electrographic method of image reproduction. This is done with the typical gloss of the toner, typical dots, and

using surface application of strokes, without penetration into the paper fibres, in the complete absence of any traces of pressure.

2. Use of pantographs – devices that were originally created to reproduce and scale copies of drawings, maps, etc. When using a pantograph, it is possible to find the same, typical pressure that is not inherent in the manuscript. In addition, there will be no variability, because signs of the same type will not have any differences between them.

3. Use of plotters or graph builders, which are advanced versions of the pantograph that are controlled by a computer. A module with any printing device is used to create a high-quality image.

4. Use of a robotic arm. This technology was created specifically for the highest quality reproduction of handwriting. This device also reproduces differentiated pressure. However, in the case of handwriting imitation, the lack of variability can still be detected. In addition, in the case of signature forgery, the situation has significant complications. A monotonous pressure can be detected, including the absence of random strokes, blots caused directly by the device itself, and slowing down of movement. In the presence of a large number of samples, other deviations can also be found.

A forensic examination may be appointed to detect computer forgeries of handwriting and signature. Such an examination helps to solve many issues, including:

– types of equipment that was used to perform the records under study;

– printing devices that were used to create a record subject to forensic examination;

– sequence of drawing intersecting strokes in the studied records;

– was there any preliminary technical training when performing the test recording;

– were additional drawing, erasure, or etching used when applying the records;

– were there any changes to stamps, seals, or strokes in the documents under study, and if so, in what technical way were they made;

– what typographic font was used to create the text under study, if the font is present in the text.

These are only the main questions that are essential when performing a forensic examination, in general, the list of questions to a forensic expert who deals with the issue of conducting a forensic examination of a document made using computer technology is much wider [7].

In general, the tasks of forensic expertise are the following:

– determine the means of forgery of a document or its individual parts;

– determine the computer equipment used to create a forged document;

– establish the primary content of a document, in cases where it has lost readability for any reason;

– determine the deadline for developing a document as a whole or its individual parts.

Forensic examination of documents made using computer technology implies the mandatory participation in this procedure of not only a forensic expert, but also an investigator, who can act independently or with the involvement of a specialist. In general, the purpose of forensic research in documents made using a computer requires the necessary basis [8]. Such a study is a type of forensic examination performed to obtain certain evidence and other objects on behalf of pre-trial investigation bodies and judicial instances to resolve issues put to the expert.

Forensic examination of documents made using computer technology is necessary to determine the facts of forgery of documents, if there is a suspicion of such. In modern criminalistics, there is a conditional division of all detected forgeries into two main types: material and intellectual. Material forgeries involve making false information and illegal changes to a previously created document. Imitation of the original document by a fake is performed in whole or in part. Intellectual forgery involves purposefully drawing up a document in accordance with all the requirements for similar documents, but at the same time, it contains false information. Figure 1 shows schematically the main types of existing material forgeries of documents.

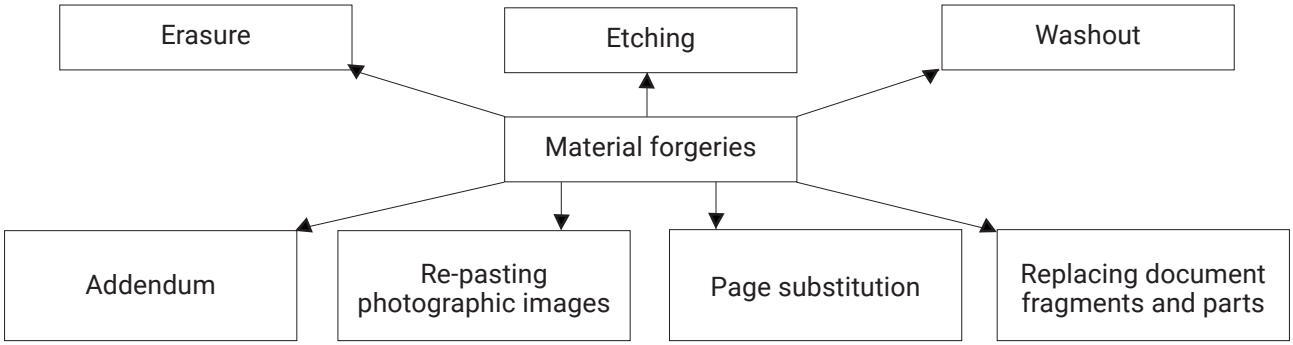

Figure 1. Main types of material forgery of documents

All types of material forgery of documents do not require the use of computer equipment, unlike intellectual forgery. Figure 2 shows the main types of intellectual forgeries, which in some cases are performed using modern computer equipment.

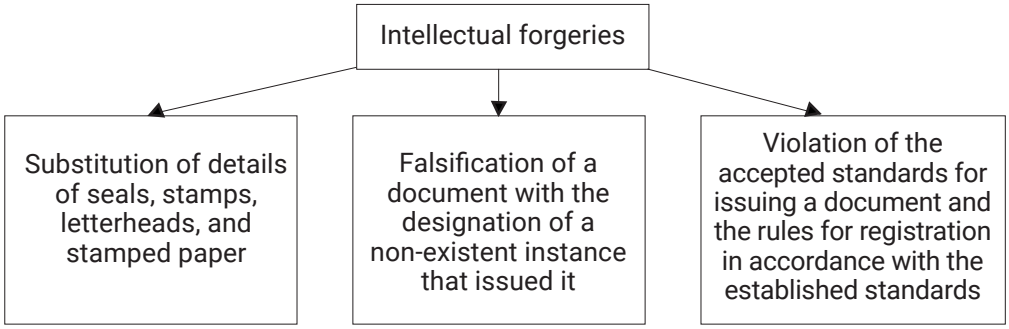

Figure 2. Main types of intellectual forgery of documents

Conducting a forensic analysis of documents made using computer technology allows identifying the main inconsistencies of the document under study in relation to the established sample, which is a sufficient basis for forming a conclusion about the fact of document forgery. Thus, with the help of forensic research, the evidence base necessary for conducting investigative actions and establishing the fact of forgery of documents is collected and systematised. At the same time, the most important aspect in this process is the preliminary receipt of good-quality original samples of documents, which are used during the examination for comparison with samples subject to forensic analysis. This is necessary to identify specific facts of forgery of documents in which there are actual differences between the studied samples and the original ones.

High-quality and professional performance of forensic analysis of documents made using computer equipment requires both the presence of a certain qualification of technical personnel and professional training of the investigator responsible for the correct interpretation of the results obtained and their attachment to the materials of criminal proceedings as recognition as material evidence. In general, research of this kind is one of the new directions of modern criminalistics, which has significant prospects for development in the context of existing and most relevant trends in scientific and technological progress in modern society.

Discussion

Forensic analysis of documents, as a separate and independent branch of modern criminalistics, has existed and developed for quite a long time. However, its individual provisions have not been rather underinvestigated. Forensic analysis of documents has several parallel existing interpretations, which were gradually introduced into circulation and contribute to a more complete perception of the goals and objectives of forensic science, in particular in the context of research on various aspects of document flow [9; 10].

In the 21st century, one of the most promising areas for improving the quality and efficiency of law enforcement agencies in the context of crime investigation and detection is the gradual introduction of new information technologies into forensic science. There is an active transformation of modern criminalistics into a science that uses new knowledge and more effective technologies that contribute to the effective development of criminalistics in general. This knowledge and technologies related to the collection, research, and establishment of a qualitative assessment of physical evidence obtained in the framework of crime investigation activities actively contribute to the creation of appropriate conditions for the development of criminalistics and effective detection of crimes commenced using computer technologies [1].

It often happens that the positive aspects of modern scientific developments in the field of criminalistics begin to be used for criminal purposes. Modern criminals quite actively use the information space and the means of television communications to commit a pre-planned crimes, coordinate their activities, and maintain communication in the criminal group. At the same time, various technical innovations are used directly in the process of committing crimes, thereby leaving electronic traces of their activities. With the help of modern computer technology and information and telecommunications systems today, a huge number of crimes are committed, the mechanism of which is often very difficult to establish [11]. Therefore, the extraordinary activity of introducing modern information and computer technologies into forensic activities and their development by individual criminals has significantly changed modern approaches to the development of criminalistics.

Modern forensic science is increasingly raising questions about the place and role of virtual traces, electronic evidence in science, and even significant trends in the development of modern digital criminalistics. Modern digital technologies in their development

significantly affect the qualitative and quantitative indicators of crime, which marks the emergence of a new criminal environment – virtual digital space.

Nowadays, humanity is very actively entering a completely new stage of its development. Therefore, the impact of modern digital information and telecommunications technologies on everyday reality has become a global phenomenon in the modern world. Every year in many countries, the overall level of digitalisation of the economy and society significantly increases, which opens up new, unprecedented prospects for socio-political development [12]. Among them, this also applies to the legal systems of modern states, in the operation of which modern information technology advances are actively used today.

Discussing the possibilities of the practical application of information obtained during forensic examination of documents, it should be noted that it can be used not only in criminal proceedings. In general, it has much more extensive capabilities.

The results of investigating the materials of many criminal cases on fraud in the receipt of social benefits indicate that employees of social security agencies pay insufficient attention to checking information data about citizens who submit their documents for consideration. In general, this distorts the conditions for committing certain crimes. In this context, the recommendation on the practical application of methods of systematic generalisation of information obtained during the forensic analysis of documents, and to identify those issues that must be paid attention to when receiving a certain list of documents, can show its effectiveness [13].

Of particular relevance is the development and implementation of effective recommendations for conducting such verification of documents, which implies the need to provide the relevant state bodies with high-quality equipment for checking these documents. This problem can be effectively and timely solved through the use of information obtained during forensic examination of documents, and appropriate interdepartmental interaction [14]. Currently, there is a problem of both purely theoretical and practical nature, closely related to the forensic analysis of documents. The key aspects of their further solution should be the emphasis of the scientific community on existing actual theoretical problems and on the real needs of practical activities, as well as updating and developing new methodological recommendations, general principles for the application of methodological recommendations by existing competent authorities, and determining new requirements for the number of experts, their level of competence and the procedure for determining their work experience in a specific position [15].

The main subject of forensic analysis of documents should be considered not just activities to establish specific facts and circumstances of the committed illegal act related to the production, modification, use of documents, but only activities based on the application of special knowledge in this area. This can create the image that the structure of this subject area should include all information about all types of documents that have side confirmations at the level of various ideas about the structure of this division of forensic technology, which exists in the specialised literature, and is described in great detail. At the same time, it is obvious that it is not necessary to include in the subject sphere of this division of criminalistics the activities of all subjects who should temporarily participate in the detection and investigation of crimes committed through the use of modern computer technology to create certain documents [16]. Such an expansive interpretation is mostly found in specialised literature, leading some researchers to refer to the analysis of certain documents also as the practical activities of a certain range of persons conducting enquiries and investigative actions, inspection, seizure of documents or taking samples for comparative examination, which was the main reason for the appearance of the special term "investigative records management".

In modern conditions, characterised by the penetration of the main trends of IT in all spheres of life of modern society, modern information and communication tools are becoming more and more common in the commission of various crimes related to the use of information. They can equally effectively become both a means of committing a crime and its main tool. Any modern electronic devices are able to store traces of any actions in which they were somehow involved. This also applies to many issues of using electronic devices and computer equipment for the production of various documents, for the purpose of their further criminal use [12].

N. Scuddler, R. Daniel, J. Raymond, A. Sears [17] separate the modern provisions of the forensic analysis of computer information as a type of forensic research of computer information and key means of its processing and protection, which requires a thorough investigation of the existing patterns of occurrence and concealment of electronic traces and the development on this basis of technical means, techniques, and methods for their detection, fixation, seizure, and analysis to disclose, investigate, and prevent crimes in the field of using computer technology as a means of manufacturing forged documents. Forensic analysis of modern computer devices is an integral system of scientific provisions and gradually created technical means, techniques, and methods for conducting research of computer devices, information systems, and telecommunications networks as material carriers for the purpose of further investigation and prevention

of crimes in the field of information technology [17].

Forensic examination of documents made using computer equipment implies that representatives of law enforcement agencies responsible for conducting this investigation must have a certain level of competence in understanding the capabilities of modern computer equipment for the production of certain documents. In addition, their ability to build effective interaction with technical units for providing forensic analysis of documents, to obtain the necessary information about the capabilities of certain types of modern computer equipment in creating forged documents, for the purpose of their further use for criminal purposes, is also essential [18]. Thus, depending on the method of manufacturing documents and the computer devices used, it is necessary to perform the correct selection of methods for forensic analysis of documents to prevent crimes in the field of information technologies.

Qualitative and quantitative indicators of crime today mostly indicate a gradual increase in the impact of the development of modern information and digital technologies on the information environment, and also reflect the emergence of a new criminal environment, which has become known as the virtual digital space. At the same time, computer criminalistics is currently insufficiently developed, despite some coverage of this topic by researchers. In addition, it is generally accepted that in the field of digital criminalistics, a thorough analysis of both purely technical and tactical methods of working with various electronic traces should be carried out [19]. At the same time, the issues of developing and implementing new, more modern and reliable means of forensic research are still debatable, often due to a lack of information on this issue. This can be explained by the fact that there is a lack of theoretical and practical experience on the use of modern information and computer technologies in the field of forensic research of various aspects of electronic terrorism and the use of computer tools to commit various criminal acts, one of which is the production of documents for the purpose of their further use for criminal purposes. Further development of modern technologies in the field of forensic analysis of documents produced using computer technology will contribute to effective counteraction to this phenomenon today and in the future.

Conclusions

The study of the prospects for conducting a forensic analysis of documents made using computer equipment has yielded the following results.

1. Forensic examination of documents made using computer equipment should determine the key aspects that are important in the context of the use of computer technology for the production of documents or their forgery. To date, the use of modern computer equipment for forgery of documents has become widespread, and sometimes it is difficult to distinguish forged documents from original ones. In this context, key importance should be given to equipping a modern forensic institution with high-quality equipment that can detect document forgery even in the most difficult cases. In addition, great importance should be given to the level of training of both employees of forensic institutions, whose official responsibility includes high-quality forensic examination of documents, and investigators, who are obliged to subsequently attach the results of research to the case as an evidence base collected during the pre-trial investigation.

2. In the process of conducting a forensic analysis of documents made using computer technology, the main types of forgery of documents are identified. The use of computer technology allows making intelligent forgery of documents in any of its existing varieties. Therefore, the task of experts and investigators responsible for conducting this forensic study and systematising its results includes determining both the types of forged documents and the types of equipment and computer equipment used to produce such documents. The results of forensic research, in general, depend on the quality of the actual performance of the task, which determines the effectiveness of collecting evidence within the framework of a specific pre-trial investigation.

In general, the issues of conducting a forensic analysis of documents made using modern computer technology require further careful study, in accordance with the current pace of development of computer technology and the possibilities of its practical application for the production of a wide variety of documents.

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Криміналістичне дослідження документів, виготовлених за допомогою засобів комп'ютерної техніки

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■ **Анотація**. Актуальність тематики наукового дослідження зумовлена наявністю проблем криміналістичного дослідження документів, а також значущістю практичного застосування комп'ютерної техніки для їх виготовлення. Метою статті є вивчення особливостей використання сучасної комп'ютерної техніки для виготовлення спеціальних документів, а також оцінка перспектив дослідження цих документів сучасними криміналістичними методами. Основу методологічного підходу становить поєднання методів сучасної криміналістики, системного аналізу у сфері дослідження документів з аналітичним дослідженням перспектив застосування засобів комп'ютерної техніки з метою виготовлення документів для їхнього подальшого використання в злочинних намірах. Головними результатами, які одержано в межах цього наукового дослідження, є визначення основних типів підробок документів і критеріїв використання сучасних засобів комп'ютерної техніки для виготовлення документів з метою їхнього подальшого використання в злочинних намірах, а також формулювання основних цілей і завдань виконання методик криміналістичного дослідження документів, виготовлених за допомогою засобів комп'ютерної техніки. Результати дослідження, а також сформульовані на підставі них висновки, мають значущість для співробітників сучасних криміналістичних установ, до безпосередніх обов'язків яких належить виконання криміналістичного дослідження документів, виготовлених за допомогою засобів комп'ютерної техніки, що має суттєве значення з точки зору поширення можливостей для розкриття злочинів, учинених за допомогою сучасного комп'ютерного й електронного обладнання, а також запобігання комп'ютерному та електронному тероризму в повсякденному житті

■ **Ключові слова**: підробка почерку та підпису; криміналістика; електронне обладнання; криміналістична наука; наукові дослідження в криміналістиці; розкриття злочинів

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Prevention of Fraud with Real Estate in the Residential Sector in Ukraine at the Present Stage

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■ **Abstract**. The real estate market in Ukraine is increasing the pace of its development every day, especially in large cities, and accordingly, in parallel with such active development, several ways of acquiring, alienating, and obtaining real estate objects are being improved. However, it is quite difficult to investigate specific volumes of fraud, since most of these phenomena still are latent, and as a result, the prevention measures taken do not give the desired results, so the issue under study is truly relevant for the scientific plane. The purpose of this study is to analyse the most common manifestations of fraudulent actions in the housing sector, their determinants in Ukraine, as well as to identify effective measures to prevent criminal offences of this category and implement them in the legal reality of the country. The study uses the general dialectical method of scientific knowledge of real phenomena, their connections, as well as the Aristotelian method. The theoretical framework of this study comprises the works of Ukrainian and foreign scientists on a comprehensive study of this adverse phenomenon and the development of effective counteraction to it in the current conditions. Based on the conducted research, the main ways of committing a criminal offence and measures that can prevent fraud with real estate in the housing sector are studied and highlighted. Statistical data on the number of registered criminal offences related to fraud in the field of property in recent years and the indicator are presented the ratio of the number of latent acts. The article examines the current state of national legislation in the field of prevention of crimes in the housing sector and identifies areas for improving the mechanism regulating this institution in Ukraine. Proposals have been made to eliminate a number of causes that contribute to this phenomenon today. The practical significance of scientific work lies in 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**: victimhood; general social measures; organisational measures; criminological characteristics; determinants; organised crime; identity of the criminal

■ Introduction

A necessary condition for effective prevention of crimes in the housing sector is the definition of a mechanism that is aimed at preventing illegal actions in this area and eliminating their determinants. There is no doubt that now and, in the future, the development of crime will depend on social existence, collective thinking and behaviour of people [1, p. 179]. The problem of fraud has not lost its scientific relevance and practical significance for several decades. Thus, a young scientist L. Kuryata in the scientific heritage notes that a considerable number of scientific works of specialists in the field of criminalistics, criminology, criminal law, criminal procedure, legal psychology, are devoted to various aspects of this socially dangerous phenomenon [2, p. 379].

Scientific figures O. Kovalchuk and E. Pryakhin believe that fraud is a fairly common current direction in the criminal environment, so the counteraction, the effectiveness of which depends on law enforcement agencies, is due to certain factors – the high latency of a criminal offence, the development of information technologies and the disguise of fraud under the guise of economic activity [3].

S. Chernyavsky in his dissertation studied financial fraud and attributed to the scientific category 2 categories of crimes – financial and economic, and

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analysed the criminal-legal nature and classification of financial fraud, described financial fraud in the structure of economic crime, etc. [4].

S. Kuzmenko investigated and described fraud in the field of investment in the construction of real estate objects, in particular, gave a forensic description, the stages of investigation by law enforcement agencies of such fraud and identified a system of tactical operations that are used in the process of pre-trial investigation [5].

Criminologist O. Juzha examines the identity of the criminal. Thus, in his work, he notes that describing the personality of economic criminals, the signs are reduced to 3 groups: 1) attitude to various social values, labour duties, attitude to property in the conditions of the formation of new economic relations; 2) the nature and social significance of the needs of a person, interests, attitudes and means of satisfying them (legal, illegal, criminal); 3) self-justification that criminal activity is useful for the interests of business and Society [6].

T. Taran in her dissertation research for the first time carried out the classification of fraud, which is associated with the seizure of real estate by female persons. The scientist describes that such fraud can be committed by women using mental or bioenergetic influence to seize property, usually money, gold products, etc. [7].

Due to the increased pace of housing construction and the correspondingly increased volume of housing stock in Ukraine, the number of fraudulent actions in this area is also increasing. Ukrainian scientist, lawyer A.Yukhno believes that fraud is characterised by dynamism, it is modernised, leads to negative consequences in the social, economic, and political aspect, and in recent years the volume of this problem has increased, which accordingly complicates the mechanism of counteraction and Investigation [8, p. 99].

Analysing the data of the unified report on criminal offences of the Office of the Prosecutor General in recent years, the statistics are as follows: during 2019, 444.1 thousand criminal offences were registered, of which 256.5 thousand (57.8%) – crimes against property, of which 32.4 thousand (12.6%) – fraud; in 2020 – 360.6 thousand criminal offences, of which 189.1 thousand (52.5%) – crimes against property, 26.8 thousand (14.1%) – fraud. During the first quarter of 2021 – 106.5 thousand criminal offences, of which 54.3 thousand (50.9%) – crimes against property, 5.2 thousand (9.6 %) – fraud [9].

In addition to fraud, other actions are used that fall under other articles of the criminal law regulating liability for crimes against property (as a rule, fraud is combined with extortion, embezzlement). In addition, crimes in the form of fraud are accompanied by crimes against the person; this usually occurs in cases where fraud cannot be completed, at some stage it is solved, and then criminals can use threats against the life and health of victims.

The purpose of this study is a description and analysis of the reasons for committing fraudulent actions in the housing sector in Ukraine and, accordingly, a study of effective measures to prevent such crimes. To achieve this purpose, the study performs the following tasks: various approaches to understanding this criminal offence are considered; the determinants of fraud that manifest themselves in the housing sector are investigated and studied.

Materials and Methods

In the course of the conducted scientific research, based on the set goal and objectives, it was used: modelling method with the help of which the identification of essential signs of phenomena and processes was carried out using the model, namely: setting the goal of the task, etc.; the dialectical method was used to study socio-legal events, their patterns, which in the future makes it possible to really assess the level, effectiveness and analysis of national legislation in the field of prevention of criminal offences fraudulent actions in the housing sector and their determinants, as well as gaps in the system that exist today; a formal logical method, with which elements of the legal mechanism for preventing criminal offences were identified; the method of analysis, since fraud in the housing sector was studied in different directions as a whole it was divided into parts for a qualitative description of the selected problem. These methods were used at all stages of the study, these include: defining a scientific problem, setting the goals and objectives of research in preventing real estate fraud in the housing sector, and ways to solve them, presenting the main material, forming conclusions and literature used.

As a theoretical framework for the study, statistical data from Unified report on criminal offences of the Prosecutor General's Office of Ukraine [9], analysed the court case Zaporizkyi Court of Appeal [10] and Lysianskyi District Court of Cherkaska Oblast [11]. The article examines the regulatory documents that govern the sphere of fraud and were the basis of the study, namely the Resolution of the Plenum of the Supreme Court of Ukraine "On Judicial Practice in Cases of Crimes Against Property" [12], Criminal Code of Ukraine [13], Tax Code of Ukraine [14], Budget Code of Ukraine [25], Customs Code of Ukraine [16], Civil Code of Ukraine [17], Land Code of Ukraine [18] and Housing Code of the Ukrainian SSR [19]. The authors of this study also used the results of the latest fundamental research of Ukrainian scientists on the Prevention of real estate fraud in the housing sector, their determinants, and ways to eliminate them.

Results and Discussion

V. Konopelsky and O. Kushnaryova the scientific article expresses the position that real estate fraud is a socio – legal and criminological illegal act, which is

characterised by professional training, latency, corruption component, significant income, so this type of fraud makes it necessary to develop effective preventive measures, since there is a direct threat to the economic security of the country [20, p. 31].

O. Musienko in the monograph notes that the current fraud is characterised by a change in forms and types, which is due to several reasons [21, p. 20]. In the study G. Chernyshov describes that fraud is a well-known crime against property since ancient times, based on deception and abuse of trust, condemned by public morals, many religions and, in some cases, prohibited by law. However, the scientist focuses on the fact that not all forms of deception are criminally illegal [22, p. 90].

The large Explanatory Dictionary of the modern Ukrainian language provides the following definitions for the concepts of "fraudster" and "fraud": "a fraudster is a cunning, clever and dishonest person, a petty thief" [23]; "fraud – 1. Cunning and clever deception; fraud, deception. 2. Taking possession of individual property of citizens or acquiring the right to property by deception or abuse of trust" [23].

Criminal Code of Ukraine Article 190 interprets the concept of "fraud" as misappropriation of someone else's property or obtaining the right to property, using deception or abuse of trust [13]. In paragraph 17 of the Resolution Plenum of the Supreme Court of Ukraine No. 10 of November 6, 2009 "on Judicial Practice in Cases of Crimes Against Property" it is indicated: "deception (informing the victim of false information or concealing certain circumstances) or abuse of trust (unfair use of the victim's trust) in fraud is used by the guilty person to cause the victim confidence in the profitability or obligation of transferring property or property rights to him [12]. A mandatory sign of fraud is the voluntary transfer of property or the right to property to victims" [24, p. 92]. From the content of the norm itself, the legislator's disposition already includes typical ways of committing this crime, namely deception and abuse of trust.

The transformation of the economy under the influence of market mechanisms has identified as an independent function of the state to ensure the economic security of the country both from the standpoint of individual interests and a complex set of national interests. At the same time, a comprehensive analysis of the negative processes taking place, first, in the economic sphere of state activity, convinces that now there is a quantitative and qualitative transformation of crime in the economic sphere. Fraud is the most actively modifiable among all economic crimes in the current market conditions.

The current situation is also characterised by a multiple increase in the number of transactions regulated by civil law in the new socio-economic conditions, a certain proportion of which occurs under the influence of deception or abuse of trust, that is, it contains the crime of fraud. Fraud is gaining increasingly significant positions in the structure of crime every year. The study of materials of criminal proceedings has shown that fraud is noticeably expanding in the sphere of society's life, and the variety of their methods is increasing [10; 11]. The social consequences of committing fraudulent attacks are manifested both in the multibillion-dollar damage caused by them to society, the state, and individual business entities, and citizens. These circumstances require methodological development and implementation of adequate response measures on the part of law enforcement agencies.

The specifics of modern organised fraud are as follows, that it, remaining within the framework of legislative interpretation every year, has acquired new forms that are subject to a special doctrinal understanding. The mysteries of social survivability and adaptability, as well as the inexhaustible variety of fraud scenarios, require special research. The analysis of the criminal legislation of Ukraine [13], which ensures the protection of the monetary interests of society and the individual, shows that it needs constant improvement due to the continuous modification of traditional spheres of financial turnover and the emergence of new phenomena in the economy. It is fundamentally important to build all the elements of the financial system from the point of view of countering criminal encroachments. It is necessary to consider the circumstances that the fight against financial offences is regulated tax [14], budget [15], customs codes [16], and joints in legislation create problems in law enforcement practice. The etymology of types of fraud lies in the ways in which it is committed, such as deception and abuse of trust. to create effective measures to counteract crime in the field of residential real estate, it is necessary to create a classification of criminals in the sphere of residential real estate turnover [25, p. 354].

It is proved that the increased victimisation of most victims of fraudulent actions in the housing sector is due to the lack of skills of behaviour in market relations, low awareness of the rules for concluding transactions, their carelessness, riskiness, frivolity, provocativeness to circumstances. At the same time, law enforcement agencies themselves are experiencing difficulties in establishing objective and subjective signs of fraud with real estate in the housing sector and distinguishing it from related crimes and civil law torts, which largely complicates the implementation of preventive work in the early stages of such criminal activity.

Often, to achieve their criminal plans, fraudsters attract front persons who are mainly representatives of marginal strata of society: citizens suffering from alcohol addiction, the poor, and people without a specific place of residence. Next to a noticeable criminological feature in real estate fraud schemes is the

use of modern means of communication inherent in the era of global globalisation. In recent years, there has been an intensive increase in the number of scams, as evidenced by official statistics Office of the Prosecutor General for 2019-2021, since only in the first quarter of 2021, the following number of proceedings was registered (54,300), which is almost half of the number of proceedings entered in the Unified Register of pre-trial investigations for the whole of 2020 (189,100) [9].

The emergence of a legally established right for citizens to acquire real estate in ownership, the growth of Housing Construction led to an increase in the number of transactions, a number of fraudulent actions in this area. The high degree of public danger of criminal acts in the real estate sector is explained by the infliction of large and especially large property damage to victims. Studying the criminological aspects of real estate fraud is a major step in developing effective measures to prevent these crimes.

It can be argued that to overcome risks in housing construction, it is necessary to develop a set of interrelated measures of financial institutions, as well as coordination of actions of all state authorities and business entities to implement them [26, p. 115].

Fraud in the field of real estate turnover is characterised by the fact that the criminal is usually outside acts openly and others do not realise the illegality of the actions of the perpetrator. At the same time, the will of the victim and the perpetrator outwardly coincide, a fraudulent transaction has the form of an ordinary contract (purchase and sale, barter of real estate, etc.). Fraud in the field of real estate turnover can occur during the conclusion of contracts for participation in the shared construction of residential buildings. The perpetrators of the transaction can act as a party that acquires the rights to immovable property, or as a party that alienates these rights from receiving funds.

It follows that the subject of fraud in the sphere of real estate turnover can be: 1) real estate; 2) funds. A common sign of fraud is causing property damage to the victim through deception or abuse of trust. Fraudulent events in the field of real estate turnover can be characterised by varying degrees of latency, depending on the specific type. For example, encroachments, the subject of which is real estate itself, are less latent, since an integral part of a socially dangerous act is the commission of a transaction subject to state registration.

Analysis of the socio-territorial prevalence of fraud in the field of real estate turnover shows that criminal business is mostly concentrated in cities with a population of one million-Kiev, Odessa, Lviv, Dnipro, Kharkiv, where there is a significant level of business activity and industrial potential [25]. This crime, as a rule, is organised, sometimes legalised under the "banner" of real estate firms, security services created under them, etc.

Organised groups often use the following criminal schemes: 1) the criminal by deception convinces the victim to issue him a general power of attorney or fakes a power of attorney on behalf of the Victim; 2) the criminal after the death of the apartment owner by forgery of documents or with the help of a front person takes possession of real estate; 3) the criminal, issuing money secured by real estate, forces the victim to sign a contract for the purchase and sale of the apartment, etc. The activities of fraudulent groups in the real estate sector imply the presence of corrupt connections (relations with law enforcement and registration authorities, notaries). It is necessary to conduct timely Criminological Research in this area, so that the housing issue does not spoil the life of law-abiding owners of residential real estate [27, p. 168].

Consider causes and conditions of committing crimes in the sphere of real estate turnover, forming in the criminological concept of "criminogenic determinants". G. Chernyshov the scientific work indicates the existence of anthropological, genetic, sociological, psychological conceptual ideas, which are actually determinants of crime [22, p. 90].

Classification of determinants is conditional; it is carried out according to various criteria. According to the scope of action, there are several groups of determinants that contribute to the implementation of fraud in the field of real estate turnover. Economic determinants are caused by the inflated cost of real estate, when the opportunities to buy housing in ownership for most citizens are minimal, and high profitability from committing a crime in this area.

Legal reasons are related to the imperfection of civil [17], land [18], housing [19], criminal [13]. As for the spiritual and moral sphere, the reasons for committing a crime in the field of real estate turnover are the low legal literacy of the population, the inability to protect their legal and legitimate interests. There are organisational reasons, for example, shortcomings in the activities of registrars, notaries, as well as in the preventive activities of law enforcement agencies.

After analysing the above, the main measures that can prevent fraud with real estate in the housing sector are as follows: 1) strengthening state control in the field under study by legislative regulation of the duties of state registrars to inform law enforcement officers about the detection of signs of forgery in documents submitted for state registration, the detection of several transactions with one real estate object; 2) preventive measures related to informing.

As law enforcement practice shows, the method of committing crimes against citizens' housing includes five characteristic elements: obtaining documents that give the right to own or dispose of the apartment; obtaining documents certifying the identity of the victim,

keys to the apartment: taking possession of the apartment; registration of sale; discharge of the victim from the apartment. Such actions relate to both ready-made housing and what is being built, when citizens sell (buy) unfinished housing as part of the so-called "assignment". In the latter case, the participants may include both employees of the developer company and the general contractor company. According to the structure, crime against citizens' apartments can be divided into large groups: crimes against buyers and crimes against the seller (owner). Crimes against the buyer are manifested in the following forms: sale or lease, transfer of real estate on bail by a person who pretends to be the owner, but in fact is not him.

At the same time, as a rule, such persons use false or stolen documents, copies of the certificate of ownership of real estate; sell/lease to several buyers of an identical residential object; appropriate funds without observing the terms of the contract; avoid the process of transferring real estate to the owner; appropriate funds even before notarising the transaction; recognition of the transaction as invalid and in the future misappropriation of funds – the actual paid price and inventory value of real estate specified in the purchase and sale agreement; receiving the entire amount from the completed transaction by one participant in the legal relationship, instead of the corresponding share, etc.

In some cases, there is a combination of such criminal acts. In relation to the seller (owner), criminal actions manifest themselves in the following most characteristic forms: extortion, that is, the requirement to transfer real estate or rights to property, or the commission of any action of a property nature under the threat of violence against the personality of the owner of real estate (signing a donation, purchase and sale agreement, etc.); fraud, when criminals, having sold the victim's apartment, refuse to provide instead of another or pay him, or resort to manipulation in the process of settlement with the seller (owner) to take possession of real estate for minimal funds (use of counterfeit bills, etc.).

As a result of the study, it was established that crimes committed against citizens' apartments, high latency is inherent, in particular A. Konev believes that the ratio of the number of latent acts in relation to registered fraud crimes is on average 65.60:1 [28]. President of the Association of real estate specialists of Ukraine Yuriy Pita at the 25th International Conference "Real Estate Market: best practices" noted that cases of fraud in the secondary real estate market of Ukraine as of 2021 account for 1.5-2% of the total number of transactions, while the number of fraudulent transactions involving non-professional Realtors is no more than 0.4% [29]. The reasons for crime in the real estate market lie primarily in the fact that the state has allowed the solution of this problem to "float freely" in market relations. Under the guise of market relations in general, there is a process of redistribution of apartments in favour of wealthy citizens, which is accompanied by criminal manifestations against former tenants. Meanwhile, for the formation of the real estate market, preliminary conditions must be met, among which Mandatory are: low unemployment and sufficiently high wages, which allows citizens to buy housing in connection with a change of place of residence; such provision of housing for the population, in which there is no need for state programs of housing construction and free provision of Housing to the population; freedom of choice of market participants, that is, the sale of housing by the owner occurs voluntarily and is not associated with economic, mental or physical coercion. There are currently no such conditions in Ukraine. There is also a shortage of housing, despite the acceleration of housing construction.

Doctor of Law A. Kulyk in his scientific heritage describes that in criminology, the study of the features of the criminal's personality is inevitable both for determining the main determinants of crime and for developing prevention measures [30, p. 98]. The problem of combating criminal bankruptcies involves studying the state of Group crime by the components under consideration. This attention is not accidental, because there are alarming trends associated with an increase in the share of economic crimes committed in the group, which in recent years accounts for about a third of all crimes. Thus, most of the frauds in the construction sector occurred in a group way. In the theory of law, there are different approaches to understanding the mechanism of ensuring human rights [31].

This circumstance can be explained by the fact that the commission of fraud in construction involves many economic and financial ties, and therefore it is problematic for one person to commit this crime. At the same time, the fight against fraud in the housing sector remains at a low level. A negative trend during 2020 is present in the number of cases considered by courts on appeals against registration actions – a decrease of 57% compared to 2019. At the same time, consideration of the case in the court of first instance, as a rule, lasts 1.5-2 years, which does not allow the victim to quickly return the stolen property to ownership. In 2020, there is a 63.5% decrease in the number of active cases in which no decision has been made on the merits, which indicates an increase in the efficiency of courts in countering fraud [26].

In addition, it is worth noting that local governments should not be aloof from solving issues related to the activities of developers who collect money from the population in the order of co-investment housing construction, because, unlike ordinary citizens, they have much greater opportunities to assess the integrity of the developer, and in this sense they should more actively protect the interests of citizens. Moreover,

citizens are willing to pay a considerable amount for consultations given by local authorities, and this circumstance must be considered by local authorities when they give permission for the construction of another residential building on the territory of a municipality.

General social measures to prevent fraud with real estate in the housing sector include the following:

– strengthening the country's economy;

– ensuring legal equality of all business entities;

– improving the efficiency of state bodies that ensure the normal functioning of the economy as a whole and individual economic entities;

– improving the system of protection of property rights of the state, economic entities, as well as individual citizens;

– improvement of legislation, but has as its subject the legal regulation of economic relations;

– implementation of strict control over the activities of such social and commercial projects, mandatory types of insurance, attracting deposits of citizens to banking and other institutions, etc.;

– ensuring state guarantees for the protection of the rights of citizens affected by the actions of fraudsters.

And as for special criminological prevention of real estate fraud in the housing sector, it is understood as the activities of public and state bodies directly aimed at identifying offences and eliminating the consequences of such violations. An influential role in combating fraud is assigned to organisational and legal measures of influence.

Legal measures to prevent fraud in the housing sector include the regulatory consolidation of the very process of implementing fraud prevention and the impact of regulations on criminogenic factors that make up the causes of this phenomenon.

As for organisational measures to prevent fraud in the housing sector, they should include:

– ensuring timely, early detection of fraud occurring in the housing sector;

– organisation of protection of the state, business entities, as well as citizens from fraudulent encroachments;

– organisation of effective investigation and criminal prosecution of persons who have committed fraudulent encroachments;

– organisation of execution of civil claims that allow compensation for damage caused to victims of crime from fraudulent encroachments;

– support from public authorities to victims of fraud, security services of organisations, to prevent, detect disclosure and investigate fraudulent attacks.

Notably, prevention of real estate fraud is the main means of preventing crimes and lies in systematically influencing those citizens who are most susceptible to committing crimes and lead an antisocial lifestyle. A substantial number of citizens are quite capable of fraud, they can adapt to the environment. If people find themselves in a suitable atmosphere with poor control, where reporting is poorly conducted, if they are under pressure from external circumstances, then their tendency to dishonest actions increases dramatically. In any organisation, you can create an atmosphere that prevents fraud or promotes such actions. The probability of fraud increases when the pressure of external circumstances, the possibility and presence of self-justification are combined. In the absence of one of these elements, the likelihood of abuse decreases.

Let us look at six ways to eliminate such opportunities:

1) having a good internal control system;

2) prevention of possible collusion between employees of the company and its customers or suppliers;

3) clearly informing all partners of this firm about its abuse policy;

4) personnel verification;

5) setting up hotlines for receiving anonymous signals and messages;

6) implementation of a proactive audit policy.

Considering the above, the use of each of these six methods allows preventing the commission of real estate fraud in the housing sector.

The main way to prevent fraud in the housing sector is to create a suitable control system. Such crimes can be prevented by sending employees on mandatory leave, rotating staff, and moving them to the service. If a firm allows an employee to be dangerously close to the same customers or clients for a sufficiently extended period, there is always a risk that this employee will start using their connections with them to seek personal gain.

Thus, N. Pavlova and V. Rec aptly noted that the ultimate goal of committing fraudulent actions is to obtain ownership of real estate in the housing sector for free ownership, use, disposal of this property, while despite the mysterious mechanism of making a transaction on the alienation of real estate objects, which requires a complex of systematic active actions, so as a result, fraud has a long-term character [32].

■ Conclusions

Thus, the scientific study presents the opinions of scientists, each of whom highlights his vision and understanding of the problems being analysed. The article analyses the current legislation of the Ukrainian state, in particular the Criminal Code of Ukraine, tax, budget, customs codes, mentions certain provisions of the resolution of the plenum of the Supreme Court of Ukraine "On Judicial Practice in Cases of Crimes Against Property" and concludes that for effective law enforcement practice, the listed regulations require constant improvement, as traditional methods of committing fraudulent actions in a criminal environment are changing. In addition, the analysis of

materials of criminal proceedings has shown that fraud with real estate in the housing sector is noticeably expanding in the sphere of society's life and the public consequences of committing fraudulent encroachments bring great losses not only to society, the state, but also to business entities and citizens, so the response from law enforcement agencies in the form of appropriate measures should be timely and prompt.

In addition, the study focuses on the specifics of the current organised fraud, describes illegal schemes used by groups. The subject of fraud in the field of real estate turnover is briefly considered, the causes and conditions of committing crimes in this area are studied in more detail. It is noted that such offences are characterised by high latency and a proportional ratio is given the number of latent acts in relation to registered fraud crimes.

It is concluded that the fight against fraud in the housing sector is currently carried out at a low level, as evidenced by the analysis of the state of consideration of cases and court decisions, and this is a rather protracted process, since materials in court instances are considered for years.

As for the prevention of real estate fraud in the housing sector with a different range of criminological measures, in today's conditions they are not productive, as a result of which crime in this area has become fixed in Ukrainian society and therefore the need to improve the existing system remains in demand. Therefore, at the end of the study, seven elements of general social measures, five points of organisational measures and two elements of legal measures to prevent fraud in the housing sector are proposed, which in a comprehensive implementation will provide an opportunity to step up work in this problem area. In addition, six ways to prevent fraud in the housing sector are considered, and criminological prevention is also described.

Fraud prevention involves actions aimed at preventing the commission of abuse, and if it has already occurred, reducing the degree of its spread. With good fraud prevention, you will not need to spend money on identifying or investigating various abuses. The possibility of reducing cases of fraudulent activities in the economic sphere is very necessary, since the funds spent on carrying out preventive measures, preventing and suppressing crimes are usually a much more effective investment than the money spent on investigating fraud that has already been committed, that is, a number of preventive measures carried out by the relevant departments can contribute to reducing economic damage.

Considering the above, it is worth summing up the fact that the listed main criminological features of fraud committed by individuals allow not only considering this type of fraud as an independent object of criminological study, indicating the relevance, scientific and applied significance of their study, but also determining the priority areas of the profile of law enforcement agencies' activities to protect the property of absolutely all participants in public relations, be it the state, society, individual business entities, and particular citizens from criminal encroachments.

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Запобігання шахрайству з нерухомістю в житловій сфері в Україні на сучасному етапі

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■ **Анотація**. Темпи розвитку ринку нерухомості в Україні щодня зростають, особливо у великих містах. З огляду на це вдосконалюються різні способи придбання, відчуження та отримання об'єктів нерухомості. Водночас дослідити конкретні обсяги шахрайства досить складно, адже більшість цих явищ лишаються латентними, у зв'язку з чим вжиті заходи запобігання не дають бажаних результатів, що підтверджує актуальність окресленого питання. Метою дослідження є аналіз найпоширеніших виявів шахрайських дій у житловій сфері, їхніх детермінант в Україні, виявлення ефективних заходів запобігання кримінальним правопорушенням зазначеної категорії та імплементації їх у правову дійсність країни. У дослідженні використано загальний діалектичний метод наукового пізнання реальних явищ, їх зв'язків, а також формально-логічний метод. Теоретичною базою публікації стали праці вітчизняних та іноземних учених щодо всебічного дослідження вказаного негативного явища та розроблення в умовах сьогодення ефективної протидії йому. На основі проведеного дослідження виокремлено основні способи вчинення кримінального правопорушення та заходи, здатні попередити шахрайство з нерухомістю в житловій сфері. Наведено статистичні дані щодо кількості зареєстрованих кримінальних правопорушень із шахрайства у сфері власності за останні роки та показники співвідношення кількості латентних діянь. Досліджено сучасний стан національного законодавства у сфері запобігання злочинів у житловій сфері та визначено напрями вдосконалення механізму, що регулює вказаний інститут в Україні. Сформульовано пропозиції щодо усунення низки причин, які зумовлюють це явище. Практична значущість наукової праці полягає в тому, що досліджувані наукові положення, узагальнення, висновки й рекомендації мають як теоретичне, так і прикладне значення, які в подальшому можуть бути використані в науково-дослідній діяльності та освітньому процесі

■ **Ключові слова**: віктимність; загальносоціальні заходи; організаційні заходи; кримінологічна характеристика; детермінанти; організована злочинність; особа злочинця

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Administrative and Legal Regulation of Gender Policy in Police Activities

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■ **Abstract**. The steady increase in the number of administrative offences committed on the basis of gender, the victims of which are the most vulnerable strata of citizens, which demonstrated the lack of effective state activity in preventing and counteracting gender-based violence, prompted an analysis of the specifics of administrative and legal regulation of gender policy in police activity and the development of ways to improve it. The purpose of the study is to provide scientifically substantiated conclusions on optimising the administrative and legal regulation of gender policy in police activities. The methodology of this paper consists of a complete and coordinated system of general philosophical (dialectical, analysis, and synthesis) and special methods (historical and legal, logical and semantic, special legal, formal logical, hermeneutical, comparative and legal, modelling, and forecasting) this allowed properly analysing the subject of the study, the data of a survey of employees of the National Police of Ukraine to determine regulatory mechanisms for ensuring equality based on gender, the specifics of administrative and legal regulation of the gender policy of the police in this area of legal relations. The study defines the essence of administrative and legal regulation of gender policy in police activities. It is noted that it is the norms of administrative law that determine the powers of the police officer and other subjects of gender policy implementation, while ensuring the proper behaviour of subjects of influence by administrative coercion measures. It is determined that the object of administrative and legal relations should be considered the behaviour of participants in legal relations that are regulated and implemented through the provisions of administrative law. An integrated approach to the issue of administrative and legal regulation of gender policy in police activities is noted, which is not limited to the legislative consolidation of mutual rights and obligations, but is also implemented by studying and addressing the specific needs of both sexes, the active role of the National Police of Ukraine in this process. Arguments are given regarding the implementation of a balanced gender parity policy in the police

■ **Keywords**: gender equality; administrative law; powers; gender-based violence; administrative coercion measures

■ Introduction

Gender equality is one of the fundamental principles of human rights, but inequality between men and women, as well as between people of different gender identities, is observed in all countries and most often results in a lack of equal opportunities and gross violations of human rights. According to the Law of Ukraine "On Ensuring Equal Rights and Opportunities for Women and Men", "gender equality is interpreted as the equal legal status of women and men and equal opportunities for its implementation, which allows persons of both sexes to take equal part in all spheres of society's life. The main components of equal rights of women and men are the absence of restrictions or privileges based on gender, equal conditions for the realisation of equal rights of women and men" [1].

In the Council of Europe Convention on preventing and combating violence against women and domestic violence, Article 3 defines "gender" [2] as "socially established roles, behaviours, activities, and characteristics that a certain society considers appropriate for women and men. The principle of gender equality is reflected in Articles 3, 21, 24, 51 of the Constitution of Ukraine. In particular, Article 3 of the Basic Law establishes the equality of men and women

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in all spheres of Llfe [3], and Part 3 of Article 24 of the Constitution of Ukraine states that equality of rights of women and men is ensured by providing women with equal opportunities with men in socio-political and cultural activities, in obtaining education and training, in work and remuneration for it, etc." [3].

In the 21st century, the policy of gender equality is being implemented quite effectively at the international level. It is implemented by various institutional units, through legal mechanisms defined in strategies, conventions, and other documents aimed at continuous work to overcome gender discrimination. Important in view of this problem are the studies by Ukrainian and foreign researchers in the field of administrative law, who raised the issue of gender equality. In particular, the paper by O. Perunova "Basic principles of general preventive measures in the field of gender-based violence" is devoted to the content of the fundamental principles that must be observed in the application of measures to prevent cases of gender-based violence [4]. N. Orlovska, Yu. Stepanova study "Issues of gender equality in the light of United Nations Security Council Resolution 1325 and related resolutions" included a scientific analysis of international documents, which create a system of complementary legal norms aimed at ensuring gender equality in all spheres of public life [5]. S. Kruhova has investigated and provided a detailed definition of "ensuring equal rights of men and women" [6]. K. Husieva, and I. Horbach-Kudria proposed a model for complementing the functions of authorised units of the National Police and differentiating their actions in the general mechanism of preventive activities provided for by the Law of Ukraine "On Prevention and Counteraction to Domestic Violence" [7]. V. Bass, S. Bratel et al. have investigated the regulatory framework aimed at ensuring gender equality in the National Police of Ukraine [8].

Some conclusions regarding the mechanisms of administrative and legal regulation of gender policy in police activities became possible due to the use of the best practices of foreign researchers, in particular, regarding: methods for overcoming gender stereotypes in relation to children in the Scandinavian countries [9]; developing a balance between men and women in various spheres of life [10].

In Ukraine, the problem of creating an effective regulatory mechanism for protecting the rights of victims of gender-based violence remains urgent. On a theoretical level, this phenomenon is subject to learning and reconsideration to further improve it. At the same time, the problems of administrative and legal regulation of gender policy in the activities of the National Police remain relevant. In particular, the main problem today is the lack of a clear legislative framework for this activity. Unfortunately, Ukraine has not yet developed a unified approach that provides the necessary requirements for legislators and law enforcers to take into account the specific gender characteristics of offenders in a way that respects the principles of equality of responsibility and punishment regardless of gender but does not violate the principles of equality, humanity, and justice (for example, when it comes to special sociodemographic and physiological statuses – pregnancy, presence of young children, etc.). These categories of persons were and still are actually the most vulnerable among other offenders.

The purpose of the study – to provide scientifically substantiated conclusions on optimising the administrative and legal regulation of gender policy in police activities. To achieve this goal, the following tasks were defined: to formulate a definition of administrative and legal regulation of gender policy in police activities; to determine the object of administrative and legal support for gender equality; to outline ways to improve the mechanism for ensuring equal rights and opportunities for men by the National Police of Ukraine.

Materials and Methods

The methodological basis of the study is formed by general scientific and special methods of research. The dialectical method was used to carry out theoretical and legal characteristics of administrative and legal regulation of gender policy in police activities. The study also uses such general philosophical methods: analysis and synthesis (research of legal regulation of gender policy and investigation of its course as an administrative and legal regulation, features of the object of administrative and legal support for gender equality, etc.). The application of the historical and legal method allowed the study to find out the evolution of the normative and legal development of compliance problems of gender equality by the police. The logical and semantic method allowed building, deepening, and concretising of the vocabulary. The special legal method contributed to a detailed analysis of the current state of legislative provisions, due to which proposals were developed to eliminate existing theoretical and legal contradictions, and conflicts in legislative acts. Formal logical and hermeneutical methods provided an in-depth analysis of the current legislation on ensuring gender equality by the National Police of Ukraine and contributed to the identification of critical problems and comments. The modelling and forecasting methods were aimed at forming suggestions and recommendations based on the results of identified problem aspects. The comparative legal method was used to determine the most promising ways to introduce the positive experience of implementation of gender policy into national legislation.

The empirical basis of the study was a summary of the results of interviewing 58 employees of the National Police, namely inspectors of juvenile prevention and district police officers of the Headquarters of the National Police in Khmelnytsk, Zhytomyr, and

Vinnytsia regions, who prevent and counteract violence in the field of family relations on the issues of: regulatory mechanisms for ensuring equal rights and opportunities for women and men; features of administrative and legal regulation of gender policy in police activities; prevention and counteraction to gender-based violence.

■ Results and Discussion

Administrative and legal regulation of gender policy in police activities

An extreme manifestation of gender discrimination, which is most often faced by units of the National Police of Ukraine, is gender-based violence, which remains one of the most acute social problems, affecting not only women but also men and children [11]. It is one of the most serious violations of human rights.

The definition of "gender-based violence" is contained in the legal system of the European Union in Directive 2012/29/EC of the European Parliament and of the Council of 2012, which contains generally recognised international standards for the observance of the rights and freedoms of victims of crime. This document recognises gender-based violence as a form of discrimination and violation of the fundamental freedoms of the injured person, which is directed against any person on the basis of gender, gender identity, or gender expression, or if it affects persons of particular sex disproportionately [12].

The above underlines the recognition as victims of gender-based violence not only of women but also of men. This does not exclude the possibility that minors, including those of the same sex, may also become victims of such violence. The conclusion is that the terms "gender-based violence" and "gender-specific violence" are not synonymous. The latter term covers the concept of "gender-specific violence", which indicates the specifics of belonging to the opposite sex in the case of gender-based violence.

Given the understanding of the essence of the gender-specific approach to the regulation of social relations, the administrative and legal means of preventing and suppressing offences in this area are aimed at influencing the circumstances arising in relations between opposing sexes, namely: identifying the causes and conditions that have contributed to the emergence of conflict, influencing the behaviour of those inclined to commit offences, developing an effective mechanism for the prevention and suppression of these offences by the police. At the same time, the subjects of prevention are endowed with appropriate powers to choose and apply the most effective means of administrative and legal influence, depending on the specific situation.

Typical general social and legal features of gender-based violence should include: destructive impact on the rights and legitimate interests of a woman/man by a person of the opposite sex; aimed at violating the rights and freedoms of women and men by gender, orientation; finds expression in various forms (physical, economic, psychological, sexual) and spheres of life (cultural, social, political, etc.); characterised by both action and inaction.

It cannot but be recognised that today there are no complete and detailed statistics on the frequency of cases of gender-based violence, due to such reasons as: lack of a unified approach in attributing a particular manifestation of violence to gender-based violence; insufficient awareness of the role of law enforcement agencies and other institutions in preventing violence and rehabilitating its victims, which leads to the recurrence of such cases, which are not always considered by statistics as separate acts of violence; unwillingness of victims to report the use of gender-based violence to them. Registration of cases of violence is also difficult because it can be difficult to classify certain acts of violence as criminal acts (regular verbal or psychological bullying or insults).

In order to investigate and determine the issues of administrative and legal support of gender equality by the National Police, it is also necessary to find out what is meant by the concept of "legal support" and "legal regulation", to find out the main regulatory documents which regulate the legal relations of the sexes in various spheres of public life.

In the general sense, legal support should be understood as the purposeful influence on people's behaviour and public relations through legal means [13, p. 327; 14; 15]. Legal regulation (from Latin reguläre – "direction, ordering") is understood as one of the main means of power influence on public relations in order to regulate them in the interests of a person, society, and the state [16, p. 40]. This understanding of this category will be used when researching the issues of division.

In the legislation of Ukraine, the term "gender equality" first appeared in the resolution of the Cabinet of Ministers of Ukraine "On the National Action Plan for the advancement of women and promotion of gender equality in society for 2001-2005" of May 6, 2001 [17].

An extremely important conceptual value in the regulatory framework is the Law of Ukraine "On Ensuring Equal Rights and Opportunities for Women and Men" of 09/08/2005 [1], which defined the institutional and legal foundations of gender relations in society and outlined the main grounds of state gender policy, the authorities responsible for its implementation.

The Law of Ukraine "On the Principles of Preventing and Combating Discrimination in Ukraine" dated 09/06/2012 [18] establishes the principles of preventing and countering discrimination in Ukraine, defines its main forms, and subjects with powers to prevent and counteract discrimination, etc. [19].

"National strategy in the field of human rights" [20], approved by the decree of the president of Ukraine on 08/25/2015, is important primarily because it contains relevant provisions (sections "ensuring equal rights and opportunities for women and men", "countering gender-based violence, human trafficking and slavery", "countering domestic violence", "ensuring the rights of the child"), which reflect the strategic directions of the state in the implementation of gender policy.

A landmark regulatory document in ensuring gender equality in the field of family and household relations is the Law of Ukraine "On Prevention and Counteraction to Domestic Violence", which entered into force on 01/08/2018, introducing a comprehensive approach to combating domestic violence [19]. According to the Law, "the new legislation on preventing and countering domestic violence, regardless of the fact of cohabitation, applies to the following persons: spouses; former spouses; brides; mother (father) or children of one of the spouses (former spouses) and another of the spouses (former spouses); persons who live together (lived) in the same family, but are not (were not) married to each other, their parents and children; persons who have a common child (children); parents (mother, father) and child (children); grandfather (grandmother) and grandson (granddaughter); great-grandfather (great-grandmother) and great-grandson (great-granddaughter); stepfather (stepmother) and stepson (stepdaughter); siblings; other relatives: uncle (aunt) and nephew (niece), cousins, great-grandfather (grandmother) and great-grandson (granddaughter); children of spouses, former spouses, brides, persons who have a common child (children) who are not common or adopted; guardians, their children and persons who are (were) under guardianship; foster children parents, parents-educators, foster carers, their children and foster children, children-pupils, children living (lived) in the family of a foster carer" [19].

This Law also provides for expanding the powers of the National Police of Ukraine. Thus, the new powers of the police include "cancellation of permits for the right to purchase, store, carry weapons and ammunition to their owners in case of domestic violence, as well as the seizure of weapons and ammunition in accordance with the procedure established by law. Police officers can enter a person's home without a reasoned court decision in urgent cases related to the termination of the committed act of domestic violence, in case of immediate danger to the life or health of the injured person" [19].

Thus, the importance of the specified regulatory document [19] is seen first of all in a comprehensive approach to combating gender-based violence in the family and household sphere regarding: expanding the circle of abusers; introducing urgent prohibiting and restrictive prescriptions for the abuser; taking such a person on preventive registration and implementing preventive measures against them, in particular, passing a programme for abusers; expanding the list and capabilities of subjects with powers to prevent and counteract such violence, etc.

In addition, to optimise the response to gender-based violence, the Code of Ukraine on Administrative Offences is supplemented with Article 39-1 (Appointment for passing a programme for a person who has committed domestic violence or gender-based violence) [22], according to which, "in the case of domestic violence or gender-based violence, the court, when deciding whether to impose a penalty for an administrative offence, has the right to simultaneously decide whether to send a person who has committed domestic violence or gender-based violence to pass a programme for such persons provided for by the Law of Ukraine "On Prevention and Counteraction to Domestic Violence" [19] or by Law of Ukraine "On Ensuring Equal Rights and Opportunities for Women and Men" [1]. In addition, the fine was returned as a type of penalty in Art. 173-2 in the amended version "commission of domestic violence, gender-based violence, failure to comply with an urgent prohibition order or failure to notify about the place of their temporary stay [22].

Important in strategic terms is the Concept of the state social programme for preventing and countering domestic violence and gender-based violence for the period up to 2023 of 10/10/2018 [23] its goal is to reduce the prevalence of domestic violence and gender-based violence, develop a system for preventing and countering domestic violence and gender-based violence in accordance with international standards and the Law of Ukraine "On Prevention and Counteraction to Domestic Violence" [19] in the context of decentralisation.

Strategically important is "achievement of effective implementation of gender equality policies and empowerment for women and men in Council of Europe member states by supporting the implementation of existing instruments and strengthening the Council of Europe's gender equality regulatory framework under the leadership of the Gender Equality Commission (GEC). The main focus during 2018-2023 was on the following strategic areas: prevention of gender stereotypes and sexism and combating such phenomena; prevention and combating violence against women and domestic violence; ensuring equal access of women to justice; achieving balanced participation of women and men in political and public decision-making; protecting the rights of migrants, refugees, and women seeking asylum; implementing a strategy to achieve gender equality in all policies and measures" [24].

Notably, legal regulation acquires its own characteristics depending on the branch of law, the norms of which are used to regulate the relevant legal

relations. It is "administrative and legal regulation that characterises the special legal mechanism of influence of administrative law on the behaviour and activities of its addressees" [25, p. 237]. According to the practical opinion of V. Halunko, "the sphere of administrative and legal regulation includes relations that reflect the individual public needs of individuals and legal entities; third parties whose rights and freedoms are violated first; the general public interest of the state and the Ukrainian people as a whole; which implement the imperative and power competence of public administration and the mutual public interests of all non-governmental participants in administrative and legal relations, each of which must go to a certain infringement of their interests to meet the interests of the other; which require compliance with certain rules established by the state in administrative and legal norms" [25, p. 238].

It is worth noting that administrative law deals with many aspects of gender equality, or rather inequality, since it covers an extremely wide range of public relations with its regulatory influence and has no clear boundaries. Basically, administrative law studies everything related to the organisation and functioning of the executive branch at all its levels, paying considerable attention to issues related to the civil service and the procedure for its passage. Ultimately, a third set of issues can be identified that has recently emerged as a separate branch of law: administrative responsibility or administrative tort law, where there are particularly many gender-specific problems and an extremely high risk of neglect.

Object of administrative and legal support for gender equality

Administrative and legal regulation has its own objects of regulation. In the dictionary, the category "object" (Latin – objectum) is defined as what the cognitive and transformative activity of a person (subject) is aimed at [26, p. 187]; the phenomenon to which the action of law (object of law) is directed [27, p. 803]. Managerial activity of the state, which is regulated and implemented through the norms of administrative law on the spread of public relations based on gender ideas in various spheres of life, which, in fact, is the object of administrative and legal support for gender equality. Every action of the police, as participants in administrative and managerial legal relations, is aimed at achieving certain legal consequences.

Administrative and legal regulation is permissible only if and within those limits, if it does not violate the fundamental rights and freedoms of the individual. Interference in this sphere can only be carried out based on the law and be reasonably justified. The intervention of the police is justified by the need to stop the illegal act in order to protect the health, rights, and legitimate interests of the person and further prevent it on the part of the offender. For example, when receiving a message about a conflict based on gender in the sphere of family and household relations, the police are obliged to respond even when they believe that such information indicated in the appeal is groundless or imaginary [28, p. 207].

The Constitution of Ukraine and international laws and regulations define the most general and basic rights and freedoms of a person and citizen, including those that are mandatory for the exercise of their powers by the police. The legal basis for the protection of citizens' rights is best laid down in the Law of Ukraine "On the National Police", which contains a number of progressive points in terms of ensuring the rights of individuals when police measures are applied to them. In particular, according to Article 7 of this Law, "police officers are prohibited under any circumstances from facilitating, committing, inciting, or tolerating any form of torture, cruel, inhuman or degrading treatment or punishment" [29]. "In the activities of the police, any privileges or restrictions are prohibited on the grounds of race, skin colour, political, religious and other beliefs, gender, ethnic and social origin, property status, place of residence, language or other grounds" (Article 5 of the Law of Ukraine "On the National Police") [29].

Ensuring gender equality requires not only legislative consolidation, but also a comprehensive investigation of its nature, a comprehensive and balanced approach to solving specific gender problems. Among other things, one of the most important issues is ensuring equal rights and opportunities for men and women by the National Police.

The mechanism of illegal behaviour of subjects of different genders, the psychological characteristics of each of them have significant differences, which excludes the use of uniform preventive measures of counteraction and requires the use of a gender approach (taking into account the biological, socio-psychological, and other characteristics of persons of different genders). Given this, the issues of maintaining a reasonable balance in the implementation of personnel policy regarding professional selection to the National Police do not lose their relevance, because it is no secret that, for example, the active involvement of women in reconciliation procedures in the event of family conflicts often has the best effect in countering such manifestations. At the same time, the insufficient number of women in certain police units makes it impossible to optimise activities in the field of prevention of gender-based violence.

The analysis of administrative and legal norms revealed the inconsistency of the gender approach of the legislator to their construction, which consists in particular in the absence of: a clear list of gender features that require differentiation of subjects of administrative responsibility; methods of the same type, systematic application of these features in the construction of norms of administrative and tort legislation. The above only highlights the high relevance of study on the issues outlined in the subsection, the search for the most effective mechanisms for preventing and

countering gender-based violence, and the development of optimal ways for such activities by the National Police.

Conclusions

The conducted study has yielded the following conclusions regarding the specifics of administrative and legal regulation: of gender policy in police activities:

1. Administrative and legal regulation of gender policy in police activities is a set of tools defined by the norms of administrative law that are used to ensure that authorised subjects of the National Police effectively regulate legal relations in the field under study. It is the norms of administrative law that establish the limits of the powers of a police officer and other authorised entities, establishing their rights and obligations, by ensuring the proper behaviour of subjects of influence by administrative coercion measures.

2. The object of administrative and legal support of gender equality is public relations based on gender ideas in any sphere covered by public management activities of the state. Accordingly, the object of administrative and legal relations is the behaviour of the participants in legal relations themselves (certain actions or abstinence from actions), which requires legal regulation and implementation through the norms of administrative law.

3. The promotion of gender equality is not limited to legislative consolidation and ensuring equal rights of women and men. An effective solution to this problem requires a thorough investigation and comprehensive solution of specific problems of the sexes, a balanced approach to ensuring equal rights and opportunities for men by the National Police of Ukraine, and gender balance in the implementation of personnel policy in the police.

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Адміністративно-правове регулювання гендерної політики в діяльності поліції

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■ **Анотація**. Стійке зростання кількості адміністративних правопорушень, учинених за ознакою статі, жертвами яких стають найбільш незахищені верстви громадян, засвідчує недостатньо ефективну діяльність держави в запобіганні та протидії гендерно зумовленому насильству. Здійснено аналіз особливостей адміністративноправового регулювання гендерної політики в діяльності поліції та визначено шляхи його вдосконалення. Мета статті – надати науково обґрунтовані висновки щодо оптимізації адміністративно-правового регулювання гендерної політики в діяльності поліції. Методологію дослідження становить цілісна й узгоджена система загальнофілософських (діалектичний, аналізу, синтезу) та спеціальних методів (історико-правовий, логіко-семантичний, спеціально-юридичний, формально-логічний, герменевтичний, порівняльно-правовий, моделювання та прогнозування). Зазначений методологічний інструментарій дав змогу належно проаналізувати предмет дослідження, дані опитування працівників Національної поліції України щодо визначення законодавчих механізмів забезпечення рівності на основі гендеру, специфіки адміністративно-правового регулювання гендерної політики поліції в цій сфері правовідносин. Встановлено сутність адміністративно-правового регулювання гендерної політики в діяльності поліції. Зауважено, що саме норми адміністративного права визначають повноваження поліцейського та інших суб'єктів реалізації гендерної політики, забезпечуючи належну поведінку суб'єктів впливу заходами адміністративного примусу. Зауважено, що об'єктом адміністративно-правових відносин варто вважати поведінку учасників правовідносин, які регулюються та реалізуються за допомогою положень адміністративного права. Наголошено на комплексному підході до питання адміністративно-правового регулювання гендерної політики в діяльності поліції, що не обмежується законодавчим закріпленням взаємних прав та обов'язків, а реалізується шляхом вивчення та вирішення специфічних потреб обох статей, активною роллю в цьому процесі органів Національної поліції України. Наведено аргументи щодо реалізації органами поліції виваженої політики в цій сфері, тобто на умовах гендерного паритету

■ **Ключові слова**: гендерна рівність; адміністративне право; повноваження; гендерно обумовлене насильство; заходи адміністративного примусу

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Prosecutor's Procedural Guidance on Pre-Trial Investigation: International Experience and National Realities

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■ **Abstract**. One of the main problems of reforming the institution of the prosecutor's office is the partial uncertainty of the function of procedural guidance of pre-trial investigations as an element of supervisory powers. The lack of provisions on effective influence on the implementation of instructions on the management of the investigation, bringing investigators to justice, etc. indicates the need to review the existing approaches to the scope of the prosecutor's powers. The purpose of the study is to analyse existing approaches to the scope of the prosecutor's powers regarding the procedural management of pre-trial investigations and to analyse the international experience of the functioning of this institution of criminal procedure. When writing this paper, terminological, system and structural, comparative and legal methods were used. The paper analyses the current state of procedural guidance in Ukraine and a number of European and post-Soviet countries to identify positive innovations and develop proposals for their implementation in the national law enforcement environment. The necessity of bringing approaches to the consolidation of this institution in the legislation in accordance with the provisions of the Constitution of Ukraine is discussed. The paper considers in detail the requirements of the legislation of Germany and Georgia regarding the consolidation of the institution of procedural guidance for pre-trial investigations. The classification of states according to the powers of their prosecutor's offices in terms of procedural management of pre-trial investigations is carried out. It is proved that the institute of procedural management of pre-trial investigations in Ukraine requires application of the experience of foreign countries. The findings can be used in rule-making and law enforcement activities

■ **Keywords**: supervision; powers; inquiry; criminal procedure; investigators; procedural actions

■ Introduction

The current stage of reforming the law enforcement system in Europe and the former Soviet Union has not yet been completed. This stage is characterised by the creation of new institutions (agreements in criminal proceedings, adversarial parties, etc.), the abolition of existing ones (the institution of pre-investigation verification and initiation of criminal proceedings), the reform of existing ones (bringing to criminal responsibility (suspicion, accusation), choosing a preventive measure, etc.). In this regard, one of the main problems is the reform of the institution of the prosecutor's office and the introduction of the function of procedural guidance of pre-trial investigation as an element of supervisory powers, which today is not homogeneous in the countries that have introduced this function, and the structure of criminal justice and the place, role and even name of such a body as the prosecutor's office.

Issues of procedural management of the prosecutor's pre-trial investigation were the subjects of study by many researchers. In particular, O. Kaplina [1] raises the issue of determining the competence of a prosecutor and investigator that is relevant for modern law enforcement practice. The author emphasises that this problem is partly caused by the uncertainty of the current criminal procedure legislation, including in terms of the prosecutor's implementation of procedural management of the pre-trial investigation. A. Palyukh [2] examines the essence and content of procedural guidance as the basis of the prosecutor's activity at the stage of pre-trial investigation during the implementation of evidentiary activities, emphasising that the prosecutor's activities to ensure the speed, completeness, and impartiality of pre-trial investigation is unthinkable without the use of authority to lead the investigation,

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which consists in the fact that the prosecutor organises and controls the activities of the investigator for evidence in criminal proceedings. The researcher also highlights the problematic issue of the fact that in most of the studied criminal proceedings, the prosecutor does not directly conduct investigative (search) and other procedural actions. V. Klochkov [3] examines the problem of legislative support for the activities of the procedural controller – prosecutor in relation to criminal proceedings in the pre-trial investigation. The prosecutor must perform the tasks of criminal proceedings to protect rights and freedoms and legitimate interests, to ensure a quick, complete, and impartial investigation.

In the above papers, the authors quite fully revealed the issues under study. However, a number of problematic issues (the lack of regulatory provisions regarding the effective influence of the prosecutor on the implementation of instructions on the management of the investigation, bringing investigators to justice) regarding the implementation of the functions of the prosecutor – procedural controller remain unresolved, which requires a review of existing approaches to the scope of the prosecutor's powers and the need to investigate the international experience of the functioning of this institution of criminal procedure.

The purpose of the study is to define and revise the scope of the prosecutor's powers and the specifics of their implementation in the context of the institution of procedural management of the pre-trial investigation, considering the international experience of its functioning.

■ Materials and Methods

When writing this paper, terminological, system and structural, comparative and legal methods were used. In particular, the terminological method was used to clarify the essence of the concepts of "procedural management of pre-trial investigation", "supervision of compliance with laws". The system and structural method was used in the process of considering the legal institution of procedural guidance of a pre-trial investigation through its components. The comparative legal method is widely used in the study of the norms of foreign procedural legislation and their comparison with the norms of the national procedural law.

During the study, the Ukrainian criminal procedure legislation, the scientific doctrine on the competence of the prosecutor's office, and the norms of foreign procedural legislation were considered. In particular, the following laws and regulations were analysed: the Constitution of Ukraine [4], the Criminal Procedure Code of Ukraine [5], the Law of Ukraine "On the Prosecutor's Office" [6], the Criminal Procedure Code of Ukraine of 1961 [7], the Criminal Procedure Code of Germany [8], the Law of Georgia "On the Prosecutor's Office" [9], the Criminal Procedure Code of Georgia [10], the procedure for maintaining a single record in police bodies (divisions) of statements and reports of criminal offences and other events [11].

■ Results and Discussion

Procedural guidance in Ukraine

In Ukraine, procedural guidance is a new institution of criminal procedure, which is at the stage of establishment and reform. The activities of prosecutors at the stage of pre-trial investigation are associated not only with the exercise of supervisory powers, but also with the implementation of the function of procedural guidance. The powers of the prosecutor, which are determined by the Criminal Procedure Code of Ukraine [5] (hereinafter – CPC), are not just of an authoritative nature, but are actually of an authoritative and administrative nature. Coordinating the work of the investigator, taking a direct part in the implementation of investigative actions, timely pointing out the mistakes made during the investigation, the prosecutor acquires the actual and legal opportunity to firmly defend in court their own views on the proven fact of the crime and the guilt of the defendant [1, p. 76].

The prosecutor's procedural powers are much broader than those given to the heads of investigative departments. Heads of pre-trial investigation bodies are obliged to follow the instructions of prosecutors provided in the written form. Procedural guidance by a prosecutor should be understood as organising the process of the entire pre-trial investigation, determining its vectors, coordinating the entire set of necessary procedural actions, ensuring compliance with legal norms during the investigation, and helping to ensure conditions for the normal exercise of their functions by investigators [3, p. 262].

Supervision of compliance with laws, which is carried out as a form of procedural guidance of pre-trial investigation, is revealed in the implementation by the prosecutor, along with the exercise of supervisory powers, activities associated with determining the range of evidence, methods of obtaining it in a separate criminal proceeding, and with the conduct of appropriate investigative (search) and secret investigative (search) actions, and with ensuring in this process the legality in the actions of investigators [12, p. 108]. For its part, the procedural supervisor combines the head of the investigator and prosecutor, who supervise the investigation, and accordingly, the management of the investigation [13 p. 137].

On November 20, 2012, the new CPC of Ukraine came into force [5], in which the prosecutor's activities underwent significant changes. In fact, the prosecutor's supervision of the CPC of 1961 was replaced by prosecutor's supervision of compliance with laws during pre-trial investigations in the form of procedural guidance [7]. If under the 1961 CPC [7] the prosecutor was away from the investigation process itself, monitoring

compliance with laws and interfering with the process itself only when violations of the law were detected or when final decisions were made, then under the 2012 CPC [5] in each criminal proceeding from the moment it was entered into the Unified Register of pre-trial investigations (hereinafter – the Register), the prosecutor is appointed as the procedural controller. The procedural controller can conduct prosecution by giving instructions, participating in investigative actions, coordinating relevant petitions and decisions, thereby preparing evidence for making a final decision in the proceedings. The investigator can no longer carry out investigative actions that restrict the rights of citizens without the consent of the prosecutor.

In addition, according to the CPC of 1961 [7], only the head of the prosecutor's office or deputy had the right to sign decisions in a criminal case, but now every prosecutor – procedural controller makes almost all decisions and signs all procedural documents in criminal proceedings [14, p. 271]. The process has also changed significantly. Thus, the stages of pre-investigation verification, initiation of criminal proceedings have disappeared, it is consolidated that all statements about crimes are entered in the Register and all facts are investigated by investigators. The powers of operational units are limited to the execution of instructions of the investigator and prosecutor, at the same time, investigators received the right to independently conduct secret investigative actions, an analogue of operational search activities, in fact becoming analogues of detectives that exist in other countries of the world [2, p. 478].

Such novelties in the procedural law [5] immediately led to significant changes in the registration of criminal offences (crimes) and provoked an increase in the burden on investigators and prosecutors – procedural managers. The first months of the CPC 2012 [5] showed that law enforcement agencies, primarily the police and prosecutors, were not fully ready to work under the new legislation [15, p. 80]. First of all, this was conditioned by the fact that the structure of law enforcement agencies was not changed in a timely manner in accordance with the CPC 2012 [5]. For example, as of 11/20/2012, the Ministry of internal affairs employed 8,142 investigators, the number of operational employees exceeded 40 thousand, making the ratio of investigators and employees of operational units one to five. That is, the reserve for increasing the number of investigative units was significant, but there was no mass transfer of operational employees to investigative units. After the reform of the police, the number of investigators generally decreased [5].

In order to address the issues of reducing the burden on investigators and prosecutors from the first days of the CPC 2012 [5], the way of issuing bylaws was chosen, some of which, as it turned out later, contradicted the law [16, p. 112].

In the system of the Ministry of internal affairs, an order was issued on unified accounting [11], which provides that the decision to enter an application in the unified state register of legal entities is made by the deputy head of the district department – the head of the investigative department, and other applications are written off to the order, since they do not contain information about the commission of a criminal offence. This order is still valid today. It has led to thousands of appeals against refusals to register applications to the court, which are satisfied by the court in almost all cases of appeal. At the same time, the prosecutor provides procedural guidance from the moment of registration of the application in the unified state register of legal entities and therefore does not legally have the authority to respond to violations of the law when the application is refused registration in the Register.

In addition, after the start of the new procedural legislation [5], the right of the prosecutor to respond to the inaction of investigators and heads of investigative units was significantly restricted [1, p. 80]. Criminal liability of investigators was provided for deliberate failure to follow the instructions of prosecutors, but with an avalanche-like increase in the number of cases for each of the investigators, it was impossible to prove the premeditation of the latter's actions regarding non-compliance with the instructions. A total of 18 such proceedings were registered, and all of them were closed. In the future, the norm on criminal liability of investigators for failure to comply with the prosecutor's instructions was abolished. At the moment, the prosecutor has only the right to provide mandatory instructions to the investigator, but does not have the ability to respond to their non-compliance [5].

In general, the prosecutor's procedural guidance has remained virtually unchanged for almost 10 years of the CPC 2012 [5], but as a result of the reform of law enforcement agencies, it has become much more complicated, which indicates the inconsistency of the legislation. In the Constitution of Ukraine [4] in Paragraph 2 of Part 1 of Article 131-1, the functions of the prosecutor's office include the powers to organise and provide procedural guidance for pre-trial investigation, supervision of secret and other investigative and search actions carried out by law enforcement agencies, and the solution of other issues that arise during criminal proceedings in accordance with the norms of legislation [4]. Part 2 of Article 36 of the CPC of Ukraine [2] stipulates that prosecutors monitor compliance with the provisions of the relevant laws during the pre-trial investigation. The form of such supervision is called procedural management of pre-trial investigation [5]. In the Law of Ukraine "On the Prosecutor's Office" [6], the prosecutor's office is assigned such functions as supervision of compliance with laws by bodies that carry out operational search activities, pre-trial Investigation, inquiry, and in this norm procedural guidance is not consolidated [6].

International experience in procedural guidance

The above indicates the need to bring approaches to the consolidation of this institution in legislation in accordance with the provisions of the Constitution of Ukraine [4]. In addition, the practical application of the norms of laws revealed a number of problematic issues in the exercise of the prosecutor's functions. First of all, this concerns the lack of provisions on effective influence on the implementation of instructions for managing the investigation, bringing investigators to justice, and others, which also indicate the need to review existing approaches to the scope of the prosecutor's powers. The process of further reform should be based on the investigation and application of international experience.

Since the CPC of Ukraine [5] is similar to the CPC of Germany [8], due to the implementation of the norms of the latter, when developing the Ukrainian Criminal Procedure Law, it is necessary to consider the regulation of this institution in Germany. Thus, in German criminal proceedings, only the prosecutor's office has the right to initiate criminal proceedings and support the prosecution. According to §170, p. 1 of the German CPC [8], if in the course of conducting an inquiry sufficient grounds for initiating a public accusation are obtained, the prosecutor's office brings it by submitting an indictment to the court [17, p. 233]. In addition, §163 of the German CPC [8] delegates the duties of investigating the circumstances of a criminal action to the police, although it is not an officially recognised body of inquiry. This order also grants police authorities and officials the right to "First Access" (in German – "erster Angrif") to find out the reasons for the act committed and prevent complications during the investigation. Police bodies are considered subsidiary bodies to the prosecutor's office due to the fact that they must transfer the collected materials to it without unnecessary delay to ensure the performance of their function, as required by § 163 p. 2 of the German CPC [8].

The approach of the German CPC [8] provides for the priority of prosecutor's orders over so-called "emergency" judge decisions, and also regulates the ability to give orders and instructions to the investigator directly, without the consent of the head of the investigative body [18]. An interesting Institute of German Criminal Procedure Law is the Erbittlungspersonen der Staatsanwaltschaft Institute (the literal translation is prosecutor's persons of inquiry, but given that there are no analogues of this institution in Ukrainian legislation, the study suggests that the full content of this institute will reveal the term "prosecutor's office inquirers") of police officials who are involved by the prosecutor's office to conduct an inquiry. These persons are authorised to conduct certain procedural actions during the inquiry, both on behalf of the prosecutor's office, which gave instructions, and on behalf of the prosecutor, who gave instructions to conduct them. It is with the help of this institution that the prosecutor can give instructions to a specific police officer without involving their leadership [17].

Georgia's experience in these matters is also of interest. Thus, according to Articles 32 and 33 of the CPC of Georgia [10], the prosecutor's office is a criminal prosecution body. To ensure the performance of this function, the prosecutor's office provides procedural guidance to the investigation. In cases provided for by the CPC of Georgia [10], and in accordance with the established procedure, the prosecutor's office fully investigates crimes, supports state prosecution in court [19, p. 194]. Georgian legislation, along with other tasks, assigns the prosecutor the function of exercising procedural supervision at the stage of preliminary investigation to secure charges. To fulfil these powers, according to Articles 23-28 of the Law of Georgia "On the Prosecutor's Office" [9], it is responsible for introducing such acts of prosecutor's response as submission, protest, ruling, instruction, approval, and complaint [9].

According to Article 33 of the CPC of Georgia [10], the prosecutor has the right to:

a) entrust the investigation of a criminal case to a particular law enforcement agency or investigator; withdraw the case from one investigator and transfer it to another;

b) take part in conducting investigative actions or independently conduct a preliminary investigation;

c) in the course of the investigation, give mandatory instructions to the law enforcement agency or (and) the lower prosecutor;

d) request separate materials of the criminal case;

e) apply to the court with a request to adopt a court ruling on the election, modification, or cancellation of preventive measures against the accused subjects, conduct investigative actions or (and) operational search measures restricting human rights, and in other cases provided for by the code;

f) cancel the decisions of the investigator or the lower prosecutor;

g) discontinue the criminal prosecution or (and) the investigation or discontinue the criminal prosecution;

h) allow complaints about the actions or (and) decisions of the investigator, and in case of their appeal to the court – to give the necessary explanations to the court;

i) change the charges;

j) enter into a procedural agreement with the accused and submit a petition to the court for sentencing against the accused without the court considering the criminal case on its merits;

k) submit evidence to the court, participate in the consideration of the issue of their admissibility;

l) apply to the court to request evidence from private individuals during the investigation process;

m) demand and freely receive documents or other material evidence from state bodies;

n) make decisions on the search for the accused (convicted person);

o) recognise a person as a victim and explain to them their rights and obligations;

p) exercise other powers provided for in the Code [19, p. 196].

The Chief Prosecutor of Georgia or an authorised person is granted the right, according to which, regardless of the jurisdiction, they can withdraw the case from a certain investigative body and transfer it for investigation by another investigative body; remove the lower prosecutor from exercising procedural guidance and assign their functions to another prosecutor [9].

In the above-mentioned and other countries of the near and far abroad, where prosecutor's offices operate, their officials are assigned the following functions in pre-trial investigation:

1) prosecution (in Albania and Denmark);

2) prosecution; supervision of compliance with laws by the bodies that conduct pre-trial investigation of criminal offences (Bulgaria, Armenia, Brazil, Czech Republic, Estonia, Yemen, Portugal, Republic of Kazakhstan);

3) prosecution; supervision of the implementation of legal requirements by the bodies that investigate criminal offences; procedural guidance on the activities of pre-trial investigation bodies (China, Greece, Japan, Romania);

4) prosecution; procedural guidance on the activities of pre-trial investigation bodies (Norway, Austria, Turkey, the Netherlands, France, Switzerland);

5) prosecution; supervision of law enforcement by bodies that investigate criminal offences, human rights function (Argentina, Uzbekistan, Kyrgyzstan);

6) prosecution; supervision of the implementation of laws by the bodies that investigate criminal offences; procedural guidance on the activities of pre-trial investigation bodies; direct investigation of criminal offences (Vietnam, Azerbaijan, Georgia);

7) prosecution; supervision of compliance with laws by bodies that investigate criminal offences; direct investigation of criminal offences; coordination function (Tajikistan, Lithuania, Belgium, Poland) [20, p. 277].

In a number of countries (Denmark, Belgium, Georgia), prosecutors perform at the stage of pre-trial investigation only the function of prosecution and direct investigation of criminal offences or prosecution functions; supervision of the implementation of the law by the bodies that conduct pre-trial investigation of criminal offences; direct investigation of criminal offences [20, p. 276]. The function of supervision (control) over compliance with laws during pre-trial investigations is performed in Bulgaria, Armenia, Brazil, Yemen, Portugal, Republic of Kazakhstan, Estonia, Czech Republic, China, Greece, Japan, Romania, Argentina, Uzbekistan, Kyrgyzstan, Vietnam, Azerbaijan, Georgia, Tajikistan, Lithuania, Belgium, Poland; the function of procedural guidance of bodies that investigate criminal offences is performed by prosecutors in Norway, Austria, Turkey, the Netherlands, France, Switzerland, China, Greece, Japan, Romania, Vietnam, Azerbaijan, Georgia; the function of direct investigation of criminal offences – in Vietnam, Azerbaijan, Georgia, Tajikistan, Lithuania, Belgium, Poland; human rights protection – in Argentina, Uzbekistan, Kyrgyzstan.

In recent years, the function of prosecutors providing procedural guidance to pre-trial investigations has become particularly widespread. Prosecutors, as procedural controllers, determine the strategy and tactics of pre-trial (or preliminary) investigation, provide written instructions on the implementation of certain investigative and other procedural actions, cancel unjustified or illegal decisions of the latter.

Conclusions

There is no homogeneous institution of criminal procedure, in general, and the institution of procedural guidance by the prosecutor of pre-trial investigation, in particular. In connection with the studied positive experience in the criminal process of Ukraine, it is necessary to apply: following the example of Germany – the exclusive right of the prosecutor to initiate criminal proceedings (pre-trial investigation); from the experience of Germany – the existence of the right of the prosecutor to give instructions to a specific police officer without involving the management; the right of the prosecutor to initiate disciplinary responsibility of investigators, employees of bodies conducting operational search activities, for violations of the law, non-performance or improper performance of official duties, instructions of the prosecutor; the right of the prosecutor to issue an order to initiate disciplinary proceedings against an investigator; from the experience of Georgia – to transfer proceedings from one investigator to another, to terminate criminal prosecution in all cases provided for by law.

In addition, the Institute of German Criminal Procedure Law, called Erittlungspersonen der Staatsanwaltschaft, which refers to officials who are involved by the prosecutor's office to conduct an inquiry is also of interest to borrow in Ukraine. The literal translation may sound like "prosecutor's persons of inquiry". There are no analogues of this institution in Ukrainian legislation. The study suggests that the introduction of this institution will have a positive impact on the effectiveness of prosecutors' implementation of procedural guidance in pre-trial investigations.

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Здійснення прокурором процесуального керівництва досудовим розслідуванням: міжнародний досвід і національні реалії

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■ **Анотація**. Однією з основних проблем реформування інституту прокуратури є часткова невизначеність функції процесуального керівництва досудовим розслідуванням як елемента наглядових повноважень. Відсутність положень щодо ефективного впливу на виконання вказівок стосовно керівництва слідством, притягнення слідчих до відповідальності свідчать про необхідність перегляду наявних підходів до обсягу повноважень прокурора. Метою статті є аналіз наявних підходів до обсягу повноважень прокурора щодо процесуального керівництва досудовим розслідуванням і вивчення міжнародного досвіду функціонування цього інституту кримінального процесу. Під час написання статті застосовано термінологічний, системно-структурний, порівняльно-правовий методи. У статті проаналізовано сучасний стан процесуального керівництва в Україні, низці країн Європи та пострадянського простору щодо визначення позитивних інновацій та розроблення пропозицій щодо їх впровадження в національне правозастосовне середовище. Аргументовано необхідність приведення підходів до закріплення цього інституту в законодавстві відповідно до положень Конституції України. Детально проаналізовано приписи законодавства Німеччини та Грузії стосовно закріплення інституту процесуального керівництва досудовим розслідуванням. Здійснено класифікацію держав за повноваженнями їхніх органів прокуратури в частині процесуального керівництва досудовим розслідуванням. Доведено, що інститут процесуального керівництва досудовим розслідуванням в Україні потребує застосування досвіду зарубіжних держав. Зауважено, що результати дослідження можуть бути використані в нормотворчій і правозастосовній діяльності

■ **Ключові слова**: нагляд; повноваження; дізнання; кримінальний процес; слідчі дії; процесуальні дії

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Problems of Forensic Handwriting Examination in the Analysis of Signatures and Short Notes

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■ **Abstract**. The widespread introduction of the latest means of printing and copying, new materials of writing, the use of advanced technologies for performing individual details of various documents has led to an increase in the role of forensic handwriting analysis and technical and forensic examination of documents in the disclosure and investigation of criminal offences, which are now one of the most complex types of forensic expertise. During the investigation of criminal offences, identification studies, which establish the presence or absence of identity, are of the greatest evidentiary importance. However, recently, short handwritten notes and signatures have become increasingly the objects of forensic research, which are often performed using technical means and tools. This causes considerable difficulties for knowledgeable people in solving investigation problems and their combination. Such tasks often remain either unresolved, or insufficiently substantiated conclusions are drawn from the findings. The purpose of the study is a detailed scientific analysis of the problem of investigating documents that exist at the present stage and relate both to this branch of forensic technology in general, and some individual aspects of forensic handwriting research and technical and forensic research of documents, and, based on this, the development of ways to improve the implementation of the mentioned investigations. In accordance with the goal and specifics of the subject matter, a number of methods are used, including: dialectical, formal and logical, system and structural, dogmatic and other methods of scientific knowledge. The essence of such categories as "signature" and "short notes" is clarified; attention is focused on the need to establish the method of execution (type of writing device) or the fact of the presence or absence of signs of forgery when conducting expert studies of signatures and short notes. The need to train handwriting experts in order to train complex specialists, in particular in the field of technical and forensic research of documents, computer technologies that can comprehensively examine documents and handwriting objects made in a variety of ways is emphasised. Prospects are defined in: further development of methods that allow for forensic research of signatures and short notes made using technical means and tools; development of parameters for solving identification, diagnostic, classification, and situational problems in terms of the quality and volume of the handwriting object and features of making technical changes to it

■ **Keywords**: graphology; forensic examination of documents; expert examination; low-volume handwriting objects; technical forgery of documents

■ Introduction

Forensic handwriting expertise is one of the most common and important forensic studies. Its objects – handwritten texts, short notes, and signatures – are widely represented in public life and are of great importance in the implementation of legal proceedings and other law enforcement activities. Forensic research of such uninformative handwriting objects as signatures and short notes in the investigation of criminal offences is aimed at establishing the objective side of crimes, the circumstances that are included in the evidence. The method of forgery established with the help of special knowledge of the expert, making changes to the handwriting object in the process of further proof is interpreted by the pre-trial investigation body, the court based on legal knowledge as a method of material forgery of the document, or its individual details.

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Questions of studying properties of low volume handwriting objects, determining the possibilities of solving identification, diagnostic, and other tasks during their forensic research were the subject of attention of some Ukrainian [1-3] and foreign forensic graphologists [4-6]. A significant contribution to the forensic study of documents was made by N. Terziev, who in his works in the middle of the 20th century for the first time identified two parts in the forensic study of documents: 1) handwriting expertise; 2) technical expertise of documents [7]. Modern studies devoted to this problem should include the works of V. Biriukova, V. Kovalenko, T. Biriukova and K. Kovalov ("Forensic documentation") [3], E. Simakova-Yefremian ("On the criteria for evaluating methods of forensic examinations in Ukraine") [2], G. Kutskir ("Modern methods of technical forgery of signatures using technical means" [8], M. Hryha ("Forensic examination of signatures made using technique" [1].

At the same time, it has to be stated that methodical foundations of forensic handwriting expertise were developed in the second half of the 20th century, when the texts of documents were written by hand. Over time, both the methods of committing offences and the theoretical foundations of this expertise were improved, which tried to keep up with the times. Paying tribute to the theoretical and practical significance of previous studies on this issue, it is worth recognising the insufficient number of papers devoted to clarifying the organisational and technical aspects of forensic research of signatures and short notes made using technical means and tools. There is a need for the further theoretical and scientific study of the chosen problem, considering and developing existing scientific achievements, to practically use the identified potential opportunities. After all, in the 21st century, the development of forensic research of documents is associated with the greatest technological progress in the field of printing and office equipment.

In particular, one of the problems of modern research of low-volume handwriting objects is that when conducting them, sufficient attention is not paid to establishing the fact of the presence or absence of signs of technical forgery, due to the fact that the expert does not have the competence to establish such circumstances. It also requires solving the issue of clearly delineating the competence of experts in the study of signatures, mainly in relation to documents with technical forgery in the framework of forensic examination of documents. These circumstances actualise the expediency of scientific and practical analysis of the identified problem.

The purpose of the study is a detailed scientific analysis of the problem of forensic handwriting expertise in the analysis of signatures and short entries and, based on this, the development of ways to improve the implementation of expertise. To achieve this goal, it is necessary to solve the following tasks: to find out the essence and content of signatures and short notes as objects of expert handwriting research; to determine the theoretical and applied and organisational problems of forensic handwriting research of documents; to suggest ways to optimise the conduct of forensic handwriting expertise.

Materials and Methods

The complex application of methods and techniques which form the methodological basis of this study allowed considering the problems of analysis of signatures and short entries made using technical means in the unity of their social content and legal form. The main research method is *dialectical*, with the help of laws and categories of which the essence of forensic research of signatures and short notes made using technical means and tools is determined. The use of general scientific and special methods allowed considering the features of the object and subject of this study. In particular, the application of the dogmatic method contributed to the clarification of the content of such forensic categories as "signature", "short note"; with the help of the system and structural method, the main tasks of forensic handwriting expertise are determined during the analysis of signatures and short notes, the main problems that arise are highlighted. The formal and logical method contributed to determining the content of scientific categories and concepts that are considered; the use of the sociological method confirmed individual scientific conclusions based on the results of empirical research.

The theoretical basis of the study is made up of scientific and applied results of fundamental research of Ukrainian and foreign graphologists, whose focus was to determine the possibilities of solving identification, diagnostic, and other tasks during handwriting research of low-volume handwriting objects. The empirical basis of the study consists of materials of criminal proceedings and the results of a survey of 132 handwriting experts of the State Research Expert Centre of the Ministry of Internal Affairs, Dnipropetrovsk, Poltava, Ternopil Research Expert-Criminalistics Centre, Kyiv Scientific Research Institute of Forensic Expertise of the Ministry of Justice of Ukraine (2019-2022) on the problems of applying special knowledge in the study of signatures and short notes, namely: features of low-volume objects of forensic handwriting examinations; methods of conducting these handwriting studies; opportunities for using knowledge and methods of a number of sciences in the study of complex objects, etc.

Results and Discussion

The history of falsification of documents for illegal purposes accompanies the entire history of mankind,

as evidenced by the evolution of methods of documenting information and related methods of forgery. The relationship between these two phenomena became the basis for the development of tools and methods for studying documents and finding facts of falsification. Characteristic of the modern period is that the production of forged documents has become one of the branches of criminal fishing, often carried out in a group, in particular, organised, which is associated with the "specialisation" of criminals, the emergence of skills in forging signatures, reproduced with the help of high-tech tools and performed at a fairly high level [8, p. 354]. Criminals learned to imitate the pressure characteristics of handwriting objects [3, p. 182], which led to the emergence of new difficulties in practice conditioned by the lack of appropriate methods for conducting handwriting analysis under such circumstances.

Finding out the authenticity of the search objects submitted for examination and solving other expert tasks now causes serious difficulties and requires finding solutions. The rapid development of copying and multiplying technology, which has a high retail capacity when applying a signature image or a short entry to the surface of a sheet of the document under study, poses new tasks for expert departments that require a comprehensive approach to solve them, new requirements are imposed for improving the skills of relevant specialists in this field.

Forensic handwriting expertise is a highly developed branch of criminalistics and forensic expertise. The analysis of signatures and short notes is a special case of conducting this type of expertise. The material carrier of information about the fact of writing, its signs and other circumstances that are important in criminal proceedings, in such cases, is a low-volume handwritten product (signature and/or short note) [1, p. 33], reflected in the relevant document.

First of all, it is necessary to consider the essence and content of such objects of forensic handwriting examinations as "signature" and "short notes".

The signature is one of the most important details of the document and, at the same time, the most common proof of identity. The abundance of different categories of documents and the variety of circumstances that they certify do not allow making even an approximate list of all cases of using a signature as one of the document details. The signature is one of the most difficult objects when conducting expert research. There are the following reasons for this: a signature is an identifiable object on documents; the emergence of new methods of signature forgery; an increase in the number of criminal offences related to document forgery; the obsolescence of signature research methods, etc.

A signature differs from handwriting in the process of its formation, but as a handwriting material, it also has the main identification properties – individuality and stability. The signature is associated with handwriting by the unity of psychophysiological foundations, technical and graphic writing skills. At the same time, the content of signature features differs from the content of handwriting features, and the signature features themselves are peculiar only to this object of research.

Despite different interpretations, the characteristic features of the signature are the following: the signature is a certifying sign of a certain person [9]; it is performed personally in the form of a graphic image [9; 10]; it can consist of letters of the surname or be a conditional graphic design of the surname, initials, first name [11; 12]; it is applied to the document to certify various facts and events [10; 12].

Short handwriting objects according to the existing classification of objects of handwriting expertise include: small texts (with a letter composition – from 4 to 10 words and digital – from 8 digital characters to half a page of a standard sheet filled with digital text), short entries (respectively 1-3 words and 1-7 digital characters), and signatures. A common property that unites all handwritten objects of this type is that the volume is significantly smaller than that of large and medium-sized texts that represent the handwriting of a particular person more fully. Ultimately, it is well known that a manuscript, other things being equal, is either larger or more informative [13].

According to a survey of handwriting experts, the vast majority of handwriting information in the form of signatures, short entries, can be contained on official documents (84%), less often – on such media, as a box or packaging, which can be either paper (12%) or non-paper (4%).

The study of such objects is based on the general provisions of the methodology of forensic handwriting expertise, which is a step-by-step sequence of expert actions and is determined by typical expert situations. Situations that arise during the study of low-volume manuscripts leave their mark on the entire methodology of expert research and make significant features in each of its stages.

Forensic research of such uninformative handwriting objects as signatures and short notes in the investigation of criminal offences is aimed at establishing the objective side of crimes, the circumstances that are included in the evidence. The method of forgery established with the help of special knowledge of the expert, making changes to the handwriting object in the process of further proof is interpreted by the pre-trial investigation body, the court based on legal knowledge as a method of material forgery of the document, or its individual details. Modern forensic science contains areas that allow it to assist the authorities in the prevention, investigation, and detection of criminal offences. In this case, forensic research of documents,

as a branch of forensic technology, is important. However, it is worth noting that the exact differentiation of experts' competence in the study of signatures remains a debatable issue, mainly in relation to documents with technical forgery in the framework of forensic research of documents [14, p. 23].

For example, when conducting a forensic analysis of signatures, the fact of the presence or absence of signs of technical forgery is practically not established, due to the fact that the expert does not have the competence to establish these circumstances. The method of conducting handwriting expertise provides for the mandatory establishment of the method of execution (type of writing device) or the fact of the presence or absence of signs of forgery. Avoiding this provision leads to expert errors. Experts have problems studying documents created using computer technologies. It can be concluded that the very narrow competence of the handwriting expert does not allow them to fully investigate texts, notes, and signatures. Today, it is necessary to supplement the competence of experts in the field of technical and forensic examination of documents.

In practice, a technical and forensic examination is assigned to these documents, during which it is necessary to establish factual data related to the execution of documents, the specifics of changing documents during their use and storage, etc. At the same time, the work of an expert is impossible due to insufficient knowledge in the field of computer technology. There is a way out of this situation in the need to move from training narrow-profile experts to training complex specialists who are able to examine documents and handwriting objects made in a variety of ways.

A relevant issue is the examination of signatures and brief notations in documents produced by ink-jet method. When performing such an examination, a handwriting expert who has little work experience and does not have the appropriate competence in the framework of technical research of documents may be misled and come to an erroneous conclusion, considering these handwriting objects as original documents made in handwriting and continue their further identification research. Since to identify the structure of a single-colour image during a cursory study (inspection) of these objects, without the help of appropriate technical equipment (when studying these objects in less than 32^{x} magnitude), it is almost impossible and they can be similar in general features to those made by a writing device like a capillary pen. This is conditioned by the rapid development of copying and multiplying technology, which has a high retail capacity when applying an image of a signature or a short entry to the surface of a sheet of the document under study.

In general, it can be concluded that the tasks of an expert in conducting these studies are of an integrative, complex nature, and their solution is associated with the use of knowledge and methods of a number of sciences in the process of conducting forensic expertise in the study of complex objects. The authors of this study share the position of such modern criminologists as E. Simakova-Efremyan, T. Balinyan, L. Derecha regarding the integration of knowledge during complex examinations is a mechanism that helps to overcome the lack of information about the object under study, correctly substantiate the expert opinion, and therefore increase the level of its completeness and reliability. Ultimately, it is precisely according to the principles of objectivity and completeness of research that forensic expert activity should be built [2, p. 153].

Conclusions

Thus, it can be concluded that the forensic study of signatures and short notes made using technical means and tools refers to complex and integrative tasks of forensic handwriting expertise. The rapid penetration of computer technologies in almost all areas of activity, the constant increase in the variety and improvement of digital printing equipment, the active use of modern technical achievements by criminals for the production of forged documents and their details, require the development of new research methods in the field of handwriting and document science.

While maintaining the conventional procedure characteristic of the study of all objects of handwriting, during the forensic handwriting examination of signatures and short notes for the expert, the organisation of work on obtaining additional information is relevant, namely: determining the degree of suitability of the object, on the quality of which the possibility of handwriting research depends; orientation information on the use of technologies for forging signatures and short notes; information and systematisation of those factors that affect the quality of the manifestation of individual signs of writing; information about those signs that have undergone changes and masking, etc.

The handwriting expert studies of signatures and short notes, considering their relevance, require an integrated approach and additional development of theoretical foundations related to the definition of the object, purpose, and objectives of this type of research, and the development of recommendations for research methods of these low-volume handwriting objects, which are often performed using technical means. In this regard, it is effective: to further define methods that allow for forensic research of signatures and short notes made using technical means and tools; to develop parameters for solving identification, diagnostic, classification, and situational problems in terms of the quality and volume of the handwriting object and features of making technical changes to it.

With this in mind the expert must pay particular attention to: establishing whether or not there are any signs of technical forgery; making a clear distinction between the competence of experts in the examination of signatures and short notes, mainly documents with technical forgery within the framework of forensic document examination. The quality of such research primarily depends on the level of knowledge and competence of the expert.

The considered topical issues in the field of handwriting and technical and forensic research of documents, conditioned by the needs of the development of society and forensic investigative practice, require a clear regulation and a single methodological approach when conducting forensic research of signatures and short notes, because in practice there are problems that in the absence of appropriate methods today would cause misunderstandings not only among experts, but also among authorised subjects of criminal process – the investigator, prosecutor, judge, who evaluate the expert opinion as a source of evidence, and individuals who commissioned the expert analysis.

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Проблеми судової почеркознавчої експертизи під час дослідження підписів та коротких записів

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■ **Анотація**. Активне впровадження новітніх засобів поліграфії та копіювання, нових матеріалів письма, використання передових технологій для виконання окремих реквізитів різних документів призвело до підвищення в розкритті та розслідуванні кримінальних правопорушень ролі криміналістичного дослідження почерку й техніко-криміналістичного дослідження документів, які нині є одними з найскладніших видів криміналістичної експертизи. Під час розслідування кримінальних правопорушень найбільше доказове значення мають ідентифікаційні дослідження, у яких встановлюється наявність чи відсутність тотожності. Проте останнім часом дедалі частіше об'єктами криміналістичних досліджень стають короткі рукописні записи та підписи, які нерідко виконуються за допомогою технічних прийомів і засобів. Це викликає неабиякі труднощі в обізнаних осіб під час вирішення завдань дослідження, їх комбінації. Такі завдання нерідко залишаються або невирішеними, або за результатами дослідження робляться недостатньо обґрунтовані висновки. Метою статті є детальний науковий аналіз проблеми дослідження документів, що існують на сучасному етапі та стосуються як загалом цієї галузі криміналістичної техніки, так і деяких окремих аспектів криміналістичного дослідження почерку та техніко-криміналістичного дослідження документів, та, на підставі цього, вироблення шляхів удосконалення здійснення зазначених досліджень. Відповідно до поставленої мети та специфіки предмета наукового дослідження, використано низку методів, серед яких: діалектичний, формально-логічний, системно-структурний, догматичний та інші методи наукового пізнання. З'ясовано сутність таких категорій, як «підпис» та «короткі записи». Акцентовано на необхідності встановлення способу виконання (виду пишучого приладу) або факту наявності чи відсутності ознак підробки під час проведення експертних досліджень підписів і коротких записів; наголошено на необхідності підготовки експертів-почеркознавців вузького профілю до підготовки комплексних фахівців, зокрема в галузі техніко-криміналістичного дослідження документів, комп'ютерних технологій, здатних всебічно досліджувати документи та об'єкти почерку, виготовлені найрізноманітнішими способами. Визначено перспективи дослідження, які полягають у подальшому розробленні методів, що дозволяють здійснити криміналістичне дослідження підписів і коротких записів, виконаних за допомогою технічних прийомів та засобів; визначенні параметрів вирішення ідентифікаційних, діагностичних, класифікаційних і ситуаційних завдань з точки зору якості та обсягу об'єкта почерку й особливостей внесення технічних змін у нього

■ **Ключові слова**: почеркознавство; криміналістичне дослідження документів; експерт; малооб'ємні об'єкти почерку; технічна підробка документів

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Victimological Aspects of the Behavior of Victims of Domestic Violence

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■ **Abstract**. The relevance of the subject under study is conditioned upon the need for an in-depth study of such a complex social phenomenon as domestic violence, which involves finding out the patterns of formation of victim behaviour of victims of domestic violence. That is why the purpose of this study is to prove and investigate the general and special qualities, properties, nature of victimhood, victimisation and characterise the specifics of the behaviour of victims of domestic violence. To achieve this goal, a complex of philosophical, general scientific, and special legal methods of scientific knowledge was used. The historical method, comparative legal method, system, hermeneutical, structural, and functional method, comparison method, generalisation and other methods of scientific research were applied, which in turn contributed to the effective scientific search for the chosen research subject. As a result of the study, the criminological and victimological aspects of victims of domestic violence are analysed in the context of modern theoretical and legal knowledge. The essence of domestic violence as a social phenomenon and as a crime is considered. The article highlights the general provisions of victimology in the field of scientific and criminological knowledge, as well as individual victimological characteristics of victims of domestic violence. The essence and characteristic features of victim behaviour are revealed, and the factors of victimhood and victimisation are identified. Typical coping strategies are described. The interdisciplinary analysis of victim behaviour of victims of domestic violence allowed us to consider psychological and legal aspects of various demographic segments of victims of domestic violence by gender and age: women, men, children. The system of causal relationship victim – abuser – victim behaviour in domestic violence is found. It is proved that victims of domestic violence are characterised by the presence of signs of emotional and behavioural disorders caused by systematic acts of domestic violence. The provisions formed and set out in the scientific article can be used in law of applicable activities – in the development and improvement of recommendations on preventing and countering domestic violence; research activities – for further research of solving the problem of domestic violence and developing general theoretical and practical recommendations, measures; educational process – during the preparation of lectures, seminars, criminology, victimology, criminal law, family law, social psychology, legal psychology, preventive psychology

■ **Keywords**: legal conduct; domestic violence; crime; abuser; victim; coping strategies

■ Introduction

In modern conditions of development of the processes of state creation, development of the rule of law and formation of a conscious civil society, issues of solving the problems of domestic violence and related vectors of legal behaviour in the family, everyday life, and family are of particular importance. Thus, "according to the statistics of the National Police, the National Police of Ukraine in 2019 [1, p. 11] registered applications, reports of committed offences and other events related to domestic violence – 141814. Urgent restraining orders were issued – 15878 (of which men – 15259, women – 616). Since 2019, there has been an increase in the number of registered applications and reports of domestic violence-related offences. Among the reasons for this growth may be an increase in public attention to the problem of domestic violence, an increase in public awareness, the adoption of changes in legislation, the introduction

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of new norms and their wide discussion in society, namely in the media and social networks" [1, p. 11]. Therewith, in 2019 under Article 126-1 of the Criminal Code of Ukraine [2] 588 people were recognised as victims (women – 534, men – 49). Of these, victims of physical violence – 145 (women – 132, men – 12), from psychological – 412 (women – 376, men – 33), from economic – 7 (women) [1, p. 15].

In turn, "according to the statistics that were published during the voting for the Law of Ukraine "On Preventing and Countering Domestic Violence" it is indicated that "over 3 million children in Ukraine annually observe acts of domestic violence or are forced participants in them, and almost 70% of women are subjected to various forms of bullying and humiliation. Every year, about 1,500 women, and this trend has been increasing over the past three years, die at the hands of their own husbands. Children of offended mothers are 6 times more likely to commit suicide, and 50% – to drug abuse. Almost 100% of mothers who were subjected to violence gave birth to sick children – with neuroses, stuttering, enuresis, cerebral palsy, and mental disorders. Domestic violence in Ukraine is the reason for 100 thousand days of hospitalisation, 30 thousand appeals to traumatology departments, 40 thousand calls to doctors. At the same time, only 10% of victims seek help. To this day, many consider such relations "normal" [3].

It is also a matter of concern that domestic violence is the most common cause of family breakdown and divorce. "Victims of domestic violence (mostly women) cannot properly perform their parental duties, as a result of which the level of social orphanhood increases" [4]. And 21% of those who experienced physical violence in childhood also use physical force against children [4].

Thus, the relevance of the chosen research topic is beyond doubt and is due to the public demand for preventing and countering domestic violence. The relevance of the subject under study is also reinforced by the need to overcome stereotypical ideas about the privacy of legal behaviour in the family, family, everyday life, as well as by increasing the role of social control in preventing deviant behaviour in interpersonal relationships.

The purpose of this study is an analysis of victimological aspects in relation to victims of domestic violence. To achieve this purpose, the following tasks were outlined and performed: to highlight the historical aspects of the formation of the theoretical foundations of victimology as the doctrine of the victim; to determine the essence of the concepts: victim, victim, victim, victim behaviour; to outline conceptual approaches to the study of victim behaviour of the individual; determine the determining factors of victimisation of victims of domestic violence and consider the victimological aspects of different categories of victims of domestic violence based on gender, age, and education; generalise received research results and make recommendations regarding the victimological prevention.

■ Literature Review

The problem of victimological aspects and legal behaviour in the family, family, everyday life is the object of close attention of foreign and Ukrainian scientists and practitioners. Researchers are interested in finding out the genesis of victimhood and criminal behaviour, which in turn causes *addressing the origins* the doctrine of the victim (victimology). "The idea of the victim's place in the genesis of criminal behaviour is not new, it occurs in numerous literary sources since ancient times" [5, p. 223]. Among the famous scientists of the past, whose ideas and activities are directly related to the formation and development of victimology, it is worth mentioning the name of the German scientist Hans von Hentig, the Romanian researcher B. Mendelssohn, the Swiss scientists G. Elenberger and R. Gasser, the Lithuanian scientist L. Frank. The works of the above-mentioned scientists contributed to the formation of victimology as a branch of criminology.

In 1940, Hans von Gentig published his scientific work [6]. In this scientific article, the scientist expresses the opinion that there is a relationship between individual categories of criminals and the corresponding categories of the victim and identifies forms of victim behaviour (a victim who succumbs, contributes, or provokes a criminal situation). The author also outlines and presents widespread characteristics of the types of victims. Thus, for example, for the depressive type of victim, according to the scientist, the instinct of self-preservation is weakened [6, p. 304]. Subsequently, in 1948, the scientific work of Hans von Gentig was published [7]. where the researcher offers a new thesis in criminology – the role of the victim and focuses on how certain traits, features of the victim form the aggressive tendencies of the criminal [7]. Gradually, the doctrine of sacrifice became complex and interdisciplinary.

The current state of development of victimology is represented by various areas of theoretical research and practical developments in applied application. Thus, some issues of criminological definition of the term "victim of crime" were investigated by D. Vygovskyi, T. Nikiforova [8]. Analysis of victimhood as the main category of victimology was performed by B. Holovkin [9]. The problem of the victim of crime as the main element of victimology was studied by O. Dolgiy, T. Mudryak, L. Omelchuk [10]. Ya. Chaplak and G. Chuiko investigated victimhood as a socio-psychological problem of modern times [11]. Special attention should be paid to the dissertation thesis of V. Tulyakov, which is a fundamental scientific work in the field of criminal law, criminology, and victimology [12].

The search for solutions to the problems of domestic violence and legal behaviour in the family, everyday life, and family was carried out by many Ukrainian scientists. M. Pashkovska made methodological recommendations on preventing and countering domestic violence by national police units [13]. The study of the victimological portrait of victims of life-threatening domestic violence was carried out by M. Kuznetsov [14]. Features of coping strategies and types of victim behaviour in women who have experienced domestic violence, and those who have not had any facts of violence were studied by T. Klebais and K. Chernets [15]. The issue of male victimhood in the modern family is presented in the study by M. Dikova-Favorska [16].

Research in the context of comparative law plays a vital role in scientific research on the genesis of victimhood and other victimological aspects of victims of domestic violence. According to researchers from Rutgers University, N. Bhardwaj, J. Miller, who conducted a comparative interethnic analysis of domestic violence, such work brings us closer to understanding the common and different causes, patterns, and consequences of domestic violence in society and emphasises that marriage, religion and global processes reveal theoretically significant variations in the experience of women experiencing domestic violence [17]. N. Bhardwaj, J. Miller notes that domestic violence is a global phenomenon that affects countless lives, which in turn leads to the further development of intersectional comparative studies [17].

Interesting and promising scientific studies of the problem of victimhood in domestic violence are presented in the works of modern Canadian scientists. Thus, a historical retrospective of the 40-year practice of operating shelters (homes for living) of women victims of domestic (marital) violence was carried out by the Canadian researcher I. Côté [18]. The ethical difficulties associated with working with women who have suffered from domestic violence and do not want to report violence to the authorities have attracted the attention of Canadian scientists C. Lalande, S. Gauthier, M. Bouthillier [19]; the evolution of the social network of women victims of domestic violence was considered by scientists A. Nolet, C. Morselli, M. Cousineau [20].

The relationship between violence against women, victimisation of women and abuse of children by women in the context of domestic violence was studied by a group of Canadian scientists, in particular: D. Damant, S. Lapierre, C. Lebossé, S. Thibault et al. [21]. The results of the study revealed a connection between victimisation of women, violence against women, and subsequent abuse of children by women in the context of domestic violence. It is argued that women's abuse of their children can be seen as a consequence of their personal experience of domestic violence. Therewith, women who have suffered from violence have free will, and therefore are responsible if they decide to use violence against their children [21].

Analysing the victimological aspects of victims of domestic violence, the question of the victim's response to manifestations of domestic violence naturally arises by contacting law enforcement agencies and the police. For example, the study of factors that encourage, encourage, or prevent victims from reporting domestic violence and contacting the police was carried out by R. Felson, S. Messner, A. Hoskin and G. Deane [22]. The results of the study showed that the response of victims to attacks is quite a complex issue. Based on the generally accepted perception that victims of domestic violence, especially women, are reluctant to call the police, the researchers found that victims of domestic violence are less likely than victims of other types of violence to go to the police because of concerns about privacy, privacy and fear of revenge on the part of the abuser and at the same time a desire to protect the offenders. Therewith, scientists pay attention to the victim's desire for self-defence, gender role and the victim-criminal relationship regarding the reporting to the police [22].

Rethinking access to justice through the eyes of survivors of domestic violence in rural areas was studied by American scientists A. Magnus and F. Donohue [23]. Analysing the problems of domestic violence in rural areas, scientists emphasise that access to justice, as a theoretical construction and applied principle in the US legal system, can be used in many ways [23].

Thus, the analysis of scientific works of Ukrainian and foreign scientists shows that despite a significant number of scientific developments, the solution of the problem of domestic violence does not lose its relevance and encourages us to find out the components of the links in the system of causal relationship of domestic violence, and in particular, to understand the features of the nature, sources, and factors of victimhood in domestic violence.

Materials and Methods

The methodological tools were chosen considering the purpose, object, and subject of the study. The theoretical and methodological framework of this study constitutes a pluralistic approach to scientific knowledge of victimological aspects of victims of domestic violence. A set of philosophical, general scientific and special methods and techniques was used to solve these problems. Thus, the use of the historical method allowed us to consider the retrospectives of the formation and development of the science of the victim of criminal attacks; the use of the system method allowed us to consider the process of victimisation of the person and identify the structural components of determination, as a result of the interaction of various

factors: objective, subjective, internal, external, acquiring the essence of biological and social characters; with the help of the hermeneutical method, individual units of the potentially categorical apparatus of victimology, as the doctrine of the victim, are revealed and interpreted. The structural and functional method helped to present the results of the study on a modular system. Scientific developments of modern Ukrainian and foreign scientists are considered using the comparative method. Classification as a type of analysis was applied when considering the variability of victim behaviour; the generalisation method was used to find out the general and characteristic features inherent in a person as a victim of domestic violence; the regression analysis method was used to search for hidden patterns and features of the formation of victim behaviour and identify an interdependent connection with the coping strategy.

The information base of the study was the current regulations of the current legislation of Ukraine and official statistical data. Namely: the Law of Ukraine No. 2229-VIII "On Preventing and Countering Domestic Violence" of 12/07/2017 [24]; Letter No. 1/11-5480 of the Ministry of Education and Science of Ukraine "Methodological Recommendations for Preventing and Countering Violence" dated 05/18/2018 [3]; Decree of the Cabinet of Ministers of Ukraine No. 728-R "On Approval of the Concept of the State Social Programme for Preventing and Countering Domestic Violence and Gender-Based Violence for the Period Up to 2025" of October 10, 2018 [4].

■ Results and Discussion

Domestic violence in its consequences and actions is one of the key problems of public and private existence. However, the nature of the problem of domestic violence is a complex causal chain, the solution of which requires balance, objectivity, legality. In situations of domestic violence, social and personal configurations can be traced, which are a complex of objective and subjective conditions and factors that accumulate unmotivated manifestations of aggression and form favourable conditions for domestic violence.

In addition, "contradictions of public opinion regarding the background phenomena of domestic violence and the preservation of discriminatory ideas about behaviour models and overcoming conflicts complicate the solution of problematic situations of domestic violence" [25, p. 81].

Against this background, "domestic violence has deep roots in outdated oppression based on inter-sex, economic or physical dominance in family relationships. Such violence is committed with the illegal intention of causing direct or indirect influence on the behaviour of a dependent family member and is associated with causing material or moral damage. Moreover, the lack of understanding and condemnation of such offences in society and in individual families makes it particularly difficult to counteract domestic violence" [26].

At the same time, the problems of latent and open forms of domestic violence are often associated with moral and psychological failure, cultural taboo, fear of judgment, shame and other unfavourable ideas that are the result of long-term stereotypical thinking about the criterion of legality in the family, everyday life, family. This vision is based to a considerable extent on the factors of micro – and macro – culture of tolerance, inertia, outdated modes of normativity and deviation in Family-Family and everyday relations. The current problems are compounded by the inability to properly protect one's honour, dignity and defend one's legitimate rights and interests. In this regard, one of the strategic tasks of the principal guide to preventing and countering domestic violence is to overcome stereotypical discriminatory ideas about legal behaviour in family and family relations and develop a fresh style of interpersonal communication.

In this context, it is worth paying attention to the results public opinion research, carried out by Ukrainian scientists G. Kuzan and N. Hordiienko [27, p. 131]. As a result of the conducted research, several provisions are formulated. According to G. Kuzan and N. Hordiienko*,* it is established: "systematic unjustified jealousy on the part of a man, which often ended in threats and scandals, women explained the ban on communicating with colleagues primarily by their husband's love, jealousy or ordinary unbalance. Financial restrictions of the wife, total control on the part of the husband over expenses from the family budget were most often explained by his thriftiness and the fact that he is the real owner or the dependence of the wife on her husband, if her earnings are small" [27, p. 131].

In turn, O. Dmytrashchuk also emphasises that domestic violence is characterised by group victimisation of the female sex. The victim who has been harmed by domestic violence is a woman over the age of 18, married, working, has a secondary education, and lives together with the abuser. Such a person is prone to passive behaviour and due to their psychophysiological characteristics, is not able to resist the abuser, which contributes to the commission of domestic violence. The abuser causes harm to the victim with this characteristic [28, p. 143].

The problem of victim behaviour of victims of domestic violence against vulnerable categories of the population is particularly acute: people with disabilities; children; the elderly; people who are in difficult life circumstances and have the highest risk of insufficient social or psychological protection.

Regarding the use of alcoholic beverages and the crime of domestic violence, it is worth noting that almost one in six cases of domestic violence (16%) was committed during or at once after drinking alcohol.

At the same time, women are 3 times more likely than men to commit domestic violence while sober. This trend looks quite natural against the background of the deterministic role of victim behaviour in the mechanisms of domestic violence committed by people revealed above of different intensity [29, p. 92].

At the same time, we emphasise that the essence of the category "victim of crime" is still quite contradictory in science and practice. It is argued that the concept of "victim" is a broader concept than "victim". The conceptual provision in this sense is the statement of V. Tulyakov that "any individual (social community) who has suffered physical, material, or moral damage by the crime is recognised as a victim of a crime" [12, p. 11].

Considering the distinction between the definitions of the concept of "victim", "victim" and "injured person", it should be noted that Article 1 of the Law of Ukraine "On Preventing and Countering Domestic Violence" states as follows: "a person who has suffered from domestic violence (hereinafter referred to as the victim) is a person who has experienced domestic violence in any form" [24, p. 1]. In criminal proceedings, the victim is one of the parties taking part in criminal proceedings, with the definition of the status of "victim" and is endowed, per the Criminal Procedural Code and the fundamental principles of judicial proceedings, with the corresponding subjective rights and legal obligations. Paragraph 2 of Article 55 of the Criminal Procedural Code of Ukraine States: "the rights and obligations of a victim arise in a person from the moment of filing an application for committing a criminal offence against him or an application for involving him in proceedings as a victim" [30, p. 55].

In general, victim behaviour, as well as the phenomenon of "victimhood" cover, among other things, socio-demographic, socio-role, criminal-legal, moral, and psychological components. Under these circumstances, S. Hura emphasises the importance of analysis in victimhood, its forms, and phenomena in various spheres of life. This approach allows, according to S. Hura: "to determine the features of interaction between the victim and the criminal in the mechanism of criminal behaviour" [31, p. 32].

Let us consider scientific approaches to defining the concepts of "victimism" and "victim behaviour". For example, N. Lishchuk tends to recognise the complex structure of victimhood, according to which victimhood is considered as "a complex of relatively stable typical social and (or) psychological (less often physiological) personality traits that determine in interaction with external circumstances an increased "ability" of a person to become a victim of crime" [32, p. 99]. According to N. Lishchuk, the properties of a person's ability to become a victim of a crime can be corrected, changed, and even completely neutralised. The researcher notes: "victimisation is primarily a personal characteristic. A person can contribute to their own victimisation by victim behaviour, both considering these victim personal inclinations, and due to a random combination of circumstances" [32, p. 100].

V. Tulyakov notes:" victimhood as the ability of a subject to become a victim of a socially dangerous manifestation and acts in its general theoretical understanding as a social phenomenon (status characteristics of role victims and behavioural deviations from safety standards), mental (pathological victimhood, fear of crime, and other anomalies) and moral (interiorisation of victimogenic norms, rules of behaviour of the victim and criminal subculture, self-determination of oneself as a victim)"[12, p. 15].

N. Lishchuk notes the relationship of guilty behaviour with the characteristics of the victim's personality. The researcher claims that guilty behaviour is often "a consequence and implementation of victimogenic deformity of the victim's personality" [32, p. 103].

The article substantiates the opinion that victimhood is considered at the individual, group, and mass levels. In turn, victimisation is considered by scientists as a process of formation and development of victimhood, at various levels of organisations of social communities (individual, group, mass levels), which is based on factors of social and psychological nature [33, p. 12].

In this context, it is worth noting the position of V. Tulyakov, who emphasises:" victimhood and criminal behaviour of a person are formed through antagonism between the levels of recognition (social aspect), opportunities (mental aspect) and claims (moral, spiritual aspect), and at the mass level reflect various manifestations of the existence of deviation as a social form" [12, p. 8].

V. Tulyakov states: "the homeostatic interaction of dependent but independent manifestations of criminal and victim behaviour forms a stable criminogenic system. This process occurs at the level of both the social whole and individual groups and individuals" [12, p. 11].

It is also worth noting the opinion of S. Hura on the allocation of general and specific victimhood. Thus, according to S. Hura, general victimisation is represented by the social, role and gender characteristics of the victim. At the same time, "specific victimhood is realised in the attitudes, properties, attributes of the individual" [31, p. 36].

In this regard, scientists distinguish the following types of victim behaviour: legitimate; neutral; illegal. In turn, according to the degree of risk, there are: a random victim; a victim with a low degree of risk; a victim with an increased degree of risk; a victim with a remarkably high degree of risk. Depending on the stages of criminal influence, victims are distinguished: potential; real; latent. According to the principle of

activity and critical perception, there are: active; proactive; passive; non-critical. In addition, victim behaviour is divided into individual; specific; group; mass.

Without denying the logic of the above statements, we emphasise that the degree of victimhood of any person can be minimised depending on whether a person chooses the best behaviour option to prevent a victimogenic situation [10, p. 32].

According to A. Dzhuzha and D. Tychyna: "the fundamental provision on the partial dependence of the criminal's behaviour on the victim's behaviour becomes important. Of course, the actions of the victim can also be different due to their legal assessment, namely: illegal, legitimate, indifferent from the point of view of law, and sometimes morality. In some cases, the behaviour of victims often serves as an impetus for the commission of a crime" [34, p. 91].

The above provisions also apply to victimhood in family and family relations. Thus, S. Filippov notes: "victimisation of a person who has suffered from domestic violence is defined as an integral property of the individual, which is characterised by low self-esteem, disproportionately critical attitude to oneself; an increased level of anxiety; a low ability to overcome external pressure; a noticeable attitude to helplessness; such behavioural dispositions in family relations that are guided by victim stereotypes" [35, p. 158-159].

Given this, even the very fact of provocations in domestic violence often has the usual character of long-term systematic conflict interaction of both the offender, the victim, and observers, conquerors, and other third parties, creating a gradually threatening atmosphere of hatred, rage, revenge, and over time becomes a potential risk of crime. N. Honcharova notes that experts in the field of criminal law and criminology have repeatedly drawn attention to the fact that prolonged domestic violence is highly likely to lead to the commission of a crime either by the subject of violence or by its victims. In the first case, a person who commits violence against their loved ones, without meeting adequate resistance, gradually becomes confident in their own impunity, and from swearing and insults passes to bullying and beatings, which can later end in injury or death of victims of violence in the second – the ongoing process of violence leads to the accumulation of frustrating emotions in the victim and subsequently to a surge of aggression in the form of a dangerous criminal act – murder, causing grievous bodily harm, etc. There is also a third variant of the development of events when for some time there is a periodic inversion of psychological roles in the rapist-victim dyad, and only on the case depends who will eventually become the subject of the crime, and who is the victim [36, p. 141].

At the same time, we will pay attention to the characteristics of the victim/injured person, which is indicated in the methodological recommendations for preventing and countering violence [3]. Thus, the injured person – "this is often a person who sees the act of violence to get love through suffering". Victims have problems with setting boundaries, boundaries, do not know how to defend them, and you can interfere in their space with impunity. Their inherent features are shame, problems with a sense of self-esteem. The victim of cyclical violence can enjoy the benefits of violence, such as the opportunity to take advantage of feelings of guilt felt by the perpetrator during periods of tranquillity, or to receive pity from others (compassion). Psychologists also apply such a concept as "acquired helplessness" to victims – a phenomenon that is formed because violence was not protected, it could not be avoided, it was indulged, and therefore, protection from it has lost its meaning. That is, a person begins to use their position as a victim to obtain certain benefits" [3].

Researcher N. Lishchuk emphasises: "according to most experts, women victims of domestic violence are characterised by a passive-contemplative position, feelings of fear, anxiety, patience, sacrifice, and rigidity. There is the presence of low self-esteem, self-doubt, dependence on a man, imbalance, which can manifest itself in increased emotionality, vulnerability or inadequate reactions, aggression" [32, p. 78]. In this context, it is also worth paying attention to the so-called "beaten woman syndrome" ("*Le syndrome de la femme battue*").

Victimisation of child victims of domestic violence deserves special attention in the structural segmentation of victims of domestic violence. Children are known to belong to one of the most vulnerable demographic groups. Therefore, without a doubt, raising a child in an atmosphere of harmony, harmony, and kindness is the key to its development neuropsychiatric health and successful comprehensive development. But family troubles, misunderstandings, the inability of adult family members, family members to find compromises in advance and constructively resolve conflicts negatively affect the mental, physical, moral development of the child, his legal socialisation, which leads to the likelihood of increasing marginality and the problem of "social orphanhood".

When conducting research on the victimological aspects of domestic violence, it is also worth paying attention to the phenomenon of male victimhood in domestic violence. The problem of male victimhood is relevant in the segmentation of domestic violence and is understudied. Accordingly, there are not enough comprehensive studies of the voiced segment. Although statistics of domestic violence show that about 10% of men suffer from domestic violence. At the same time, the latency of domestic violence against men is significantly higher. Usually, men try not to disclose these cases about their suffering as a victim of domestic violence.

However, "90% of victims of violence are women. During 2019, more than 130 thousand complaints of citizens about domestic violence were recorded, which is 15% more compared to the same period last year, of which 88% were from women, 10% from men. 1,055 requests were received from children" [37]. In these circumstances, the opinion of D. Dikova-Favorskaya about the need for new approaches "that would take into account the interests of men and recognise domestic violence not only as a gender problem, but as a problem of a general social scale "seems reasonable [16, p. 231].

In the scientific work of D. Dikova-Favorska, analysing the individual psychological traits of male victims of domestic violence, she concludes that there are common features that are observed in victims of both male and female sex. In particular, there are the following features: "low self-esteem, anxiety, neuroticism, dependence, self-doubt, internal aggressiveness, loss of orientation, as well as lack of formation of moral values, lack of value orientations regarding spiritual development, low respect for oneself and others" [15, p. 230]. The researcher also draws attention to cases of male alcoholism, "when a woman, having no other means of influence, resorts to psychological and economic pressure, or even physical force" [16, p. 230]. D. Dikova-Favorska emphasises: "men who are subjected to domestic violence often have sexual problems or are marked by inadequate gender-role self-identification; in such families, there is a confusion of social roles, which is manifested primarily in the dominance of women, complete subordination and helplessness of a man who has a low level of needs and desires, an unformed sense of self-esteem. The characteristic behaviour of men in conflict is to choose a strategy of avoidance (leaving home) or confrontation (retaliatory violence). Constructive resolution of the family conflict was unsuccessful" [16, p. 230]. It follows from the above that domestic violence, like victimisation in domestic violence, has no age or gender boundaries.

Thus, the universal characteristics of victims of domestic violence include psychological instability, emotional exhaustion, unbalance, feelings of fear, anxiety, intemperance, disharmony. This is to a certain extent combined with psychological incompatibility with the abuser and accumulates outdated grievances, thereby disturbing the psychological balance of these individuals. Failure to independently break the cycle of domestic violence and economic disorder, dependence on a partner produces new acts of domestic violence. Long-term conflicts of domestic violence from time to time give rise to the formation of various forms of deviant behaviour, both passive and active. This in turn indicates an internal conflict of the individual and provokes tragic consequences: bipolar disorder, depression, auto-aggression, or suicide.

V. Papusha, summarising the conceptual provisions regarding the nature of victim behaviour, identifies the following approaches: a) psychodynamic approach; b) socio-cognitive; c) dispositional. According to the psychodynamic approach, victim behaviour is a "syndrome of pathological personality development" [38, p. 71]. The prerequisite for victim behaviour in this case is "an unconscious internal-personal conflict" [38, p. 71]. In turn, V. Papusha notes: "representatives of the socio-cognitive directly a certain set of behavioural reactions and actions is considered as prerequisites, formed over the course of life". Therewith, V. Papusha notes: "according to the dispositional approach, its weighty prerequisites are: features of Family Education, forming victim dispositions of the individual and self-stigma as a victim; individual reactions of the individual to environmental conditions, taking into account the phenotype of his parents; features of the influence of personal experience of ontogenetic development; value dispositions of the individual, taking into account his social environment" [38, p. 71].

The multiplicity and multifactorial nature of victim behaviour naturally coordinates the researcher to find out strategies for resolving conflicts in the family-family household sphere and to the so-called phenomenon of coping strategies. Coping in the example from English means "to overcome". Coping strategy covers cognitive, emotional, and behavioural strategies for coping with stressful environments. The definition of coping strategies of the individual allows you to reveal and interpret the trend of style and behaviour patterns when overcoming various obstacles. The phenomenon of coping strategies is quite clearly manifested in the origin, formation, and development of the model of overcoming difficulties in the family and household family sphere and provides a certain legal understanding of the abuser-victim, revealing at the same time the prospects and conditions for the transformation of stressful conflict situations, misunderstandings into motivating factors of domestic violence. This allows finding structural elements of the genesis of victim behaviour of victims of domestic violence in the polyphony of the deep conflict "domestic violence".

S. Hrabovska, M. Yesyp note the existence of different approaches to the interpretation of the phenomenon of coping strategy. Scientists distinguish psychoanalytic, dispositional transactional directions. Thus, according to the authors: "in the psychoanalytic approach, coping is understood as a mechanism of psychological protection; dispositional – as a person's tendency to overcome difficulties, depending on the personality traits of a person; transactional – as a set of cognitive and behavioural efforts aimed at solving a problem; in the resource approach, attention is focused on the various opportunities that a person has" [98, p. 188].

An important characteristic feature of choosing

coping strategies is the relationship of coping strategies with individual psychological personality traits. Very revealing in this sense are the scientific achievements of Ukrainian scientists T. Klibais and K. Chernets regarding the coping strategies of women who have experienced domestic violence and suffer from domestic violence. Thus, in 2019, T. Klebais and K. Chernets presented to the academic community and a wide audience the results of the study "coping strategies and types of victim behaviour in women who have experienced domestic violence and those who did not have any facts of violence". The results of the study showed that among women who have suffered from domestic violence, the most common coping strategies are: a) "escape-avoidance"; b) "distancing" [15, p. 153]. *In addition*, T. Klibais, K. Chernets note:" women who have experienced domestic violence are most often inclined to use confrontational coping, escape-avoidance strategy and search for social support in stressful situations" [15, p. 152]. Therewith,"the most successful types of behaviour used by women who have not experienced domestic violence were identified: self-control strategies and problem-solving planning" [15, p. 153]. In addition, as T. Klibais and K. Chernets note, "for women who have never experienced domestic violence, the main coping strategy is to create a plan to get out of a critical situation" [15, p. 152]. Currently, "women who have not experienced domestic violence are more likely to use a self-control strategy in demanding situations" [15, p. 152].

The determinants of victimisation of victims of domestic violence are a complex of interrelated factors of a biological and social nature. Along with biological factors, there are also social factors, namely the legal and economic status in the social hierarchy, the level of mandatory social security, the social role, etc. Biological factors include, first, the presence of certain pathological changes in cells, tissues, and organs of various etiological origin, which under certain conditions give rise to the inability of the victim to adequately defend their legal rights and interests and, accordingly, protect themselves and (or) their relatives and relatives. Structural elements that characterise individual psychological factors include intellectual, sensory, and emotional loads in the personal sphere, internal tension, and "frustration". In the formation and formation of victim behaviour and the affirmation of the role of the victim in domestic violence, actions and actions, views, reasoning produced by pathogenic thinking acquire a peculiar significance. Often, the first bricks of victim behaviour are laid in childhood. When in the family circle, the family begins to instil the label "victim" in a small child; they delay with ideas, beliefs of pathogenic thinking and words like "unhappy, ugly, loser", thereby forming the "stigma of the victim" and victim behaviour. The "victim stigma" and victim behaviour formed in primary socialisation sometimes become one of the catalysts for domestic violence and manifest themselves in the long-term role of the victim, which has been fixed for years, and the inability to independently break the circle of domestic violence. A separate place in this sense is occupied by the so-called "victim syndrome". Thus, in the formation and development of victim behaviour in family-household, family role interaction, along with situational factors, environmental and genetic factors occupy a prominent place.

The analysis of the studied problems suggests that any inconsistency in family and household kinship relations with the inability and lack of readiness, desire, ability, and conditions for a constructive solution to the conflict gradually encourages the accumulation of complaints and claims and the distribution of roles of the abuser, victim, observers, instigators, advisers. At the same time, with the identification of the roles of participants in a deep polyphonic conflict and a socially dangerous act, which is domestic violence, increased attention of the researcher is drawn to finding out the analytical quantitative and qualitative characteristics that are associated with the existence of the phenomenon of victimhood of victims of domestic violence. It is the above-mentioned context that determines the researcher to find out the stable and natural in the problem of victimhood and victimisation of victims of domestic violence and, accordingly, encourages the search for the relationship of the individual, special and general, which in turn serves as a significant factor for studying the relationship between objective and subjective in the behaviour of victims of domestic violence. Taking this approach into account, the general classification characteristics of victim behaviour are indicated. Therewith, it is necessary to use both the fundamental and special foundations of the doctrine of sacrifice. The fundamentals stand for the initial canons of general victimology theory and victim behaviour theory. Special principles hold specific structural elements of victimhood of certain types and groups, categories, namely victimhood of victims of domestic violence. In this process, there is a close private abuser-victim interaction, situational conditions of the dynamics of legal reality, psychological compatibility-incompatibility, culturally defined narratives of a stereotypical model of legal conduct, legal national mentality, cultural and traditional customs, fragmentary changes in the life cycle, etc.

Summing up the above provisions, it is also worth noting the role of victimological prevention in the field of preventing and countering domestic violence, as a set of measures aimed at slowing down the rate of victimisation and preventing, identifying, eliminating and neutralising victimhood factors. Under these circumstances, victimological prevention is divided into primary; secondary; tertiary prevention. Macro-,

micro-, and meso-levels of victimological prevention are also distinguished. General and special victimological prevention are distinguished by their target orientation. Separately, we note social and individual victimological prevention. In particular, individual victimological prevention, along with social and spiritual components, includes the individual's own work to improve their knowledge, skills, and abilities to reduce the influence of victimogenic determination factors and, accordingly, minimise victimogenic situations. This implies finding the individual's own resources, developing the individual's own autonomy, which, among other things, acts as a significant predictor of a harmonious well-coordinated existence of the individual.

Conclusions

Thus, the results of the study allowed us to emphasise the complexity of the social phenomenon of domestic violence as a social phenomenon and as a socially dangerous act. The analysed main theoretical approaches provided an opportunity to highlight a wide range of scientific views on the source of victimhood, victim behaviour and identify moral, psychological, mental, and legal characteristics of victims of domestic violence. The results obtained indicate a complex system of causal chain of macro-and microenvironment factors, and, accordingly, raise many new questions for the researcher about the nature and factors of victim behaviour in domestic violence. Given the above, the authors of this study conclude that victims of domestic violence are characterised by the presence of emotional and behavioural disorders, which are caused, among other things, by systematic acts of domestic violence.

A characteristic feature is psychological instability, emotional exhaustion, unbalance, feelings of fear, anxiety, intemperance, disharmony. This is to a certain extent combined with psychological incompatibility with the abuser and accumulates outdated grievances. At the same time, the inability to independently break the circle of domestic violence and economic disorder (lack of economic, psychological, moral autonomy, dependence on a partner) produce new acts of domestic violence, depriving a person of a harmonious perception of their own being. Such forms of deviant behaviour as auto-aggression, suicidal behaviour, and other adaptive behaviour disorders are particularly relevant in domestic violence. These signs, in turn, indicate many questions that remained outside the scope of this work and emphasise the need for further interdisciplinary research on the genesis of victimhood in domestic violence by group and species, as well as the development of appropriate preventive and rehabilitation measures.

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Віктимологічні аспекти поведінки жертв домашнього насильства

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■ **Анотація**. Актуальність теми значною мірою обумовлена необхідністю поглибленого дослідження такого складного соціального феномену, як домашнє насильство, що передбачає з'ясування закономірностей формування віктимної поведінки жертв домашнього насильства. Метою статті є встановлення та дослідження загальних і спеціальних рис, властивостей, природи віктимності, віктимізації, а також визначення специфіки поведінки жертв домашнього насильства. Для реалізації поставленої мети використано комплекс філософських, загальнонаукових і спеціально-юридичних методів наукового пізнання. Застосовано історичний, порівняльно-правовий, системний, герменевтичний, структурно-функціональний методи, а також методи порівняння, узагальнення тощо, які сприяли ефективному науковому пошуку обраного предмета дослідження. Унаслідок проведеного дослідження проаналізовано кримінолого-віктимологічні аспекти жертв домашнього насильства в контексті сучасних теоретико-правових знань. Розглянуто сутність домашнього насильства як соціального явища та як злочину. Висвітлено загальні положення віктимології в галузі науково-кримінологічного знання, а також окремі віктимологічні характеристики жертв домашнього насильства. Розкрито сутність і характерні особливості віктимної поведінки, виокремлено чинники віктимності та віктимізації Описано типові копінг-стратегії. На підставі міждисциплінарного аналізу віктимної поведінки жертв домашнього насильства встановлено психологічні та правові аспекти різних демографічних сегментів жертв домашнього насильства за статевою та віковою належністю: жінки, чоловіки, діти. Визначено систему причиново-наслідкового взаємозв'язку «жертва – кривдник – віктимна поведінка» у домашньому насильстві. Встановлено, що жертвам цих протиправних діянь притаманні ознаки емоційних і поведінкових розладів, які спричинені систематичними актами домашнього насильства. Викладені в науковій статті положення можуть бути використані у: правозастосовній діяльності під час розроблення, удосконалення рекомендацій з питань запобігання, протидії домашньому насильству; науково-дослідній діяльності – для подальшого дослідження проблематики домашнього насильства й розроблення загальнотеоретичних і практичних рекомендацій, заходів; освітньому процесі – під час підготовки лекцій, семінарів з кримінології, віктимології, кримінального права, сімейного права, соціальної психології, юридичної психології, превентивної психології

■ **Ключові слова**: правова поведінка; домашнє насильство; злочин; кривдник; жертва; копінг-стратегії

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The Court as a Subject of Examination and Evaluation of Evidence in Criminal Proceedings

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■ **Abstract.** The reform of the criminal procedure legislation and the judicial system of Ukraine actualises the need to clarify the boundaries of the court's activity in criminal proceedings, its role in collecting, verifying, and evaluating evidence to establish circumstances relevant to criminal proceedings. The purpose of the study is to investigate the provisions of the current criminal procedure legislation in terms of examination and evaluation of evidence by the court. A system of general scientific and special research methods was used to achieve the goals set, including dialectical, system and structural, statistical, and system analysis methods. It is proved that within the framework of judicial proceedings, a judge, as a subject of examination and evaluation of evidence, carries out certain research activities. It is proved that this activity is aimed at establishing circumstances and reproducing certain fragments of reality that prove or refute the facts, which results in the formation of an internal conviction in the judge and, ultimately, a court decision. The priority importance of such a basis of criminal proceedings as the immediacy of the examination of testimony, items, and documents is emphasised, which contributes to the full clarification of the circumstances of the proceedings and its objective solution. The study results will contribute to the development of the justice system, considering the best international practices in the context of adversarial criminal proceedings, ensuring the correct and timely consideration of criminal proceedings

■ **Keywords**: trial; testimony; pre-trial investigation; evidence; verdict; procedural decision

■ Introduction

Modern practice of implementing judicial procedures and certain judicial powers shows the need to build a scientifically based concept for the further development of legal proceedings in Ukraine, considering both the doctrine of the Ukrainian criminal process and the experience of international human rights practice. Of particular importance is the issue of determining the boundaries of the court's activity in criminal proceedings as an important prerequisite for justice. This, in particular, is confirmed by documents that define priorities for improving legislation on the judicial system, the status of judges, judicial proceedings, and other institutions of justice. Thus, the strategy for the development of the justice system and constitutional court proceedings for 2021-2023 defines the main principles and areas for the development of the justice system, taking into account the best international practices. The document [1] outlines priorities for improving legislation on the judicial system, the status of judges, judicial proceedings, and other institutions of justice, introducing urgent measures to improve the activities of legal institutions. One of the tasks of the strategy is to improve access to justice.

At the same time, data from modern opinion polls show that society has less and less confidence in the courts and judges. Thus, the level of trust in the judicial power of Ukraine among persons who participated in judicial procedures is 40%, and among persons who were not participants in judicial procedures – 13% [2]. One of these factors is the unnecessarily long consideration of criminal proceedings in court. Correct and timely consideration of criminal proceedings that can ensure an adversarial criminal process is a characteristic feature of a modern state governed by the rule of law. This fact should encourage the rethinking of certain forms of functioning of the judicial system, considering measures of a theoretical, legislative, and applied nature.

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The above encourages theoretical and praxeological discussion, actualises the discussion of issues of optimising the court's activities for the study and evaluation of evidence in criminal proceedings. Problematic issues of the court's participation in the examination of the circumstances of a criminal offence and their assessment in criminal proceedings have served as the subject of research by many modern processalists, whose studies are mainly devoted to highlighting the criteria for evaluating evidence, in particular through the prism of the categories "belonging", "admissibility", "reliability of significance" and "sufficiency of evidence" [3], the phenomenon of internal persuasion as a manifestation of personal ideas about justice, duty, correctness, expediency [4], the subject and limits of proof [5], the concept of verbal probabilities [6-7]. A separate block of papers is devoted to the procedure for interpreting evidence in criminal proceedings and related issues of their affiliation, admissibility, and sufficiency, the order of their examination in a court session [8-10], the key principles of this process [11-12]. At the same time, most of these papers relate to the general provisions of evidence in judicial criminal proceedings or other theoretical and practical aspects of the theory of evidence, and therefore, questions about the content of the court's activities in the study and evaluation of evidence in adversarial criminal proceedings remain insufficiently covered.

On the agenda of Ukrainian legislators is the revision of many methodological provisions of the criminal process. This is conditioned by the accelerated pace of increasing the volume of scientific knowledge, which naturally implies the need to improve existing and create new, more effective methods of assimilation and practical application of the acquired knowledge, improve the relevant legislation. The reform of the criminal procedure legislation and the judicial system of Ukraine actualises, in particular, the need to clarify the role of the court in the examination and evaluation of evidence in criminal proceedings.

The adoption of the new Criminal Procedure Code of Ukraine in 2012 [13] was marked by a change in the legal regulation of the judicial procedure. The key principles of the normative array were the priority of protecting the rights and freedoms, legitimate interests of a person and citizen, and the introduction of an adversarial model of criminal proceedings and, as a result, changing the functions and role of the court when considering a criminal case.

Considering the above, the doctrine of criminal procedure raises questions about the limits of activity of the court as a subject of examination and evaluation of evidence in criminal proceedings. Thus, some modern researchers [14] quite rightly state the debatable nature of this issue, because theorists and practitioners, on the one hand, consider the court as a key subject of the process of establishing objective reality in criminal proceedings, comprehensive and objective investigation, and on the other – emphasise minimising the level of activity and initiative of the court, which is indicated by the essence of its procedural function in the context of examination and evaluation of evidence.

The purpose of the study is to analyse the provisions of the current criminal procedure legislation and the specifics of its application in terms of clarifying the place and role of the court in the evaluation of evidence, which is achieved by solving problems to clarify the essence of such concepts as "immediacy of the study of testimony, items, and documents", "adversarial criminal process", "internal conviction of a judge".

Materials and Methods

In the process of investigating the problem based on the analysis of the norms of criminal procedure legislation, general scientific and special methods of scientific knowledge were used. The methodological basis of the study is the dialectical approach, which revealed the specifics of the process of examination and evaluation of evidence in criminal proceedings in the dynamics and interrelation of the relevant components of the court's activities. In addition, the main components of the methodological tools were: system analysis, which was applied within the framework of the analysis of legal norms regulating the participation of the court in the examination and evaluation of evidence in adversarial criminal proceedings; system and structural – during the examination of the stages of proof and the role of the court in them, the essence and features of the implementation of such concepts as "immediacy of the examination of testimony, items, and documents", "adversarial criminal process", "internal conviction of a judge"; statistical – for the study and generalisation of judicial practice in this area. These and other general scientific methods (generalisation, comparison, modelling) were used in the study in interrelation and interdependence, which ensured the completeness and completeness of the analysis of the court's activities during the examination and evaluation of evidence in criminal proceedings.

The theoretical basis for this study is the research papers on criminal procedure, civil law, general theory of state and law, other legal sciences, psychology, and sociology. The normative legal basis of the study is the Constitution of Ukraine [15], the Criminal Procedure Code of Ukraine [13], current Ukrainian and international laws and regulations, and decisions of the Supreme Court of Ukraine [1; 16-17].

Results and Discussion

Article 23 of the Criminal Procedure Code of Ukraine [13] defines that "the court examines evidence directly",

and "receives the testimony of participants in criminal proceedings orally". This provision indicates that the oral testimony of participants in criminal proceedings as a result of their direct investigation in the course of judicial proceedings is perceived and evaluated by the court based on the so-called internal conviction of the judge. The legislator repeatedly uses the concept of "examination of evidence" in relation to the stage of judicial proceedings (Art. 319, 322, 339, 349, 352, 357, 358, 359, 386 Criminal Procedure Code of Ukraine) [18]. All subjects of judicial criminal proceedings are endowed with certain powers, rights, and obligations in the field of evidence. The specifics of these powers depend on the procedural function of the relevant subject, its procedural status, and the nature of the powers.

The court, to verify the ownership, admissibility, and reliability of evidence provided by the parties to criminal proceedings, has the following powers: to include questions in the decision to conduct an expert examination (Part 3 of Article 332 of the Criminal Procedure Code); to ask questions during the interrogation of the accused (Article 351), witnesses (Article 352 of the Criminal Procedure Code), the victim (Article 353 of the Criminal Procedure Code) or an expert (Article 356 of the Criminal Procedure Code). Certain provisions of the Criminal Procedure Code of Ukraine also indicate the need for the court to carry out a certain activity in establishing the circumstances of a criminal offence. At the initiative of the court, some investigative (search) actions may also be carried out, in particular: interrogation of an expert (Part 1 of Article 356 of the Criminal Procedure Code); examination of documents (Article 358 of the Criminal Procedure Code); on-site examination (Article 361 of the Criminal Procedure Code); examination in accordance with Part 2 of Article 332 of the Criminal Procedure Code; repeated interrogation of a witness (Part 13 of Article 352 of the Criminal Procedure Code); simultaneous interrogation (Part 14 of Article 352 of the Criminal Procedure Code) [13].

An important group of issues to be resolved by the court consists of those that are related to the provision and examination of evidence in the course of judicial proceedings. In the context of this, the authors share the opinion of researchers from the University of California, B. Thompson and E. Schumann, who define the examination of evidence in court proceedings as "the mental and practical activity of the court regulated by the Criminal Procedure Code with the active involvement of participants in court proceedings and the assistance of other participants in criminal proceedings" [19]. At the same time, Ukrainian researchers [20, p. 731] argue that this activity provides for establishing the ownership, reliability, and admissibility of evidence by analysing each of them, comparing them with other evidence, and obtaining evidence that confirms or refutes the ownership, reliability, and admissibility of the examined evidence.

The importance of such a areas of judicial activity as the administration of justice requires the creation of such conditions for studying the actual circumstances of a criminal offence that would ensure the adoption of an informed court decision. Considering the principle of adversarial proceedings as one of the key principles of judicial proceedings defined in paragraph 4 of Part 3 of Article 129 of the Constitution of Ukraine [15], participants of criminal proceedings are endowed with equal rights to examine evidence and prove its credibility in the criminal proceedings in court. Instead, the court must create the necessary conditions for the participants in the proceedings to exercise their procedural rights.

According to Part 1 of Article 23 of the Criminal Procedure Code of Ukraine, "the court receives the testimony of participants in criminal proceedings orally" [13]. Part 2 of this Article states that "information contained in statements, items, and documents that were not the subject of direct research by the court, except in cases provided for by this Code, cannot be recognised as evidence". Thus, this refers to the "immediacy of the examination of testimony, items, and documents" as a general basis of criminal proceedings, which is defined in paragraph 16 of Part 1 of Article 7 [13].

It is important in the context of establishing the circumstances of criminal proceedings, and its objective solution. This refers to the ability of the court to properly investigate and verify, evaluate them according to the criteria provided for in Part 1 of Article 94 of the Criminal Procedure Code of Ukraine [13], on the basis of which to form a complete and objective idea of the actual circumstances of certain criminal proceedings. Thus, paragraph 18 of the Resolution of the Supreme Court of Ukraine of 01/21/2016 in case No. 5-249ks16 States: "the immediacy of the examination of evidence means the requirement of the law addressed to the court on the examination of all evidence collected in a particular criminal proceeding by interrogating accused, victims, witnesses, an expert, examining material evidence, announcing documents, playing audio and video recordings, etc." [16].

Determining the limits of the court's participation in the examination of evidence in court proceedings, the conclusions of V. Nor regarding the inadmissibility of the perception of the court purely as a passive observer of the legal duel of the parties are relevant [21, p. 358-359]. After all, it is indisputable that the court should not only monitor compliance with a certain procedure for further making an informed decision, but also conduct investigative and judicial actions regarding the study of evidence provided by the parties.

The most common procedural means of examining evidence in judicial criminal proceedings are

investigative (search) actions, in particular, interrogation in court. The general procedure and sequence of interrogation of witnesses, victims, suspects, and accused persons, features of interrogation of minors of different procedural status, conducting interrogation in video conference mode, etc., are defined in Articles 351-354, 356 of the Criminal Procedure Code of Ukraine [13]. In case of non-compliance with the procedural rules for conducting an investigative (search) action, it is considered invalid.

Persons who have information about the circumstances of a criminal case give evidence in court, which is actually considered a judicial interrogation. And this method is not limited only to the process of voicing the testimony of the person being interrogated in court, and its essence consists in questioning the person being interrogated, giving oral testimony (in the form of a free story or answers to questions asked), perception (listening) to the testimony by a subject who procedurally or situationally conducts the appropriate type (stage or phase) of judicial interrogation.

The person being questioned may be prompted to give evidence by the court, prosecutor, defence lawyer, the victim themself, or other participants in the trial. The evidence provided allows proving or refuting the facts consolidated in the procedural sources of evidence, based on which the court forms an internal belief about the facts of objective reality that have become the subject of examination in court. N. Maksymyshyn statements [22, p. 136] regarding the fact that during interrogation the person should be given an opportunity to express themself exhaustively without interfering or making comments, after which additional questions can be asked to detail what has been said and to establish the circumstances that are essential to the case are appropriate. This is the essence of forensic investigation as a cognitive and verification operation.

After interrogating a witness, victim, or expert by the parties to criminal proceedings, they may be asked questions by the presiding judge and judges (Part 1 of Article 351, Part 12 of Article 352, Part 2 of Article 353, Part 2 of Article 356 of the Criminal Procedure Code of Ukraine) [13]. The presiding judge interrogates the accused last, which does not deprive them of the right to clarify and supplement the answers of the accused to ask them questions throughout their interrogation by participants in court proceedings (Part 1 of Article 351 of the Criminal Procedure Code of Ukraine) [13]. Such powers of the presiding judge to examine evidence during an interrogation in court are much broader than those of other participants in it.

The study suggests that such a procedure for interrogating persons does not create obstacles for the court to take an active position in clarifying the circumstances of criminal proceedings during the interrogation. It is necessary to clarify this position through the prism of research into categories of "activity" and "initiative". It is appropriate to consider the concept by V. Vapniarchuk, according to which these terms are similar in content, although they have different shades of value. The researcher's conclusions regarding the fact that initiative activity is implemented on its own impulse and "is not mandatory for the subject who carries it out" are valid [23, p. 237]. At the same time, this activity is usually determined by the leadership of a particular body and corresponds to its functional load, while activity serves as its essential characteristic. In addition, within the framework of the above conceptual vision, it is also necessary to consider the interdependence of these categories, because the initiative activity is a manifestation of a certain degree of activity, while a high degree of activity will encourage appropriate initiatives. In this context, initiative activity is a narrower category, that is, a component of the court activity.

If during the trial there are contradictions between the already interrogated participants in criminal proceedings, according to Part 15 of Article 352 of the Criminal Procedure Code of Ukraine, "the court has the right to appoint a simultaneous interrogation of two or more already interrogated participants in criminal proceedings (witnesses, victims, accused) to find out the reasons for the discrepancy in their testimony, which is carried out according to the rules established by Part 9 of Article 224 of the Criminal Procedure Code of Ukraine" [13].

It is worth paying attention to the procedural procedure defined by the Criminal Procedure Code of Ukraine for clarifying the circumstances of criminal proceedings in the examination of written and physical evidence. Before starting the examination of material evidence, the presiding judge explains to the participants of the court proceedings their right "to draw the court's attention to certain circumstances related to the item and its inspection" (Part 1 of Article 357 of the Criminal Procedure Code of Ukraine), and "the right to ask questions about material evidence to witnesses, experts, specialists who examined them" (Part 3 of Article 357 of the Criminal Procedure Code of Ukraine) [13]. At the same time, Part 1 of Article 363 of the Criminal Procedure Code of Ukraine States: "after clarifying the circumstances established during criminal proceedings and verifying them with evidence, the presiding judge at the court session is obliged to find out from the participants in the court proceedings whether they want to supplement the trial and what exactly" [13].

The provisions of the Criminal Procedure Code of Ukraine define general rules for determining the reliability of testimony, items, and documents. For example, to verify the authenticity of documents, participants in criminal proceedings are granted the right to: "ask questions about documents to witnesses, experts, specialists"; "ask the court to exclude it from

the list of evidence and decide the case on the basis of other evidence or appoint an appropriate expert examination of this document" (Parts 2 and 3 of Article 358 of the Criminal Procedure Code of Ukraine) [13].

Investigating this issue, A. Dekhtiar emphasises the importance of such a method of establishing the reliability of evidence (documents as the appointment by the court of various types of examinations (authorship, handwriting, phototechnical, etc.) [24, p. 324]. Under these conditions, participants in criminal proceedings have the right to ask the expert questions that are subject to inclusion in the court's decision on the appointment of an expert examination. At the same time, "the court has the right not to include in the decision questions raised by participants in court proceedings, if the answers to them do not relate to criminal proceedings or are not relevant for the trial, justifying such a decision in the resolution" (Part 3 of Article 332 of the Criminal Procedure Code of the Russian Federation) [13].

The authors of this study agree with the position of M. Shevchuk, that legitimate and permissible is also the activity of the court regarding the examination of evidence, which is manifested in its ability to independently fill in the incompleteness of the study of specific evidence, which is caused by the passivity of the parties in its presentation in the court session, by a more thorough, comprehensive examination of the evidence [25, p. 108]. For example, the court may examine in more detail the objects and documents provided to it by the party or other participants in the proceedings; ask the interrogated witness additional clarifying questions; consider it necessary to conduct an inspection of the scene of the incident; in addition, the court may ask questions to the participants of the criminal proceedings who participate in it at the place of inspection.

The unconditional organisational influence of the presiding judge in the court session, because the judge, according to Article 321 of the Criminal Procedure Code of Ukraine, "directs the course of the court session, ensures compliance with the sequence and procedure for performing procedural actions, the exercise of their procedural rights by participants in criminal proceedings and the performance of their duties, directs the trial to ensure clarification of all the circumstances of criminal proceedings, eliminating from the trial everything that does not matter for criminal proceedings" [13].

At the same time, according to Part 1 of Article 94 of the Criminal Procedure Code of Ukraine, "the court, according to its internal conviction, which is based on a comprehensive, complete, and impartial study of all the circumstances of criminal proceedings, guided by the law, evaluates each evidence in terms of belonging, admissibility, reliability, and the totality of collected evidence – in terms of sufficiency and interrelation for making an appropriate procedural decision". In addition, Part 2 of this Article states: "no evidence has a pre-established force" [13].

The assessment of evidence is final in nature for resolving issues that arise during the movement of criminal proceedings [26-27], and the Criminal Procedure Code of Ukraine provides for the appropriate procedure for the activities of participants in criminal proceedings in identifying inconsistency of factual data with the criteria of belonging, admissibility, and credibility. Evaluation of evidence is actually the mental activity of a judge aimed at establishing evidence, its affiliation, and admissibility.

In the process of developing the theory of evidence as one of the areas of the criminal process, various approaches to defining the concept of evaluating evidence were outlined. The positions of those authors, according to whose research, the assessment of evidence is not limited to the purely mental work of the subject of knowledge, should be recognised as appropriate. Thus, for example, A. Stoian substantiates the two-component structure of the process of evaluating evidence, that is, the presence of internal (logical) and external (legal). This refers to logical and psychological, and legal aspects [28]. Considering the above, the assessment of evidence can be defined as the practical and mental activity of authorised subjects of criminal proceedings regulated by law to determine the affiliation, admissibility, sufficiency, reliability of evidence, and their relationship for making an appropriate procedural decision.

One of the most important criteria for evaluating evidence should be considered its admissibility. The inadmissibility of evidence is the opposite of its admissibility. The inadmissibility of evidence is determined by the following criteria: obtaining evidence by unauthorised subjects; obtaining evidence from an improper source; violation of the procedure for obtaining evidence established by law. Clearly inadmissible evidence is evidence that is: obtained by the pre-trial investigation body in accordance with the procedure not provided for by the procedural law; obtained by the pre-trial investigation body in violation of the procedure provided for by the procedural law; evidence obtained as a result of a significant violation of human rights and freedoms. Part 2 of Article 89 of the Criminal Procedure Code of Ukraine states: "if an obvious inadmissibility of evidence is established during the trial, the court recognises this evidence as inadmissible, which entails the impossibility of examining such evidence or the termination of its evaluation in a court session, if such examination was initiated" [13].

In the research literature, it has been repeatedly noted that the court in no case can independently initiate the procedure for declaring evidence inadmissible during the trial, arguing that otherwise the

principle of adversarial parties will be violated. The court must decide on the admissibility of evidence in the sentencing process, determining the reasons for which it recognises this or that evidence as inadmissible.

The final evaluation of the admissibility of evidence is carried out by the court when passing a sentence. According to the Criminal Procedure Code of the Russian Federation, it is the court that decides the issue of admissibility of evidence during its assessment in the consultation room when making a court decision (Part 1 of Article 89).

The law requires that the court consider all the circumstances of criminal proceedings in aggregate and on this basis develop its internal conviction to assess evidence based on an objective vision of what has been done, that is, the results of an impartial knowledge of the circumstances of a criminal case in exact accordance with reality. Only then a complete conviction that certain factual circumstances actually occurred in the past can be developed.

Having systematised and analysed the opinions of researchers, it can be concluded that internal belief is an element of mental activity for the examination and evaluation of evidence, formed during the consideration of criminal proceedings in essence, the judge's idea of how to resolve a dispute.

The court remains solely responsible for resolving issues under Article 368 of the Criminal Procedure Code. A guilty verdict cannot be based on assumptions, it is accepted only if during the court session the defendant's guilt in committing a criminal offence is proved [29, p. 78].

When administering justice, a judge is obliged to form an internal belief based not on personal, subjective ideas or preferences, but based on value judgments that are the result of proving or refuting the facts available in procedural sources. Internal persuasion, on the one hand, appears as a method of evaluating evidence, and on the other – as a result of this assessment, formed based on confidence in the reliability of evidence, the correctness of the conclusions reached by the court in the framework of criminal proceedings.

Conclusions

Summing up the results of studying the issues of examination and evaluation by the court of evidence in criminal proceedings, it can be stated that during the trial, the judge carries out research activities, examining and evaluating the available evidence, the result of which is the reproduction of a particular fragment of reality, the reconstruction of all the circumstances necessary for the court to make a court decision. Moreover, one of the key foundations of this process is the immediacy of the study of testimony, items, and documents in judicial criminal proceedings, which structurally consists of two elements: personal perception of evidence by participants who examine it, and substantiation of the decision by evidence that has been examined and evaluated personally.

Evaluation of evidence as one of the stages of proof is a type of mental activity. At the stage of judicial proceedings, the basic factor in the establishment of the assessment of evidence by the judge, along with the procedural conclusions obtained in the course of judicial proceedings, is the so-called internal belief, which is the perception and understanding of perceived information through the prism of knowledge of substantive and procedural law, the judge's categorical confidence that they give a correct assessment of all the evidence available in the proceedings and that the conclusion that they made based on studying all issues is correct, meets the requirements of the law, justice and in no way restricts human rights.

Internal conviction of the judge, which makes allows forming in the consultation room conclusions about the guilt/innocence of a person, which are the basis of the verdict based on appropriate, permissible, reliable, and sufficient evidence in their relationship. The conviction of judges is based primarily on their legal awareness, the whole set of views, ideas, a sense of justice (as a subjective factor in forming the internal conviction of judges), on their direct examination of evidence during criminal proceedings, oral hearing of the testimony of participants in criminal proceedings (as an objective factor).

These conclusions encourage further study on the limits of the court's activity as a subject of examination and evaluation of evidence in criminal proceedings, optimisation of the criteria of this process to build a scientifically based concept for the further development of legal proceedings in Ukraine.

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Суд як суб'єкт дослідження та оцінки доказів у кримінальному провадженні

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■ **Анотація**. Реформування кримінального процесуального законодавства та судової системи України актуалізує необхідність з'ясування меж активності суду в кримінальному процесі, його роль у збиранні, перевірці й оцінці доказів з метою встановлення обставин, що мають значення для кримінального провадження. Метою наукової роботи є вивчення положень чинного кримінального процесуального законодавства в частині дослідження й оцінки судом доказів. Для досягнення поставленої мети використано систему загальнонаукових і спеціальних методів дослідження, серед яких діалектичний, системно-структурний, статистичний та метод системного аналізу. Обґрунтовано, що в межах судового розгляду в кримінальному провадженні суддя як суб'єкт дослідження та оцінки доказів провадить певну дослідницьку діяльність. Доведено, що зазначена діяльність спрямована на встановлення обставин і відтворення певних фрагментів дійсності, які дають змогу довести чи спростувати факти, результатом чого є формування в судді внутрішнього переконання та зрештою ухвала судового рішення. Наголошено на пріоритетному значенні такої засади кримінального провадження, як безпосередність дослідження показань, речей і документів, що сприяє повному з'ясуванню обставин провадження та його об'єктивному вирішенню. Одержані результати дослідження сприятимуть розвитку системи правосуддя з урахуванням кращих міжнародних практик у контексті змагального кримінального процесу, забезпечуючи правильний та своєчасний розгляд кримінальних проваджень

■ **Ключові слова**: судовий розгляд; показання; досудове розслідування; доказування; вирок; процесуальне рішення

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