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ОЦІНКА ЯКОСТІ РЕКОМЕНДАЦІЙ АНТИМОНОПОЛЬНОГО РЕГУЛЯТОРА В УМОВАХ РОЗВИТКУ ПРАВОВОЇ СИСТЕМИ УКРАЇНИ

Анотація. *Формування конкурентної системи в економіці країни завжди визначається можливостями використання інструментів, які стимулюють розвиток і формують незалежну картину для зовнішнього середовища. У зв'язку з цим і визначається ефективність визначення антимонопольними регуляторними органами критеріїв і меж регулювання. Разом з тим відзначаються випадки, коли антимонопольне регулювання розумілося переважно як форма економічного тиску на суб'єктів підприємницької діяльності. Новизна дослідження визначається новим розглядом меж антимонопольного регулювання. Автори показують, що антимонопольне регулювання в своїй поточній іпостасі є формою обмеження зростання компанії і спрямована переважно на зниження залежності ринку від одного стейкхолдера. У статті визначаються можливості додаткового розгляду критеріїв обмеження антимонопольного регулювання в контексті формування економічної безпеки суб'єкта підприємницької діяльності. У статті розкриваються аспекти визначення меж державного забезпечення економічної безпеки підприємницьких суб'єктів. Практична значимість дослідження визначається необхідністю більш практичного наближення законодавства країни до світових норм ведення бізнесу та зниження рівня урегульованості підприємницького середовища укупі з її забезпеченням від недружніх поглинань. У дослідженні представлена структура забезпечення економічної безпеки в контексті розвитку економічної системи*

Ключові слова: *безпека, розвиток, підприємництво, формування, структура*

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QUALITY EVALUATION FOR RECOMMENDATIONS OF THE ANTITRUST REGULATOR IN THE DEVELOPMENT OF THE LEGAL SYSTEM OF UKRAINE

Abstract. *The formation of a competitive system in a country's economy is always determined by the possibilities of using tools that stimulate development and form an independent picture for the external environment. In this regard, the study determines the efficiency of antimonopoly regulatory authorities in establishing the criteria and limits of regulation. At the same time, there are cases when antitrust regulation is understood primarily as a form of economic pressure on business entities. The novelty of the study lies in a new consideration of the limits of antitrust regulation. The authors demonstrate that antitrust regulation in its current capacity constitutes a form of limiting the growth of the company and is aimed primarily at reducing the dependence of the market on one stakeholder. The paper identifies the possibilities of additional consideration of the criteria for limiting antitrust regulation in the context of the formation of economic security of a business entity. The paper covers the aspects of determining the limits of state support of economic security of business entities. The practical significance of the study is determined by the need for a more practical harmonization of the legislation of the country with global business standards and a decrease in the level of regulation of the business environment, coupled with its protection from hostile takeovers. The study presents the structure of economic security assurance in the context of the economic system development*

Keywords: *security, development, entrepreneurship, formation, structure*

INTRODUCTION

As for the concept of "security", it can be found in the Old Testament and ancient literature. However, it has become an object of large-scale analysis in the social sciences only since the 1970s. Perhaps this is why representatives of these sciences have not yet reached consensus on the interpretation of this concept [1]. We hold a view, which distinguishes three approaches to the interpretation of security: static, process (activity), and one that combines its static and process aspects. We shall hereinafter refer to the latter approach as integral.

According to the static approach, security is seen as a specific state [2]. In particular, security is the state of an object in the system of its relations from the standpoint of ability to survive and develop in conditions of internal and external threats, as well as the effects of unpredictable and

hardly predictable factors. It represents a static approach and a look at security as a state of protection of the vital interests of people, organisations, society, and the state from internal and external threats, dangers [3]. With such an approach, external conditions are entirely excluded from the analysis, but it is from there (from the "external") that threats come, strikes and attacks are carried out. Danger/safety is associated with the state of the facility, but are not limited to it. The state in which the object is, to a certain extent determines the probability of damage to it, its possible amount. But only to a certain extent, and not completely. However, these considerations do not consider the existence of such definitions of security as the state of the object, that do not factor in the influence of external conditions on the latter. In particular, the following

definition is appropriate in this respect: “By economic security we mean such a state of the subject when the probability of an undesirable change in any qualities of the subject itself, the parameters of the property owned by it and the environment that hurts it is small (lesser than a certain limit)”. The same can be said of our definition of security. At the same time, we cannot but agree with the opinion that the safety of an object should not be reduced only to its state [4].

The view of security as a state of security is also unacceptable. The main objections come down to the following:

- the content of the concept of “protection” is clarified even less than the content of the concept of “security”, and the definition of one concept through another, the attributes of which are unknown and which itself needs to be determined, leads to an error that lies in determining the unknown with the use of the unknown;

- “security” cannot be interpreted as a state of protection also due to the fact that “protection” cannot have any “state”, as the term “state” can only be applied to an object.

These objections appear to be quite fair. We also find a critical opinion of the concept of security as a state of protection in the works of some other scientists [5]. In particular, upon describing one of the security definitions built on such an idea, it is not unreasonable, in our opinion, to note that the definition in question cannot be considered sufficiently correct also because the concept of “protection” used in therein does not have a specific, express meaning and requires clarification. There is a problem with this approach, according to some researchers [6]. The interpretation of the concept of “security” as a state of protection of a person, society, and the state from internal and external threats does not fully reflect its essence. Researchers point out that security is described not by the degree of protection from external and internal threats, but by the level of conditions for the existence, functioning, and development of the system itself. It can be stated that the definition of security through the concept of “protection” does not cover all dangerous conditions [7].

Proponents of the process approach consider security as an activity. This includes the activity of a person, state, and the world community to identify, prevent, and eliminate those factors and circumstances that can deprive people of fundamental material and spiritual values, cause damage, and close the door upon the development and even survival [8]. Another example of a process approach to the interpretation of security is the following position: security should be understood as the constant management of static (permanent) and dynamic (temporary) external and internal threats to completely eliminate or at least reduce the possible harm from them for the functioning of an object with the conditions and parameters set by it.

1. LITERATURE REVIEW

In our opinion, the interpretation of the concept reflecting the activity approach to determining the essence of security,

is as follows: the security of the subject is its objective reality in certain conditions, which is based on the active interaction of this subject and the conditions of its existence, which it mastered in the process of its own self-fulfilment and is capable of controlling [9]. We believe that since the starting point in this interpretation is the objective reality of the subject, this gives reason to believe that it also reflects the static aspect of security, and therefore, can be considered as integral [10].

An attempt to combine static and process approaches to the interpretation of security can also be traced in its definition: security is a state parameter of a system (security object) that describes its integrative property [11]:

- of being in the state of least vulnerability to negative internal and external influences;

- of maintaining its systemic qualities and interrelations;

- of functioning stably, steadily, and progressively developing”.

In the formulated definition [12]:

- firstly, security is considered as a parameter (set of parameters) of integrative properties (and not the property itself), since the object, having certain properties, can be both in a safe state and in danger (this depends on the parameters);

- secondly, security is a parameter describing the intrinsic property of a specific system (security object), excluding the conditionality of this property by threats, since their number, orientation, and qualitative features can be probabilistic, subjective in nature;

- thirdly, this does not refer to all the impacts, but only those that are negative for the security object, that is, they can cause some harm to its systemic qualities (including interests) and its connections;

- fourthly, there is no emphasis on protecting the security object, since it is not the purpose of its existence, but only one of the ways to ensure the progressive development and stability of its structure and functioning process.

As a basic category of the sociological analysis of safety, it is proposed to consider the dual opposition “danger-security” [13]. In personal and public perception, the situation of danger is compared to a high level of uncertainty and instability in various spheres of human life [14]. Security is described as a stable network of necessary and sufficient factors that reliably provide [15]:

- a decent life for each person;

- protection of all structures of viability of the family, society, and the state;

- protection of their goals, ideals, values and interests, their culture and lifestyle, traditions from unacceptable risks, from internal and external challenges and threats;

- the ability to effectively prevent dangers that are based on a culture of compromise on welfare and justice for all.

Understanding of the dualistic opposition with consideration of modern innovations in various areas of social practice allows to use new information and new methodological tools in research to define the new logic of the interaction of factors that determine security and a security culture.

2. MATERIALS AND METHODS

It can be especially noted that security is interpreted both as a state and an activity, which can be traced in the formulated definition of public security. “The category of “public security” can be defined as follows: this is the state, conditions, and nature of the life of the state and society, in which citizens, social groups, associations and organisations created by them freely act in accordance with their own nature and purpose and are capable of neutralising external and internal threats” [16].

In our opinion, there are no significant differences between the proposed classification of approaches to the interpretation of security and the previously considered classification [17-19]. After all, the apophatic approach can be considered as a special case of the static one, and compliance with certain parameters and requirements, which is aimed at ensuring security is a form of activity to enable it [20].

Even more approaches to the interpretation of safety are highlighted in the formation of forecast trends. These include:

- 1) security as a state;
- 2) security as an ability of an object to maintain its condition in a targeted and destructive internal or external impact;
- 3) security as a property of the system;
- 4) security as a guarantee, a necessary condition for the operation of the facility;
- 5) security as the absence of dangers and threats to the facility;
- 6) security as the current and future protection of the subject from various threats.

In our opinion, the fact that the proposed classification can also be reduced to the one that was considered in the beginning hardly requires special evidence.

3. RESULTS AND DISCUSSION

The described scientific ideas on the concept of “security” determined the existence of a static, process, and integrated approach to the interpretation of the security of a business entity. It is rather evident that the latter is of most interest to us. We find a very extraordinary attempt to implement it in the definition that covers the formation of the economic mechanism of systemic protection of a company.

In our opinion, the following integral characteristic of the security of a business entity is even more apt: the security of a business entity can be defined as a dynamically stable state with respect to adverse effects and activities on protection against internal and external threats, to ensure such internal and external conditions of its existence that guarantee the possibility of stable development. We see the advantage of this characteristic in that elements of a static and process approach to the interpretation of security are present in an explicit form and at the same time are reflected equally and lapidary. Proceeding from it and factoring in the needs of practice, we propose the following definition: enterprise security is a stable state of its minimal vulnerability to threats and activities to create and

maintain optimal conditions for achieving its goals. Since the definition we have proposed includes threats to the security of business entities, it is necessary to clearly define the nature of these threats. Often, the latter are associated solely with malicious intent and malicious acts. Thus, a threat is a danger at the stage of its fulfilment, which is initiated by the result-oriented intentions of the destructive forces to damage the vital interests, values, and needs of the business entity until its destruction. Upon describing the security system of the company, it is noted that a threat is a potential or real action committed by intruders, which can cause moral or material damage. Three attributes inherent in threats to the economic security of business can be noted: a conscious and selfish nature of actions; the focus of action on the harm to the business entity; unlawful nature of actions.

We believe that such opinion is one-sided. State authorities and local governments, which are usually and mistakenly identified with the state, are the most serious sources of threats, but not because they are corrupt or related to crime, but because they have the greatest ability to harm any business entity operating within its jurisdiction. With that, the threat is posed both by, to put it mildly, imperfect legislation, and the possibility of its ambiguous interpretation by executive authorities, and the possibility of officials using the administrative resource (official position, law enforcement agencies, the press, etc.) to fulfil their commercial or simply mercantile interests, and the complexity (impossibility) of a fair resolution of disputable matters. Another motive not to share the opinion under consideration is the fact that the threat to the security of a business entity can be not only a certain potential or real action, but also inaction, and not extremely malicious.

It is easy to see that the abovementioned definition of a threat to a company does not have the indicated one-sidedness. The definitions of a threat to the security of an enterprise proposed in other scientific papers also do not contain it:

– a threat is such a development of events, action (inaction), the result of which creates an opportunity or increased possibility of disrupting the normal functioning of the enterprise and hindering its ability to achieve its goals, in particular, causing the enterprise any kind of damage;

– a threat to the safety of an enterprise should be understood as a potential or really possible event, action, process or phenomenon that could violate its stability and development or lead to the termination of its activities.

Considering the above three definitions, and also factoring in the aforementioned features of security, we shall understand a threat to the security of a business entity as a certain development of events, action or inaction, the result of which is a negative impact on this entity that could cause it such damage that is estimated as considerable [21-23].

There is an opinion that the threat to the security of a business entity is not any action that has negative consequences for it. Actions of the management of a business entity such as the introduction of new organisational management structures, which may be unjustified, or

establishment of low prices for the products of an enterprise at the initial stage of its functioning should not be considered a threat, since it is a matter of actions aimed at achieving the main purpose of the enterprise, its further development, and constitute an integral part of the activity of business entity, which is carried out at its own risk and involves certain losses. However, we tend to consider actions of this kind as unintended threats to the security of a business entity.

Next, we shall consider the classification of threats to the security of business entities. In this case, first of all, we shall be guided by the above expressed opinions on it. By the nature of occurrence, threats to the security of business entities are divided into two classes:

- natural (objective), that is, caused by natural disasters that are not dependent on a person (floods, earthquakes, hurricanes, etc.);

- artificial (subjective), that is, due to human activities. In turn, artificial threats can be unintentional (for example, caused by personnel management errors) and intentional.

By the source of occurrence, all threats to the security of business entities can be divided into internal and external. Examples of internal threats include conflicts between co-owners, staff incompetence, disclosure of confidential information by employees, and inefficient security services. External threats include crisis in the economy, unfavourable national economic policy for private entrepreneurship, inconsistency of regulatory acts of legislative and executive authorities, theft of material assets and values by persons who are not members of the personnel of a given business entity, commercial espionage, unfair competition, raiding, non-performance of obligations on the part of partners, suppliers, customers [24-26].

The severity of consequences distinguishes: threats with high, considerable, moderate, and low severity of consequences. High severity means that the fulfilment of threats can lead to a sharp deterioration in all financial and economic indicators of the enterprise, cause its immediate termination or cause such damage that will subsequently lead to the said consequences. A considerable degree of severity includes such financial losses of the business entity that are likely to negatively affect its activities and will take a long time to overcome. Moderate severity of threats does not involve a long time for overcoming the consequences of the damage and requires costs comparable to current ones. Fulfilment of threats with a low severity of consequences does not significantly affect the strategic position of a business entity and its current activities.

Threats to the security of a business entity are also classified by the object of encroachment. The object of encroachment, first of all, is personnel, material, financial, information resources, intangible assets. Threats to personnel – psychological terror to obtain confidential or secret information, abduction of employees, shooting attack. Threats to material resources – explosions, arson, damage to communication systems and equipment, theft of the latter. Threats to financial resources – fraud, falsification of financial documents, counterfeiting and theft of funds. Threats to information resources – unauthorised connection to the information network of a

business entity, confiscation of confidential documents, negative information influences, misinformation. Threats to intangible assets – issues with licensing, actions aimed at undermining business reputation.

According to the subjects of threats, there are threats from criminal structures; threats from unfair competitors; threats from counterparties; threats from one's own personnel. It is advisable to add another position to this list – threats from state authorities and local self-government.

By types of losses, threats are distinguished as those leading to direct losses, and those that can cause or cause lost profits. By probability – unlikely, probable, and very probable. By the nature of the impact – active and passive. By types of damage – material and moral. By remoteness in time – close and distant.

By the nature of the liability of a legal entity or an individual, which threatens the security of a business entity, we can distinguish:

- threats leading to civil liability;
- threats leading to criminal liability;
- threats leading to administrative liability.

Classification of threats to the security of business entities can be based on other criteria. Thus, their differences appear important depending on who should bear responsibility for ensuring the security of the subjects from certain threats. By this criterion, we obtain the following classification:

- threats the prevention or elimination of which is the responsibility of the state;
- threats that business entities themselves must combat, while the state can only provide assistance.

Of considerable interest is the multilevel classification of threats to the security of business entities. It is based on the idea to consider these threats at five interconnected levels of the company's structure: three main (the nano-level – employees, a mini-level – departments, a micro-level – the company at large as a subject of interaction with the environment) and two intermediate (professional groups of workers and functional subsystems), and at the same time factor in the multi-layered environment [27, 28].

It is quite common to identify the security of a business entity with its economic security. Economic security of an enterprise (company) is such a state of a given business entity in which the vital components of the structure and activity of the enterprise are described by a high degree of protection against undesirable changes. However, in our opinion, in fact, everything that is used to describe the essence of the economic security of an enterprise in this definition concerns its security in general. It is for a reason that it practically coincides with the definition of general enterprise security: "It's suggested that enterprise security is generally understood as the enterprise's security from the negative impact of a combination of social, economic, environmental, legal and power internal and external factors".

We believe that the opinion that rejects the identification of the security of a business entity with its economic security is correct, and we fully share the following provisions of the theory of economic security:

A distinction should be made between the concepts of "economic security of an enterprise" and "safety of the functioning of an enterprise". In the first case, the subject

of the study is the external and internal economic threats to a particular business entity (company, bank) and the methods and mechanisms for their prevention. In the second case, the subject of research is the objects of threats in the enterprise: personnel, material assets, information resources, and the activity of the enterprise.

Thus, the “safety of the functioning of the enterprise” includes “economic security”. Being a component of state security, the security of business entities is at the same time a relatively independent system. The creation, successful functioning and development of this system is impossible without legal support, in particular, administrative and legal. In this regard, a question arises as to what is precisely included in the administrative legal support for the security of business entities. Its solution requires a clear understanding of the content of the concept of “administrative legal support”, which is generic in relation to the subject matter.

Unfortunately, there is still no generally accepted interpretation of the concept of “administrative legal support”. And this is not surprising, because the same state of affairs is observed regarding the concept of “legal support”.

Part of the interpretations of the concept of “legal support” reflects its activity aspect, and, therefore, has a dynamic nature. Examples may include the following definitions:

- legal support is carried out by the state with the help of legal provisions, regulations, and a set of means to streamline public relations, their legal consolidation, protection, implementation and development;
- the concept of “legal support” must be considered in the broad and narrow meaning of the word. In a broad meaning, this term covers the entire process of developing the means of legal regulation and using them in the practical activities of legal entities to achieve practical results in a specific sphere of public relations.

There is another approach to understanding the essence of legal support. It is represented by interpretations describing legal support as a state, that is, in a static aspect. As their common denominator, the following definition can be considered: “Legal support is a set of legal rules governing legal relations and legal status”.

Both approaches are one-sided, and therefore unacceptable. Neglect of the dual nature of the concept of “security” (as a process and as a state) in some definitions of legal support should be objected. In addition, it should be noted that it represents both a set of guarantees, which is its static component, and a process, activity to create the conditions necessary to exercise rights.

It is argued that the administrative legal support of economic security has an independent substrate basis (administrative legal provisions); organisational (systems of state bodies of special competence); functional (implements regulatory and control functions) and substantive (a set of economic interests of the state that are protected) components. However, the proposed definition of administrative legal support for economic security does not reflect the duality of the latter very well. This definition describes the administrative legal support of economic security as an activity, although it also refers to its static aspect: the

administrative legal support of economic security is a regulated daily managerial activity of state bodies and local governments governed by the provisions of administrative law within the framework of a unified national economic policy using administrative legal means, carried out with the aim of ensuring effective regulatory and organisational impact on public relations in the interests of creating and maintaining the necessary level of protection for participants in economic relations.

A similar drawback is the proposed interpretation of administrative legal security of business. It actually constitutes an attempt to determine the essence of the administrative legal support of the economic security of the subjects of this activity. The same applies to the formulated position. The following definition of administrative legal support of national security should be used: administrative legal support of national security is an activity of authorised entities carried out within the framework of a unified national policy in the field of ensuring national security, aimed at forming the administrative and legal framework for ensuring national security, and consolidating the system of administrative-legal means in it (administrative-legal provisions, relations, individual requirements), with the help of which effective regulatory and organisational influence on public relations is achieved to streamline, protect, develop in accordance with public needs the national security of the country, create and maintain the necessary level of state security facilities; a set of interconnected, internally agreed upon fundamental regulations containing legal principles and provisions aimed at the administrative legal regulation of public relations in the field of national security to streamline, protect and develop them in accordance with public needs. Administrative and legal support in general should be considered as security activities carried out on an administrative legal basis.

The novelty of the issue of creating reliable administrative legal security for business entities determines the relevance of considering relevant foreign experience. Of course, it is necessary to factor in that each country has its own features (history, form of government, political system, culture). Therefore, while elaborating on foreign experience in administrative legal security of business entities, we should focus only on those points and tendencies that are of the greatest interest to domestic jurisprudence.

We shall begin a review of the experience of the United States of America (USA) in administrative legal support of economic entities by stressing the following points:

- the absence of a federal law on private security and search activities has led to significant differences in its legal regulation at the level of individual states;
- there are police interaction programs with the non-state security system in the country. As long ago as the 1999, there were over 600 such programs. Increased attention is being paid to coordination between the police and private security services;
- the US Central Intelligence Agency has the responsibility of protecting the interests and ensuring the security of American corporations abroad;
- since the 1990s, the Department of State and

hundreds of US corporations started to regularly exchange information on threats to US business.

As early as in 1982, the US Commission on International Trade considered that violations of intellectual property rights in five individual sectors of the economy of this country led to a reduction in annual sales of 6-8 billion dollars and job losses of 131 thousand American citizens, and studies conducted by the same commission in 1988 suggested that American companies, as a result of violation of their intellectual property rights by other countries, in 1986 alone lost from 43 billion to 61 billion dollars. Thus, it was not in vain that in 1994 the Federal Bureau of Investigations introduced an economic counterintelligence program to collect information and take measures to counter threats and actions against the economic interests of the United States, and in 1996 the Economic Espionage Act was passed by the Congress, which provides for both criminal and civil liability for offenders, as well as empowers authorities to search, arrest, and destroy goods that are produced in violation of the law. We shall also recall the adoption of the Unified Law on Commercial Secrets in the United States in 1979 – a model for legislative development in legal protection of these secrets at the state level.

The aforementioned criticism of the World Intellectual Property Organisation mainly concerned two issues:

- the majority of the members of the World Intellectual Property Organisation are importers of intellectual property, and therefore it is the latter that influence the processes of preparing international treaties;
- members of the World Intellectual Property Organisation have always focused on the substantive aspects of law, but did not deal with enforcement issues, that is, did not consider that many of the countries that introduced modern models of intellectual property legislation do not have the practice of its effective application.

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement), which was drawn up after lengthy negotiations, is aimed at resolving these and some other issues.

The TRIPS Agreement recognises that a three-step approach is required to effectively protect intellectual property rights. The first stage provides for civil proceedings, regardless of whether the proceedings in civil lawsuits are judicial or administrative in nature, and the second stage provides for criminal proceedings. Both of these stages are mainly designed to protect intellectual property rights from domestic offenses. The third degree provides for enforcement measures at the customs border, which, as a rule, are carried out as part of administrative procedures aimed at banning the import (and in some cases, export) of counterfeit goods.

Despite the emergence of the TRIPS Agreement, the Office of the United States Trade Representative (USTR), which is one of the government agencies, continued to publish the 301 Special Reports, which constituted a means of influencing the American approach to international intellectual property policy. These reports, the first of

which was published in 1989, identify countries recognised by the USTR as not providing effective legal protection for intellectual property.

It is also noteworthy that since the emergence of the TRIPS Agreement, the US and the EU have been striving to ensure regional and bilateral agreements and implement requirements of a higher level of protection of intellectual property rights than those provided for by the said agreement. These requirements are usually described as TRIPS+.

In the United States, the United States Commission on International Trade and the United States Customs are empowered to enforce intellectual property rights. The United States International Trade Commission investigates allegations of unfair practices in importing goods using the powers stipulated in Section 337 of the Tariffs Act. Among the types of unfair practices that can be challenged in accordance with the procedures of this section are the importation of goods that violate the rights to inventions, trademarks, and copyright in the United States. If the United States International Trade Commission determines that there is an existing offense, it may decide to prevent the import of goods into the United States. The proceedings carried out in this commission are judicial in nature.

Following the initiation of an investigation by the United States Commission on International Trade in accordance with Section 337, a publication appears in the Federal Register to institute proceedings. Further, this commission appoints an administrative law judge who presides over the meetings and makes a preliminary decision as to whether a violation of the law has occurred. Such a judge must be impartial and adjudicate based on the evidence presented. At the time the case is heard by the United States Commission on International Trade, parties have the right to appropriate notice, cross-examination, evidence, objections and petitions, arguments, and other rights that are essential to ensure a fair trial.

Subsequent to a trial on the merits, the administrative law judge formulates a preliminary decision in writing. Before a final decision is made in writing, the parties may file a motion to review the case. If such decision recognises the fact of the offence, the importer shall be obliged to stop the illegal activity and refuse from carrying it out in the future. In most of these cases, the US Customs receives an order from the US International Trade Commission to suspend the import of illegal goods. With that, accompanying documentation is sent to the Customs Service, which can help identify illegal goods during the import process.

The US Customs has extensive ex officio powers to enable it to conduct its own investigations and, on its own initiative, to stop the importation of goods. Its employees are often in close contact with the owners of intellectual property rights in order to identify illegal goods and with employees of other law enforcement agencies who help to trace the movement of illegal goods from the customs border to the local distribution network.

To help customs officers determine the legitimacy of goods crossing the customs border, the US Customs

Service maintains a centralised database that is accessible to all departments of this service and is one of the main tools used by customs officers to protect intellectual property rights. To maintain this database, the US Customs Service requires intellectual property owners to register certain information on these rights.

At the request of the owner of the intellectual property rights or on its own initiative, the U.S. Customs Service may suspend the circulation of any goods on its territory when it is suspected that it will violate any other person's rights to a trademark, trade name, or copyright. If the customs authority decides that the goods are illegal, it carries out their arrest. With that, seized and confiscated goods are usually destroyed, unless the owner of the intellectual property rights gives permission to sell the goods in another way, for example, through charitable organisations, and large fines can be imposed on the importer.

The US Customs Service predominantly protects those trademarks whose rights are pre-registered with the United States Office of Inventions and Trademarks, unless it is a known trademark that may be legally protected without first registering it with the Office. Although, as a rule, the US Customs Service only protects copyright objects that are registered in it, in some cases, the importation of counterfeit goods may take measures against a trademark that is registered at the federal level, even if there is no such entry in the customs records.

The TRIPS Agreement does not oblige to use export means of protection of intellectual property rights to reduce the turnover of illegal goods. With that, it allows to do so. Using this circumstance, the USA does not allow the export of such goods.

Next, we shall dwell on some aspects of the experience of administrative and legal security of business entities in the EU countries. In France, to carry out detective activities in the territory of this country, one needs to obtain a special permission, which is granted by the Minister of the Interior. This permission can be obtained by a person who has completed a compulsory course of study at an educational institution designated by the Ministry of Internal Affairs of France, does not have a criminal record for a criminal offence, is not under investigation, meets certain other requirements.

The general principles for the functioning of private security in France are regulated at the legislative level of parliament, while specific issues are regulated in various decrees, orders, and circulars. The main condition for hiring a French private security company is the compliance of the candidate's training level with professional standards. A person applying for a job in a private security company must have a license issued by the police. They should not have a criminal record. Some other requirements may also be placed.

In Great Britain, for a long time, private security and search activities were not regulated by law, which resulted in a steady high level of offences among the persons who carried it out. Only in 2001, a law was passed that introduced compulsory licensing of private detective activity and registration of private detectives. A special body has

been created that is entrusted with the implementation of licensing and verification of private detective activities – the Industrial Safety Service of Great Britain.

In Italy, to carry out private detective work, it is necessary to obtain a special license, which is issued by the licensing department of the police station in agreement with the local government authority. Detectives are required to keep records of all transactions that are concluded with customers, the materials of such records should be provided to officials or agents of national security services upon their request. If private detectives, in the course of implementation of their activities have discovered signs of a crime, they should immediately report this to state law enforcement agencies. The list of services that a private detective (agency) provides is contained in a special “service table”, and the provision of other services is prohibited.

In Spain, legislation requires owners of private security companies to be licensed. Persons wishing to become private security guards must not have a criminal record. All private security officers are required to obtain a special permit from the Ministry of the Interior – an identification card. This card can only be received by a person who has completed a special training course. Along the way, it should be noted that Spanish security companies are obliged to provide their employees with continuing education.

Registration of detectives, agencies, their branches in Spain is mandatory. A person who wants to be a private detective in Spain must have a diploma. Universities and schools issue such diplomas, the list of which is approved by the Spanish Ministry of the Interior and is available on its official website and the website of the Professional Association of Private Detectives of Spain.

CONCLUSIONS

To clarify the subject matter, comments on the position regarding the content of administrative legal support of human and civil rights and freedoms are of great conceptual importance. This position reflects the definition according to which the specified security constitutes completeness of regulation with the help of the rules of administrative law of public relations arising in the process of their implementation, as well as the provision of relevant guarantees with the help of these rules, which together with other legal and non-legal guarantees create a stable system of opportunities to exercise legal values in the state.

The content of the concept of “administrative legal support” includes three main elements – administrative legal regulation, fulfilment of administrative legal rules, and guarantees of enjoyment of human and civil rights established by the rules of administrative law. The inclusion of the indicated components in the concept of “administrative legal support” allows to more clearly establish the “location” of this concept as applied to the system of key concepts of administrative legal science. With that, the power entities who are implementing (applying) the rules of administrative law in their activities are overlooked.

This allows to answer the question, which consists in the administrative legal support for the security of

business entities. In our opinion, it should be understood as the administrative legal framework for the security of economic entities and activities aimed at the formation, use, and improvement of this framework to create optimal conditions so that each such entity is constantly in a stable state of minimal vulnerability to threats and has the opportunity to achieve its goals.

REFERENCES

- [1] Dunne, N. (2016). Antitrust and the making of European tort law. *Oxford Journal of Legal Studies*, 36(2), 366-399.
- [2] Trombetta, W.L. (1980). Using antitrust law to control anticompetitive real estate industry practices. *Journal of Consumer Affairs*, 14(1), 142-155.
- [3] Noonan, K.E. (2015). The role of regulatory agencies and intellectual property: Part II. *Cold Spring Harbor Perspectives in Medicine*, 5(7), 1-16.
- [4] Erdilek, A. (2018). *Multinationals as mutual invaders: Intra-industry direct foreign investment*. Oxfordshire: Routledge.
- [5] Sokol, D.D. (2011). International antitrust institutions. Cooperation, comity, and competition. *Oxford Scholarship Online*, 5, 12-111.
- [6] Fox, E.M., & Trebilcock, M.J. (2013). *The design of competition law institutions: Global norms, local choices*. Oxford: Oxford University Press.
- [7] Rosenberg, D., & Sullivan, J.P. (2006). Coordinating private class action and public agency enforcement of antitrust law. *Journal of Competition Law and Economics*, 2(2), 159-187.
- [8] Ghosal, V. (2011). Regime shift in antitrust laws, economics, and enforcement. *Journal of Competition Law and Economics*, 7(4), 733-774.
- [9] Pressey, A.D., & Ashton, J.K. (2009). The antitrust implications of electronic business-to-business marketplaces. *Industrial Marketing Management*, 38(4), 468-476.
- [10] Boliek, B.E. (2020). Populist antitrust and the 1927 Radio Act. *Review of Industrial Organization*, 56(1), 5-16.
- [11] Zenger, H. (2012). The marginal price effects of antitrust rules against price discrimination. *Economics Letters*, 117(3), 921-923.
- [12] Gortych, J.E. (2002). Antitrust issues in intellectual property licensing. *Optics and Photonics News*, 13(3), 14-15.
- [13] Davidow, J. (1999). Antitrust issues arising out of actual or potential enforcement of trade laws. *Journal of International Economic Law*, 2(4), 681-693.
- [14] Shapiro, C. (2018). Antitrust in a time of populism. *International Journal of Industrial Organization*, 61, 714-748.
- [15] Scheld, D., Paha, J., & Fandrey, N. (2016). Managing antitrust risks in the banking industry. *European Competition Journal*, 12(1), 113-136.
- [16] Daniel III, C. (1997). The antitrust laws: A primer. *Atlantic Economic Journal*, 25(4), 420-426.
- [17] Razor, J. (2003). Antitrust laws. *Bulletin of the American College of Surgeons*, 88(4), 8-10.
- [18] Galiullina, G.F., Makarov, A.N., & Mullakhmetova, A.A. (2019). Genesis of territories with a special business regime. *Journal of Environmental Treatment Techniques*, 7(Special Issue), 1112-1116.
- [19] Penkova, O.H., Kharenko, A.O., & Tsymbaliuk, Yu.A. (2020). Trends and development prospects of grain market in Ukraine. *Scientific Bulletin of Mukachevo State University. Series "Economy"*, 1(13), 38-44.
- [20] Evans, D.S. (2019). Basic principles for the design of antitrust analysis for multisided platforms. *Journal of Antitrust Enforcement*, 7(3), 319-338.
- [21] Shughart II, W.F., & McChesney, F.S. (2010). Public choice theory and antitrust policy. *Public Choice*, 142(3), 385-406.
- [22] Gurianov, P. (2015). Formation of pollutant emissions trading optimum model at the international market. *Metallurgical and Mining Industry*, 7(8), 94-99.
- [23] Babenko, K.Y. (2020). Management of territorial economic development: Project approach. *Scientific Bulletin of Mukachevo State University. Series "Economy"*, 1(13), 135-139.
- [24] White, M.D. (2016). On the justification of antitrust: A matter of rights and wrongs. *Antitrust Bulletin*, 61(2), 323-335.
- [25] Bezpалov, V.V., Lochan, S.A., & Sorokina, N.Y. (2016). Modernization of management of the regional economy as an instrument for solving tasks related to import substitution. *Journal of Internet Banking and Commerce*, 21(Special Issue 6), 1-10.
- [26] Bobrova, A.V., & Garipov, R.I. (2018). Universal system of indicators for assessing the activities of customs authorities. *Journal of Advanced Research in Law and Economics*, 9(6), 1910-1923.
- [27] Shadova, Z.H., Gurianov, P.A., Fedorova, S.N., Zemlyakova, A.V., & Grishchenko, O.V. (2016). The structure of the share capital and the interests of the majority shareholder. *International Journal of Economics and Financial Issues*, 6(1S), 211-219.
- [28] Futalo, Yu.R. (2018). Conceptual approaches to increasing the effectiveness of economic processes integration on the development of the national economy structure. *Bulletin of Mukachevo State University. Series "Economy"*, 1(9), 32-37.

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