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ПРАВОСВІДОМІСТЬ ТА ПРАВОВА КУЛЬТУРА ЯК ПЕРЕДУМОВА РОЗШИРЕННЯ ЧИННОГО ОБСЯГУ ПРАВА ЛЮДИНИ НА ЗБРОЮ В УКРАЇНІ

Анотація. *Сучасна юридична наука відкриває нові перспективи в дослідженні проблем правової системи, яка є самостійним напрямом загальнотеоретичної юриспруденції. Забезпечення конституційних прав і свобод людини і громадянина в повному обсязі є доволі непростим процесом. Зокрема, існує істотна невідповідність між сучасними правовими регуляторами, юридичними засобами та справжнім станом реалізації культурних прав і свобод людини в Україні. Проблемою в Україні залишається відсутність законодавчого регулювання обігу зброї. Тому стаття присвячена з'ясуванню ролі правової свідомості особи та правової культури у суспільстві за умов ймовірного розширення чинного (на сьогодні) обсягу права людини на зброю в Україні. В роботі використано соціально-детерміністична система визначення змісту прав людини (зокрема права людини на зброю) та діалектичний підхід. Проаналізовано загальнотеоретичні підходи до визначення термінів «правосвідомість» та «правова культура» в контексті правосвідомості осіб-суб'єктів права на зброю. Авторами виявлені чинники, які впливають на культуру поводження зі зброєю, серед яких: традиції сімейного виховання, навчальні заклади, спортивні секції та інші. Встановлено, що необхідним елементом формування високого рівня зброєвої культури є достатня розвиненість комплексу позашкільної освіти. Також виділені проблеми щодо реалізації прав людини і громадянина на зброю в Україні. Встановлено, що приклади практики запровадження країнами легалізації зброї для самозахисту надають повну картину наслідків впливу таких дій на суспільство. Аргументовано твердження про те, що джерелом права людини на зброю є не тільки норми законодавства, а й корпоративні норми та правовий звичай. Проаналізовано корпоративні норми, які є джерелом права людини на зброю. Зазначено про позитивний вплив соціальних регуляторів, які впливають на підвищення рівня правової свідомості осіб та правової культури в суспільстві в контексті права людини на зброю.*

Ключові слова: правова свідомість, вогнепальна зброя, право на зброю, культура поводження зі зброєю, права людини, профілактично-виховні заходи.

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ON THE ISSUE OF LEGAL AWARENESS AND LEGAL CULTURE AS A PRECONDITION OF THE ENLARGING OF THE CURRENT AMOUNT OF THE RIGHT TO ARMS IN UKRAINE

Abstract. *Modern legal science opens new perspectives of researching problems of legal system that is the independent branch of general theoretical jurisprudence. Provision of constitutional rights and freedoms of a human and a citizen in its entirety is the difficult process. In particular, there is significant discrepancy between modern legal regulators, legal arrangements and reals state of implementation of cultural rights and freedoms of a human in Ukraine. The problem is still absence of legislative regulation of traffic in arms. That is why the article is devoted to clarifying the role of legal awareness of a person and of legal culture in society in the context of the likely expansion of the current level of the human right to arms in Ukraine. In the writing, social and deterministic system to determine the right of a human (in particular, the right to arms) and dialectic approach were used. The general theoretical approaches to the definition of the terms "legal awareness" and "legal culture" are analysed in the context of legal awareness of persons who are the subjects of the right to arms. The authors have revealed factors that affect the culture of weapon handling, among them are: tradition of family education, educational institutions, sports clubs and others. It has been established that the necessary element to form a high level of arms culture is sufficient development of out-of-school education. Also, the issues on implementation of rights to arms of a human and citizen have been selected. It has been established that examples of the practice of introducing weapons legalisation for self-defence by countries provide a complete picture of the consequences of such actions for society. The statement that the source of the right to arms of human is not only legislation norms, but also corporate norms and legal custom has been proved. Corporate norms that are source of right to arms have been analysed. The positive influence of such social regulators on raising the level of legal awareness of individuals and legal culture in society in the context of the human right to arms is indicated.*

Keywords: legal awareness, legal culture, the right to arms, weapons, culture of handling of weapons, human rights.

INTRODUCTION

Numerous writings of scientists-representors of different social sciences are devoted to study different aspects of the right to arms. A weapon is the object of respective attention. Also, of the legal scholars who are representatives of different branches of law. Thus, certain aspects of legal regulation of a weapon handling have been researched within the science of administrative law (as an object of authorisation system), civil law (as a thing, as an object of property right), criminal law (as a thing of

respective offence or as a crime instrument), forensic science (in aspects of forensic identification and registration of weapons), etc.

Representatives of legal scholars who studied the issue of weapons handling in various scientific aspects are G. Avdeyeva, Yu. Baulin, P. Berzin, P. Bilenchuk, O. Bokiy, K. Gorislavsky, O. Kaplina, A. Korniyets, A. Kofanov, A. Kryvosheyev, M. Maystrenko, M. Mazur, V. Mikhalov, S. Moskalenko, I. Musienko, J. Novak, P. Orlov, M. Panov, E. Pidlisniy, M. Pinchuk, N. Plyushkevich, J. Ponomarenko, V. Rechitsky, O. Romanov, O. Sarnavsky, O. Sulyaev, V. Tatsiy, P. Fris, O. Frolov, O. Kharitonov, V. Shevchuk, V. Shepitko and others.

At the same time, certain (first of all, general theoretical or philosophical and legal) aspects of such human right are not sufficiently researched at the scientific level. Relevant issue of today's Ukraine is issue on appropriateness *of expanding the current scope of the human right to arms* (this term was proposed to replace commonly used term "*legalisation of a weapon*" [1]) at the present stage of development of society. The issue concerning weapon "maturity" of Ukrainian society, the level of legal culture and legal awareness is quite relevant in recent years. It is necessary, in our view, to pay a particular attention to them.

Therefore, the object of the study *is to determine the role of legal awareness of a human and legal culture of society* in regulation the scope of the right to arms by the legislative body and implementation of this right by its entities. It is worth mentioning that this study has researched specifics of regulation of relations connected with handling exceptionally civilian weapons by only civilians.

1. METHODOLOGY

The main methodologic toolkit of the study is social and deterministic system to determine the right of a human (in particular, the right to arms) and dialectic approach. Methodologic basis of the research is the system of philosophical, general scientific and legal methods and principles that are used in interconnection. Aristotelian method, analysis and synthesis had the individual role as methods of research. The study was conducted with consideration of principles of methodologic pluralism and integral approach to understanding of law.

The method of analysis revealed that another necessary element of formation of the high level of arms culture is sufficient development of the complex of out-of-school education. This should include shooting clubs, sport clubs and sections, respective events of public organisations. Because of them anyone who wants (with minimum age restrictions) has the opportunity to try handling weapon safely or indulge in sports or hobby at the professional level.

Unfortunately, for today statistics on accessibility of shooting sport is negative. During the period from 1991 to 2002, the number of shooting clubs decreased from 2,245 to 166, respectively. This fact, undoubtedly, virtually eliminates the legal satis-

faction of the natural interest of children in weapons and obtaining important psychological training for them [2].

In addition, in our view, despite different advantages and disadvantages of military duty for men in the state, the fact that military service teaches strict compliance with the rules of safety of weapons handling and serves as a psychological and practical training in its use, is indisputable.

Examples of practice of introducing arms legalisation for self-defence provide the full picture of consequences of such actions for society. Negative consequences of arms legalisation have not been researched in a full extent, but the positive consequences are considered more significant. Many countries differ in the practice of introducing weapons and methods of regulating them. For example, Australia, which is one of the safest countries according to various indicators of world agencies. For a long time Australia treated civilian traffic in arms liberally, but because of resonance mass murders with use of firearms, the number of which increased as well as the number of victims, Australia reformed respective laws. Many arms were bought and destroyed by the state.

2. RESULTS AND DISCUSSION

2.1. Analysis of legal awareness and legal culture

Firstly, it is necessary to define the terms *legal awareness and legal culture.* Thus, legal awareness is "totality of subjective elements of legal regulation: ideas, theories, emotions, feelings and legal settings, by which the legal reality is reflected and the following are formed: attitudes to law and law practice, value orientation concerning legal behaviour, development areas and perspectives of legal system from the point of providing decent life of a human, justice in human relations, effective organisation of activity of the state and society" [3]. Thus, legal awareness is the totality of subjective inner components of regulation that belong to a person indirectly.

Legal culture, in its turn, is defined as "qualitative state of legal life of society that characteristic of level of development of legal system – condition and level of legal awareness, legal science, system of legislation, law enforcement practice, legitimacy and law and order, legal education and the degree of the guarantee of basic rights and freedom of a human" [3,4].

In the context of interconnection of legal awareness and legal culture, it is necessary to note that the level of legal awareness is the component of legal culture [3].

As it was mentioned, the necessary precondition to legalise short-barreled firearms or other expanding of the scope of the right to arms is that subjects of the right to arms have the respective culture of weapon handling and the high level of legal awareness [5].

It is needed to select factors that impact positively on raising the culture of handling weapons specifically and on legal culture and legal awareness of a human in general. In our view, such factors are:

– Respective traditions of family education (connection of generations);

– Respective educational disciplines in educational institutions (first of all, in schools and higher educational institutions);

– Development of sports clubs, sections, shooting clubs and other institutions that contribute to improvement of arms culture;

– Presence of general military duty in the state;

– Legal customs, norms of corporative law;

– Popularization of amateur and sport hunting [6].

The study has researched all of them.

Firstly, it is needed to note that during upbringing of a future weapon owner the education of a child by parents and other elder relatives is very important. The proof of this thesis is the thought of V. Mihalyov concerning collapse of such traditions of society when grandparents took the function of the main education of younger generation. We agree with the statement of the author that earlier children were taught basic skills of weapon handling by grandfathers because parents did not have time to do it. Exactly this traditional order existed to 1917, in particular, among Cossacks [2]. In our view, for today, such traditions are not fully extinct, but have become more exception that rule.

The good example of opportunities of such upbringing in modern time is forming of child's understanding of consequences of "illegal" use of toy guns (aiming at people or animals, shooting in place where parents do not allow, keep toys loaded, etc.). Such basic rules are analogies with existing requirements concerning safety with weapon handling and they form awareness of own responsibility.

The interesting example of analogic practice is educational and prevention means of police of foreign countries. They provide educative playgrounds in early childhood and school educational institutions, during which policemen visit children and teach safety in weapon handling. After children answer correctly to available question, they are given respective "permissions" that become a component of playing with toy gun. These events engage trading networks that participate in education of future consumers. In such way, person forms awareness that there are lawful procedures for handling of weapons and possession of weapons is possible only on the basis of a respective permission [2].

Secondly, it is impossible to deny efficiency of "arms" education at the lessons of primary military training where such training is conducted by competent person both in context of pedagogics and in context of experience of weapon handling. Unfortunately, it is widely known that in Ukraine many schools have very formal lessons on this discipline. First of all, this is related to the absence of necessary material and technical base: training weapons (maquette), school shooting clubs, air weapon, bullets, etc.

If to consider norms of imprescriptible right as factors that positively impact on culture of weapon handling, then, in our view, firstly these are respective customs of hunting-weapon community. The following are examples of such customs.

Firstly, if a hunter took a hare from a dog of other hunter, he has to give meat to an owner of a dog and receive in exchange bullets. Such approach is clever enough, because an argument of two armed men about property right may end tragically. That is, the implementation of mentioned legal custom in practice:

– complies with the principle of justice because factually is reward to other hunter for his dog work;

– complies with the principle of proportionality (reward of 2–3 bullets, in our view, proportionally compensates wasted bullets);

– has preventive function concerning possible argument about property right on a trophy between two armed humans in wilderness (that increases a probability of tragic consequences of this argument if there is no respective algorithm of its solution).

– forms respect among hunter to each other;

– contributes to increasing the level of culture of weapon handling and legal awareness in general.

Secondly, common custom demonstrates that during collective hunting, riding to hounds, a hunter, who has missed, in the following riding joins riders. In our view, such custom is aimed at forming awareness of responsibility for each shot, respect to work of colleagues in hunting. It is worth mentioning that during hunting any (dead or not) shot should be done only in clearly seen target that is why the custom meets requirements of safety during weapon handling and hunting.

There are also a big number of other hunting traditions aimed at appropriate implementation of the environment laws, preservation of animal and forest fund, etc., but they do not indirectly relate to safety in weapon handling and weapon culture of a person. However, following such customs leads to improvement of legal culture and forming of legal awareness in general.

2.2 Analysis of corporative norms

It is needed to pay a separate attention to corporative norms as source of law of human right to arms. Thus, corporative norms mean "documents of regulative character that developed by political parties, public organisations, trade unions, funds, movements and other organised communities in order to implement interests of their members" [3]. In the context of this study, examples of act that have such norms include founding documents of public organisations, purpose of activity and membership, in which is connected with handling of a civilian weapon: "Ukrainian society of hunters and fishermen" (USHF), "Ukrainian association of gun owners" (UAGO) and others.

Corporative norms may repeat requirements of legislation that regulate the order of weapon handling and establish additional rights, duties and sanctions for violation of corporative norms (within own competence). Thus, for example, paragraph 6 of clause 4.5 of the statute of PO "USHF" obliges members of organisation "to comply with rules of hunting and fishing and follow established order of purchasing, preserv-

ing, using, registration (re-registration) and sale of firearms and ammunition" [8]. This norm repeats requirements of the current legislation. The example of norm that establishes additional (corporative) sanctions is clause 4.8 of mentioned statute. It establishes such means of public influence as sanctions for violation of norms of the statute: rebuke; reprimand; deprivation of the right to hunting and fishing in rangelands given to USHF, or the right to participate in competition of the organisation for two years; removing from governing bodies of the organisation; loss of rank "Honourable member of Ukrainian society of hunters and fishermen", removing from membership of organisation" [8].

Also, it is needed to speak separately of paragraph 10 of clause 4.5 of mentioned statute that obliges members "not to commit acts that violate ethics of trading relations during hunting and acts that cause moral or material damage to the Society or its members" [8]. In our view, this norm at the corporate level legitimises customs of hunting society that were considered earlier as source of law of right to arms.

In such way, in the context of researching given examples of corporative norms, we agree with the statement that despite the fact that corporate norms are "weaker" in legal force (in comparison with the norms of law), their importance for functioning of public society is impossible to deny because they "expand their influence beyond boundaries of legal regulation" and are consequence of human activity, initiative [3].

The individual indicator of positive influence of corporative norms and legal customs on legal awareness and legal culture is the fact that on the official Internet representation of the President of Ukraine are many registered petitions concerning regulation of traffic in arms in Ukraine [9-12], (including decrease of scope of this right [13]). In addition, Ukrainian association of gun owners prepared own draft law of Ukraine [14; 15], the purpose of which is to overcome existing collisions and fill in the relevant gaps in regulation. Despite flaws of the draft, we think that the fact of its development (and the facts of registration of petitions) is the indicator of the high level of inner self-organisation in such public formations, high level of legal awareness of the initiators of the development of such projects and the desire of the arms community to resolve the issues in the manner prescribed by law.

CONCLUSION

The theme of legislative regulation of the human right to arms has the "place of honour" in domestic and foreigner law researches. Regulation of this right of a human may be implemented by not only legislative norms, but also corporative. Such additional social regulators are factors that positively influence both increase of the level of legal awareness of specific persons and increase of level of legal culture of society in general.

Law influence has multilayered structure, in particular, it manifests itself at the level of law perception and law implementation. Norms, values, settings and stereotypes concerning legitimate behaviour are broadcasted using mass-media, cinematograph,

literature, art, propaganda, agitation, etc. All these are means to form information and legal environment that includes information flows, channels of influence that human feels. In this, information "teared off" the object of reflection becomes the content of memory, participates in psychic processes, forms ideas, knowledge, skills, abilities. In other words, it is of psychological character and participates in determination of behaviour by a human.

At the same time, it is impossible to claim that there are means of valid measurement of the level of legal awareness or legal culture. That is why it is impossible to give an objective answer to the question "is in modern society the level of culture of weapon handling sufficient to expand the current scope of the human right to arms in Ukraine?" However, it is wrong to deny the necessity of means that positively affect both the level of culture of weapon handling and the level of legal awareness and legal culture in general.

Materials of the article may be significant for legal scholars, practicsing lawyers, students, teachers, participants of the legislative process and other persons who are interested in issues of regulation and implementation of the human right to arms.

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КРИМІНОМЕТРИЧНИЙ АНАЛІЗ ПРИЙНЯТНОСТІ КОРУПЦІЇ ТА УМОВ ФОРМУВАННЯ ЦІНИ КОРУПЦІЙНОЇ ПОСЛУГИ

Анотація. *Абсолютно всі прояви корупції формально обумовлюються девіантною поведінкою осіб, котрі можуть бути віднесені до суб'єктів корупційних правопорушень. У той же час, в теоретичному контексті недостатньо дослідженим залишається питання про те, чому ж люди здійснюють корупційний злочин, не дивлячись на очевидний загальнолюдський осуд корупції та корупціонерів. Тому основна мета роботи полягає у кримінометричному аналізі прийнятності корупції та умов формування ціни корупційної послуги. Досягнути поставленої мети дозволили методи типологізації та кримінометричного моделювання. Встановлено, що кожній категорії державних службовців кореспондує певний рівень дисципліни та відповідальності, що відповідає важливості функцій, які виконують службовці відповідної категорії, і ризикам неправомірного ухилення від виконання ними цих функцій. В роботі визначено умови прийнятності корупції – умов, за наявності яких, відповідна девіантна поведінка зі всіма її ризиками, стає привабливою в очах потенційного суб'єкта корупційного злочину. Найважливішою умовою прийнятності корупційної моделі поведінки для особи, яка надає неправомірну корупційну вигоду, буде те, що ця вигода за своєю ціною і цінністю буде перевищувати, зокрема, час, витрачений нею на отримання публічної послуги корупційним чином, відповідні ризики тощо. У той же час, відповідна прийнятність корупційної моделі поведінки для особи, що приймає неправомірну корупційну вигоду, буде констатуватись завжди, коли ця вигода дорівнюватиме або ж перевищуватиме її корупційні очікування. Разом з тим, категорія «корупційне очікування» дозволяє, з одного боку, визначити множинні закономірності формування ціни корупційної послуги, а, з іншого – розробити дієву антикорупційну логіку, що застосовуватиметься державою у процесі запобігання та протидії корупції. Всі дії держави та органів державної влади повинні бути системними, скоординованими на досягнення однієї мети. Зазначені напрями модернізації антикорупційної політики на державній службі, які будуть позитивно впливати на її діяльність.*

Ключові слова: корупційна поведінка, корупційний податок, неправомірна вигода, прийнятність корупції, розгул корупції, хабар, ціна корупційної послуги.

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CRIMINOMETRIC ANALYSIS OF CORRUPTION PERMISSIVENESS AND CONDITIONS OF PRICING IN CORRUPT SERVICES

Abstract. *All manifestations of corruption with no exceptions are formally conditioned by the deviant behaviour of individuals, who may be attributed to the entities of corruption offences. At the same time, in the theoretical context, the issue of the reason why people commit corruption crimes remains under-researched, regardless of observed universal condemnation of corruption and corrupt officials. Therefore, the main purpose of the paper is forensic analysis of the acceptability of corruption and the conditions for the formation of corruption services cost. Methods of typology and forensic modelling allowed achieving of the purpose. It has been established that each category of civil servants corresponds to a certain level of discipline and responsibility that, in its turn, corresponds to the importance of the functions performed by employees of the relevant category and the risks of misuse of these functions. The article has defined conditions of corruption permissiveness – the conditions under which the corresponding deviant behaviour with all its attendant risks becomes attractive in the minds of potential entities of corruption crimes. The most important condition for permissiveness of corrupt behaviour for a person providing unlawful corrupt benefit will be the fact that this benefit by its cost and value will exceed, in particular, the time spent by him or her to receive a public service in a corrupt way, associated risks, etc. At the same time, permissiveness of corrupt behaviour for a person accepting unlawful corruption benefit will always be stated if this benefit will be equal to or will exceed his or her corrupt expectations. However, the category "corruption waiting" allows, on the one hand, to identify multiple patterns of corrupt services' pricing, and on the other hand, to develop efficient anti-corruption logic applied by the government in the process of preventing and combating corruption. All actions of a state and governing bodies should be systemic, coordinated to achieve one goal. The focuses on modernisation of anticorruption policy in the civil service, which will positively influence its activity, have been determined.*

Keywords: acceptability of corruption, bribe, corruption behaviour, corruption tax, improper benefit, price of corruption services, rampant corruption.

INTRODUCTION

After the cold war the attention of the world was attracted by the issues of prevention and overcome corruption that is considered by scientists as tenacious and always relevant problem, which penetrates all areas of human life activity [1]. Along with this, the end of the cold war conditioned the beginning of the period of terrible chaos in many countries. In them, as the Australian scientist adjunct professor John McFarlane noted, good governance was replaced with anarchy (states of former Soviet Union and former Yugoslavia), intercommunal harmony

was destroyed by ethnic conflicts and genocidal acts (Ruanda and Bosnia), social balance was mutilated by increasing level of unemployment and impoverishment (Indonesia and Salvador), religious and cultural divisions that led to extreme violence (Alger and India), etc. [2]. In this, it is worth stressing that the end of the cold war and mentioned consequences are closely related to corruption – they are conditioned or/and deepened by it. Moreover, destructive impact of corruption is manifested not only in destabilised states (in which there are social and economic, political and other crisis phenomena) because corruption is extremely aggressive economic crime that has numerous manifestations [3] and influence in a parasite way in all governments, governing bodies, enterprises, charities and citizens all over the world. Corruption and its consequences indirectly threaten democracy and make society anxious, harm economy, conditioned exhaustive inefficiency, steal money from financial support and provision of basic social services [4;5]. That is, character of threaten of corruption to the world is analogic to threaten of nuclear war, which was expected in the period of the confrontation between the United States and the former USSR. In this, mentioned comparison of corruption consequences and nuclear war is not exaggeration of corruption significance. Destructive influence of corruption on quality of a human life, on the integrity and viability of the existing world order, does not cause serious doubts. In addition, the role of corruption should not be ignored also in genocides, wars, military conflicts that potentially may be carried out using nuclear weapon (given that quite corruptive states possess nuclear weapon).

Unfortunately, in Europe and in the world Ukraine is very corruptive state. In the rating of corruption *Transparency International* in 2017, Ukraine was ranked 130 together with Sierra Leone, Myanmar, Iran and the Gambia. At the same time, Azerbaijan, Kazakhstan and Moldova ranked 122th, Armenia was 107, Belarus and Georgia – 68 and 46 respectively, Latvia and Lithuania – 40 and 38 respectively, Poland – 36, New Zealand – 1. All this demonstrates that modern implementation of the state anticorruption police in Ukraine is ineffective, interfered by solid corruption relations. Moreover, it is obviously ineffective to increase the amount of anti-corruption legislation in Ukraine today (that causes inflation of legislation) and cultivation of anticorruption governing bodies (condition respective institutional inflation). Also, among basic reasons of insufficiency of the state anticorruption policy and the failure of Ukraine (as well as many other post-Soviet states) to prevent and counteract corruption, there are, first of all, the lack of sufficient political will of the heads of state bodies, the inconsistency of the level of anti-corruption culture in society, and ignorance of actual developments of scientists-criminologists within the framework of the theory of corruption and anticorruption activities by all subjects of anti-corruption activity. The additional problem is insufficient objectivity of theoretical understanding by academic circles and practising lawyers about the nature of corruption and its impact.

It is worth to note that corruption (within the general model of understanding thin phenomenon) means the phenomenon that is objectified through deformation of the established order of requesting-granting-receiving of public goods or attempts to inviolate this order, which are practically conditioned by deviant (in legal and/or social contexts) acts that are carried out by:

(1) a person who has power and influence (as a result of a certain position in public or municipal service or plays a special role in life of society) abuses this power and influence in exchange for items and/or services that satisfy its private interest or the interest of certain groups of people who are under its unlawful intercession;

(2) a person who wants to gain goods for himself/herself or third parties (also, to take someone's goods) offering (and also giving) improper corruption benefit in order to obtain the appropriate goods to a person who has the power and/or possesses the appropriate real influence;

(3) a person who contributes to active or passive actions of corruption practice [6].

So, corruption is the phenomenon that is caused by a certain deviant behaviour of individuals that distorts the practical appearance of the primacy of public interest over the private, distorting the existing balance of these interests.

For today, scientists-criminologists, anticorruption organisations and states, the world community have developed certain minimum standards for the prevention and counteraction of corruption, which enhance the reality of the criminal responsibility for criminal acts of corruption. However, given the experience of Ukraine and many other states, it can be seen that each anticorruption act is usually characterised of a short-term effect, it is gradually depreciating, and eventually "oxidized" and "dies" [7-9]. That is why it is possible to admit that distorting the primacy of public interest over the private is virtually inevitable in human society. Along with this, the corruption perceptions rating *Transparency International* for each year demonstrates as if different information: corruption motive is important in choosing a person's behaviour model, however, this "importance" in different countries varies. Given that, there is the logical question: does the level of corruption perception vary in different countries, or in different countries, people are limited to committing corruption differently (in some – in an effective way, and in others to a lesser extent)? In our opinion, objective result, in this case, depends on the state that quickly responds to human adaptation to anticorruption conditions (in order to commit corruption crimes in these conditions in a more "perfect" and "actual" way) and effectively counteract the possible deviation of society in the appropriate direction [10-11].

Therefore, in theoretical and practical contexts, the question of why precisely the criminal corruption behaviour, despite the numerous risks for participants in corruption relations, is more acceptable than the opposite to it – prosocial? While finding answer to this question, it is necessary to find out the social and legal essence of the accept-

ability of corruption actions for participants of corruption relations, which can be expressed in the corresponding formula.

1. MATERIALS AND METHODS

In accordance with the purpose and objectives of this study, the totality of general science and special methods, as well as means of scientific cognition (in particular, systematic method, systematic and structural analysis, typology and forensic modelling) were used; they allowed analysing comprehensively the problems of corruption theory in the part of the conceptualisation of the logic of acceptability of a corruption behaviour model, which has a direct connection with the cost of unlawful benefits and its acceptability.

It is necessary to select the following points for detailed analysis:

– The notion "corruption" is complicated, multi-layered, systematically organised social phenomenon that combines different components: administrative, political, economic, legal, social, moral and ethical;

– Corruption is the negative social phenomenon that constantly and actively influences on consciousness of citizens, their personal view, forms mercenary amoral values, sets corruption subculture in society, destroys social relations, decreases resources and undermines the credibility of the state;

– Corruption covers higher (elite), middle and low levels of public administration, penetrating all spheres and subsystems of public life, violates rules, affects the interests of all social groups and layers of society, policy, economy, social sphere, culture;

– Corruption can be political, economic, administrative and mundane, can occur in an organised or spontaneous way;

– Corruption has created corruption ethics, which has become an alternative to moral and ethical standards in Ukraine.

Using the method of analysis, it has been established that one of the most significant factors in overcoming corruption is the attitude of the population to this problem. According to the results of research conducted in Ukraine in recent years, more than half of the population is inclined to commit corruption offences if this can contribute to solving the problem. In addition, a significant part of the population, given the lack of relevant knowledge, does not classify certain behaviours as corruption, while recognising the discrepancy of such behaviours with the norms of morality or professional ethics. Provided effective explanatory work the population can change the attitude towards such practice as an unacceptable corruption, and thus, the anti-corruption potential of society will increase significantly.

2. RESULTS AND DISCUSSION

2.1 Acceptability of corruption for a provider of unlawful corruption benefits

Using corruption, parties of corruptive relations (within the basic model of respective relations, these parties are the one who provides unlawful corruption benefit and the one who receives this benefit in exchange for given promised goods) achieve cer-

tain goods, often inaccessible in non-corruption relations (at all or in the extent necessary for the parties of these relations). In this regard S.V. Lavrenko notes that the special literature distinguishes scientific positions, which argue that corrupt officials, as participants in the relevant relationship, receive from these relations "benefits in the form of material rewards for corrupt "behaviour". Persons who provide illegal reward to officials also receive access to any resources, exemption from liability for their offences, etc. in exchange for the benefit. In such way, for this category of people, corruption is an absolute blessing" [12], though for society the phenomenon remains nominally negative social and economic and legal phenomenon. IV Pigolenko also draws attention to the same fact, emphasising that not all citizens consider corruption to be a negative phenomenon. Most citizens (first of all entrepreneurs) think that "corruption gives an opportunity to do business and bribes can be called equivalent price for speeding up processing of the case or solving other issues. Often both sides of corruption act are ready for mutually beneficial contracts" [13-14]. At the same time, it would be possible to suppose that the conditionally positive effect of corruption is a consequence of corrupting the state: people enter corruption relations as an effective means of optimal participation in society, since the participation of these people in social processes (that is, a complete manifestation of people in society) is impossible without a corruption component due to the corruptions of society itself. However, this conclusion is only partially fair. If for some people corruption relations are a "desperate" means by which a person is trying to obtain the necessary good, and without it (without corruption) cannot obtain the good or receive it in the necessary time, to the extent necessary (for example, recently, the urgent receipt of an international passport in many cities of Ukraine due to high demand for them, caused by the so-called "visa-free travel to Europe", was actually carried out either in weeks or months from the date of filing the application; earlier it was possible but only when the applicant persistently filled numerous applications to the authorities and made daily phone calls to the migration service that can be estimates as obvious corruption risk), then for other people corruption relations is a reflection of their basic life and survival strategies interact in society.

Cases when a person commits corruption acts to gain a necessary good because optimal achievement of this good is complicated by corruption component (that means a person can achieve a good without corruption, but having wasted another resource, mainly time, physical strength, etc.) may be described as follows (formula 1 that determines *subjective favour of corruption opportuneness for a person who provides unlawful corruption benefits*):

$$RB = \left(\frac{NB^{-CC}-LA-CD}{t} \times 100\ \%\right) \times ThCD \quad (1)$$

Wherein

RB – a good achieved using corruption; *NB* – a necessary good; *CC* – corruptive complication; *LA* – lawful actions in order to gain a good (if they were accompanied

by corrupt acts); *CD* – corruption solution; *ThCD* – threat to be caught; *t* – time spent to achieve a goal.

In this, it is needed to pay attention to the fact that a potential participant in corruption relations (mainly one who gives unlawful corruption benefits, a corrupt intermediary), determining the likelihood of a possible corrupt act, will be guided by the criteria of rational efficiency of a corruption solution, determined by economic justification of benefit achieved through corruption – profitability of the good. At the same time, it is wrong to deny that in practical reality there are cases when a person tries to gain a good through corruption, despite the fact that its optimal achievement is devoid of corruption component (in other words, a person can attain a good that he needs without resorting to corrupt practices), but a corrupt decision even more optimises the process of achieving this benefit. Practical demand for this behaviour, in our view, is due to:

(1) Legal nihilism and guidance by self-centred idea of world outlook (and comprehension within the framework of this idea of social relations);

(2) Dynamics, competitive character of socio-economic relations, considering which people (by virtue of their psychophysiological nature) strive for increasing dynamics of achievement of necessary good to maximum extent possible.

2.2 Acceptability of corruption for a recipient of unlawful corruption benefit

For the recipient of unlawful corruption benefits (for example, a bribe-taker) this unlawful benefit will be acceptable in each specific case if it meets his/her criminal mercantile expectations (or exceeds those expectations). This leads to the fact that for a recipient of unlawful corruption benefit acceptability (efficiency) of a bribe is subjective category that in a certain way is corrected by numerous conditions, in particular:

(1) By objective conditions of administrative powers of a person, who has an opportunity to provide goods through corruption, and by boundaries of his/her influence, his/her position in society, the presence of appropriate "competitors" (those who provide similar public services in exchange for a bribe or without such a bribe), etc.;

(2) By objective economic opportunities of a person, who is empowered to provide goods through corruption, and by a character of his/her subjective evaluation of these opportunities;

(3) By model a corrupter chose on the basis of its activity;

(4) By character of a service (good) that is provided in exchange for obtained unlawful corruption benefit.

Exactly these conditions of the acceptability of unlawful corruption benefit are collectively determinative in the formation of the cost of this benefit, and also they are the important circumstance that can be used in anticorruption activity of a state as a lever to support normative behaviour in society.

Impact of self-esteem on the cost of corruption service. Objective conditions of administrative power of a person, who has an opportunity to provide goods through

corruption boundaries of his/her influence, etc. influence on not only the degree of criminal confidence of a person, but also his/her self-esteem, influence of which on a cost of corruption service is difficult to underestimate. Therefore, taking into account mentioned conditions of cost correction and Formula 1, the following hypothesis may be put forward:

Hypothesis 1. *On impact of self-esteem of a potential corruptor on likelihood of his involvement in corruption:* The higher a person (who is able to provide goods through corruption) will assess his/her own importance in society, the higher a cost of a corrupt service that it will be willing to provide.

It follows from the hypothesis that for a person with high assessment of own importance in society the unlawful corruption profit will be equal to a cost of service (or exceed a cost); but in this case some possibilities are not taken into account, for example, objective cost of being caught on committing corruption act, etc.). In this regard, increasing importance of a person in society, who has an opportunity to provide goods through corruption, increases minimum cost of corruption service, which a person may agree to provide, and the contingent of persons capable of providing the corresponding unlawful benefit will be reduced to the same extent. Preventing corruption in the state in such way, it is possible to achieve only the following practical effect:

1. The scope of corruption in the state will be markedly reduced. This can be explained by the fact that under such terms, a number of persons involved in corruptive relations will decrease because of high cost of participation in these relations.

2. Influence of corruption in a state will depend on parallel increase of influence of oligarchic clans on state and processes in society. It is important to take into account that the rate of increase of clan influence will indirectly depends on the following two circumstances:

(1) On the rate of reduction of the number of persons capable of participating in corruption relations, which causes the monopoly on participation in corruption relations;

(2) On real ability of public authorities to counteract the corruptive of the clan influence on the state and on state bodies.

At the same time, it is important also to take into account that most often public authorities are unable to counteract corruptive clan influence because of various reasons. That is why, this and similar models of corruption preventing (for example, increasing the severity of criminal liability, provided that there is selective justice in the state, etc.) often condition an increase in the influence of oligarchic clans in the state, which use the criminal law and administrative legal system in their own interests. Moreover, the following should be emphasised: persons with high assessment of own importance in society, who have an opportunity to provide goods through corruption, will themselves be interested in monopolizing participation in corruption relations, because this, among other things, will "cleanse" the mass of people, who have a potential to provide unlawful corruptive benefits, from "unreliable" elements. In such way, monopolization of participation in corruptive relations provides safety of a corrupter, decreases its anxiety

concerning possible disclosure of respective criminal activity and satisfies his/her self-esteem by interaction with persons who factually possess a state.

However, presented hypothesis 1 allows concluding about the following: assessment of own importance in society of a person, who has an opportunity to provide goods through corruption, is the important factor of corruption preventing if anticorruption strategy of a state includes transparent means of increasing a number of persons who provide the same good. Increasing competition among individuals who have the opportunity to provide similar goods through corruption will result in a lower average cost for the corresponding corrupt service, which will result in dissonance between the requirements of a potential corruptor on the cost of corrupt services and its actual value. So, it can be concluded that success of increasing of competition among persons who have the opportunity to provide similar goods through corruption will be observed when in reality there will be a dissonance of the corresponding requirements and opportunities, provided that the assessment of their own importance in the society of the considered persons will not decrease (or decrease slightly, but not reaching the limits of the acceptability of the actual cost of corrupt service that they are able to provide).

Impact of objective opportunities and their assessment on a cost of corruption service. It is obvious that the lowest limit of a cost of a corruption service by a person, who has an opportunity to provide it, depends on not only person's assessment of own importance in society but also on his/her financial (in general, material) capacity. It is undoubtedly that acceptable cost of unlawful corruptive benefit for the same public service will not be estimated equally by two persons who hold the same post and positions in society, but are unequal in their material capabilities. This can be explained by the fact that amounts, character and value of person possessions determine significantly a person's critical reflection on the value of the objects and services he/she deals with. Value of any service or thing is dependent evaluative category, and a cost of these services and things are objectively expressed result of dependent evaluative judgments of a person that determines the appropriate cost.

In view of the foregoing, it would be possible to assume the following: (1) based on the theory of rational choice, individuals, who are not financially capable, are inclined to corruption behavior; (2) improvement of well-being of individuals, who have the opportunity to provide goods through corruption, will help eradicate corruption or increase the minimum cost of corrupt service, which can potentially lead to a reduction in the extent of corruption in the state (analysis of special scientific developments of scientists [15] demonstrates that this opinion finds support among many legal scholars). However, this conclusion is impossible to consider fully compelling and complete.

Firstly, anticorruption strategy of improving well-being of this category of individuals will condition the same result as increasing of their significance in society – a monopoly on participation in corruptive relations of elite that will lead to increasing of significance and influence of oligarchic clans in the state. Moreover, improving

well-being of individuals, who have an opportunity to provide goods through corruption, by wage increases should not be associated with that these individuals at once develop a sharp rejection of corruption behaviour (but it is expediently to consider that decent wage and presence of necessary social guarantees in a certain way contribute to waning interest in corruptive activity [16]). In particular, in this regard E.S. Moldovan defence the thought that given the low wage and weak social guarantees persons, who perform functions of the state, are not able to adequately secure themselves and their families and therefore often resort to illegal ways to "replenish" their personal budget [16].

Secondly, it is worth remembering that value of something is dependent and evaluative category. Dependence of the category manifests in determination of value judgments by internal and external factors, so by psychological nature of a human, intellectual and moral features of a personality, his/her experience of interaction with society, the society influence on him/her. It follows from this that in the future the anticorruption strategy for improving the well-being of this category of people:

(1) will not have tangible boundaries, as increasing the financial capacity of a person, more often, increases the level of its requirements for quality of life, which ultimately exceeds the possibilities (this fact is one of the answers to the question why highest state officials possessing multimillion, and sometimes multibillion-dollar wealth, are also prone to corruption practices, the same as civil servants of the lower categories);

(2) will be assessed as definitely unfair strategy.

In the context of foregoing and taking into account the essence of corruption in public sector, it is important to pay attention to the fact that each category of state officials corresponds to a certain level of discipline and responsibility that correlates with importance of functions performed by employees of the relevant category and the risks of improper avoidance of these functions. It is worth noting that a risk of non-fulfillment of functions by a person, given the corruption motive, increases with the degree of latitude and significance of powers that are given to a person for the implementation of these functions. In this regard, the following state officials of I-IV categories are very illustrative:

1. Officials while performing their functions become witnesses of "significant money masses" as a budget of a state institution, economic operations of a state body, etc. This experience to a different extent (depending on a measure of psychic health, mental development and a degree of morality of an employee) can: negatively affect the employee's assessment of a value of certain things, services, and his/her own well-being; cause a sense of dissatisfaction with a quality of own life, a problem of raising the level of which an employee can solve (in particular, in the absence of critical thinking) due to involvement in corruption activities. At the same time, the depreciating effect of "significant money masses" conditions also the level of the lowest cost of a corruption service that a respective employee is ready to provide. Along with this, in

the above-mentioned conditions, a cost of a corrupt service offered to employees will be lower than that which could be considered acceptable to him in full, which can be explained by the atrophy of adequacy of judgments of a respective employee.

2. Officials while performing their functions interact with representatives of upper class of society, part of which makes contact with officials in order to provide unlawful corruptive benefit in exchange for some goods they are empowered to provide. In this, individuals who provide unlawful exchange possessing a massive capital, are able to provide employees with the benefits of participating in corruption relationships that objectively exceed their expectations. In this regard, own financial capacity is depreciated because of certain economic operations in a state body, which are witnessed by an official, is perceived inadequately and is not a proper barrier to engaging in corruption, which allows them to improve their own well-being.

Impact of activity of a corruptor on a corruptive service. In practical activity "systematic corruptors" can require lesser cost for a corruption service than "unsystematic", so-called *"impulsive corruptors",* who commit corruptive offences only in response to significant unlawful benefit proposed to them. This can be explained by the fact that an impulse to a corruption act of a person for whom corruption activity for one reason or another is unusual, "goes a long journey" overcoming inner barriers (first of all, ethic barriers and barriers of fear caused by the possibility to be caught) that block this impulse. Speaking allegorically, the following can be noted:

(1) a length of a journey and a height of barriers (and their number), which the corruption impulse has to overcome, forms a cost of a good that a respective individual is ready to provide for unlawful benefit;

(2) each time, corrupt impulse passing through the barriers gradually destroys them, making the process of achieving a goal more confident and fleeting.

The frequency of committing a corruption act by a person, reduces its level anxiety over the deviant act, dissipates fear of a violation of "taboo" (along with an increase in criminal confidence in own impunity and the admissibility of unlawful actions of the corresponding form). Therefore, it is possible to admit that acceptability of corrupt behaviour for a recipient of unlawful benefit will increase each time when an experience of corruption activity enlarges, and a cost of a bribe will decrease along with frequency of committing a corruption act that are corrected by objective indicators:

(1) the level of competitiveness among corruptions of a relevant type;

(2) the level of an average cost of unlawful corruptive benefit provided for analogic goods.

Impact of complexity of the process of providing a corruption service on its cost. In reality, a cost of unlawful benefit also reflects complexity of a service that a corruptor provides. In this meaning, significant factors are not only risks of being caught which are directly related to the activity of providing a respective good through corruption by an authorised person, but also expenses of a recipient of unlawful benefit associated

with provision of s respective good (with the exception of the above "corrupt tax"), – *"production costs.* Accordingly, for a recipient of unlawful corruption benefit a cost will be acceptable if it with the exception of all "production costs", as well as other mandatory payments (in particular, "corrupt tax"), will satisfy the corruption interest of the person concerned.

CONCLUSIONS

Corrupt behaviour can be sufficiently comprehended in the context of the theory of rational choice, although the peculiarity of this deviant behaviour indicates that it is not fully rational. It is obvious given that in the case of disclosure of facts of commission of corruption offenses and recognition of relevant persons as subjects of corruption crimes, these criminals may be exposed to the corresponding negative effect of criminal liability. However, the dynamics of the spread of corruption and its scope indicate that the corruption model of behaviour, in contrast to the pro-social one, is more acceptable to a wider range of people. That is exactly why determination of the complex of conditions of acceptability of corruption for all participants of corrupt behaviour allows correction to a necessary extent of means to implement the state anticorruption policy by directing them to decrease the level of quality of mentioned conditions. Along with this, it is worth remembering that a certain harmony of conditions of acceptability of corruption is defined by clear patterns, violation of which will not necessarily lead to a decrease in the acceptability of corruption, but may lead to a reformatting of a range of potential participants in corruption relations, as well as forms of corruption in practice. Thus, the strategy of implementation of the anticorruption policy should be based on the objective forecast of all possible scenarios of a transformation of the conditions of acceptability of corruption after committing destructive influence on them by entities of anticorruption activity.

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ПОСИЛЕННЯ РОЛІ СУДОВОЇ ГІЛКИ ВЛАДИ, ЯК ВІДПОВІДЬ ВИМОГАМ ЧАСУ

Анотація. *Сьогодні країна неможлива без складної системи органів державної влади. Незважаючи на різноманітність цілей, які стоять перед державою, відповідальність за їх досягнення лежить як на всій державі в цілому, так і на кожній структурі механізму держави окремо. Одним з таких важливих механізмів, за допомогою якого держава виконує свої функції, є судова влада. Тому основна мета роботи полягає у аналізі ролі судової гілки влади та визначенні її місця в сучасній системі поділу влади. Для реалізації поставленої мети, авторами були використані теоретичні методи, які дозволили визначити, що наслідування зарубіжних моделей судової влади не завжди є правильним. Оскільки необхідно враховувати особливості правової та судової систем певних країн. На рівні міжнародних договорів і загальноєвропейських стандартів визначені лише загальні принципи, яким повинні відповідати судові органи кожної європейської країни, та завдання й мета, які поставлені перед судами в сучасній демократичній країні. Автор зазначає, що протягом останніх десятиліть держави Європейського Союзу не зазнавали будь-яких важких потрясінь, здатних кардинально вплинути на планомірне й спокійне еволюціонування судових систем. Це дало можливість країнам ЄС при оптимізації роботи своїх судових органів ураховувати не тільки внутрішньодержавні потреби, а й забезпечити можливість співробітництва судів різних країн між собою. В роботі також розглянуто питання щодо вибору та відповідальності суддів. Встановлено, що система вибору суддів недосконала. Виявлено, що кар'єра судді може бути припинена при досягненні пенсійного віку, через психофізичний стан судді та через вчинення серйозного дисциплінарного вчинку. Також існує суддівський імпічмент, який представляє собою дуже складну процедуру з серйозними гарантіями, які захищають суддю від необґрунтованих дій. В роботі визначено, що процедура імпічменту до суддів застосовувалася дуже рідко, і тільки в відношенні федеральних суддів. У країнах континентальної Європи зазвичай встановлюється вікова межа, після досягнення якої, суддя чи інший чиновник судової влади автоматично виходить у відставку. Висновки, які випливають з даного аналізу, свідчать про зростання ролі судової влади, яка сприяє законності і правопорядку.*

Ключові слова: правосуддя, судовий корпус, виборці, політичні уподобання, судова етика.

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STRENGTHENING OF THE ROLE OF JUDICIAL BRANCH OF POWER AS A RESPONSE TO REQUIREMENTS OF TIME

Abstract. *A modern country is impossible without a complicated system of state authorities. Despite variety of purposes of a state, responsibility for their achievement is on a state in general and on each structure of state mechanism. One of such important mechanisms, using which*

a state performs its functions, is judicial power. That is why the main purpose of the article is to analyse the role of judicial branch of power and to determine its place in the modern system of separation of power. To implement this purpose, the authors used theoretical methods, which allowed to determined that imitation of foreign models of the judicial power is not always correct. Since it is necessary to take into account peculiarities of legal and judicial systems of certain countries. On the level of international treaties and pan-European standards, only general principles to which judicial bodies of each European country should correspond, and tasks and purpose set before the courts in a modern democratic country have been determined. The author notes that in recent decades, state of the European Union have not undergone any serious shocks that could drastically affect the systematic and calm evolution of judicial systems. This gave an opportunity to the EU countries when optimizing the work of their judicial authorities to take into account not only domestic needs but also ensure the possibility of cooperation between courts of different countries. The paper also analyses the issue concerning a choice and responsibility of judges. It has been determined that the system of judge choosing is very imperfect. It has been revealed that judge's carrier can be terminated upon reaching the retirement age, due to the psychophysical condition of a judge and because of a serious disciplinary act. Also, there is judge impeachment, which is a very complicated procedure with serious guarantees that protect a judge from groundless actions. The paper determines that a procedure of impeachment has been used very rarely and only in relation to federal judges. In continental Europe, usually the age limit is set, after which the judge or other official of the judicial power automatically resigns. Conclusions following this analysis demonstrate strengthening role of judicial power that contributes to law and order.

Keywords: justice, judiciary, voters, political affiliations, judicial ethics.

INTRODUCTION

In modern context of development of civilisation, the role of judicial power significantly strengthens. This is caused by the special and peculiar place of judicial power in the general system of separation of power. Strengthening of the role of executive power may lead to that it usurps all branches of powers. The only effective mechanism that can resist to these tendencies is the mechanism of judicial system.

The strategy of development of judicial system in Ukraine (hereinafter referred to as the Strategy) is one of the stages to implement the Strategic plan (SP) of development of judicial power of Ukraine adopted by the XI Congress of Judges of Ukraine, which is the supreme body of judicial self-government. This Strategy is built on strategic goals determined in the SP and at the same time it determines more specific methods, outcome and impact of actions planned.

Adopted in the period of social and political changes, the Strategy is the respond to requirements of new time, striving of Ukrainian judiciary and society for reforming, improvement of quality of services of judicial system, adherence to European standards and approximation to best practices in the administration of justice. In addition, the Strategy reflects the need of society in strengthening independency, accountability and transparency of the judiciary, and at the same time provides for more active cooperation of the judicial system with the legislative and other branches of government. Reform

of judicial system is also necessary precondition to consolidate all efforts towards European integration including the implementation of the Agreement on association and free trade agreement, visa facilitation and other measures in partnership with the European Union.

The implementation of provisions of the Conception of judicial reform of 1992 gave the opportunity to move towards the development of the judicial system and the principles of its functioning: legal consolidation of the independence of judicial power and main principles of its performing, the high status of a judge, his/her special material and social position, implementation of principles of territoriality and specialisation in building the judicial system, development of mechanisms of election and dismissal of judges; self-governing institutes of judiciary have been foreseen and formed; the State Judicial Administration of Ukraine has been created; procedure legislation has been amended, appellate and cassation review of court decisions was introduced; state allocations for the administration of justice gradually increase; some courts have received new premises and money for repairing existing ones; many other measures aimed at improving the material, technical, financial, information and organisational support of judicial activity have been used.

In the process of article writing, the author used writings of modern legal scholars. In particular, R. Lorch and L. Friedman. Also, the material of the European Court of Human Rights, the USA, France, Germany constitutions were used.

The purpose of the article is studying the role and significance of the judicial branch of power at the modern stage of society development.

1. MATERIALS AND METHODS

Correctly organised system of judges is one of the guarantees of fair and efficient justice. The author used different theoretical methods. Using analysis method, it has been determined that each country has its own version of building a system of instances and reviewing court decisions. Each version is conditioned by the necessity to achieve the optimal correlation between two requirements:

1) Justice of court decision – the system of judicial instances should ultimately ensure the legality and fairness of the court decision in the case;

2) the availability and timeliness of a court decision – the system of judicial instances should not be too large, since their passage would be very expensive and unaffordable for parties; a final judgement should be rendered as soon as possible in order to ensure certainty on controversial legal relationships in time (uncertainty has a negative moral and economic impact on the participants in the legal relationship).

Both requirements have a collisional impact on the court system. Justice of court decision may demand more instances, and the availability and timeliness of the decision demand less. In each country system of instances depends on where a legislator sees the middle ground between two requirements.

Method of comparison has determined that the introduction of the stages of judicial reform has resulted in the birth and formation of a system of administrative courts. The author stressed that implementation of such initiatives of judicial system reforming corresponded to European standards more by form than by content. Factually foreign models of judicial systems have been copied without taking into account the peculiarities of the legal and judicial systems of Ukraine. The absence of clear strategical visions of the model of judicial system in Ukraine systematic, consecutive steps in the construction of the judicial system, attempts to solve the problems situationally basing on wishes of the forces that at one time or another were on the political Olympus, have led to the fact that the quality and efficiency of functioning of the judicial system ceased to meet the expectations of society.

Using analysis method and systematization, it has been revealed that implementation of the mechanism of judges' responsibility is impossible without reforming the procedure legislation that would clearly determine tasks of justice and procedural duties of a judge in hearing of a specific case, establish fair and simple court procedure, allow to decide correctly and quickly many cases. In this, participants of a process are denied access to affect fast and efficient restoration of their rights violated as a result of a gross violation of procedural law norms by a judge during consideration of a particular case at all levels and stages. There is no responsibility of the state in the form of compensation for material or moral damage for mistakes in judiciary – in consequence of the consideration of civil, economic and administrative cases.

2. RESULTS AND DISCUSSION

Unlike the executive and legislative branches of government, which are entrusted by the constitutions to the highest state bodies, the judicial power is entrusted to the entire set of courts. Each of regular courts regardless of their place in the general system, resolves specific cases independently, guided solely by law and legal awareness. Each judicial body, not only the Supreme Court of the country, is the carrier of judicial power. It is well-known that a set of courts is called justice from Latin "justitia" – fairness, justice.

It is worth noting that the notion of justice in itself is very relative, shaky and vague. Justice is not an exact legal term and does not have a strictly defined definition. Some researchers believe that there is no justice at all. For example, American lawyer Robert Lorch thinks so. In his book "State and local politics" he writes: "The nature of justice itself is a ghostly, deceptive. You cannot define justice. Justice (fairness) cannot exist. Justice means different things to different people. All parties of the dispute can be right and fair – this depends on how to look from each side. Access to a debate mechanism can help resolve a dispute, but this is not a guarantee of justice. Such a mysterious concept as justice (fairness) cannot exist in this world, but it can be in another" [1].

Nevertheless, activity of courts on resolving legal conflicts is successfully performed and called jurisdictional activity, and space and subject area of such activity is jurisdic-

tion. Exactly jurisdictional activity of courts is practical justice, i.e. consideration of legal disputes and adjudication. Courts are entrusted with the mission of a single, constitutionally-defined body capable of effectively restraining usurpant inclinations on the part of the executive and legislative authorities, as well as defending the violated legal interests of citizens.

Most of the current constitutions of the democratic world adhere to the principle of appointment of judges. It is one of the three methods to form the judiciary. Two other methods include:

1) Election of judges. It is current in some states of America.

2) Mixed method combining election and appointment. It is also in force in some states of America. In this, state governor assigns candidates approved by the legal commission of state legislatures, which determines the level of qualifications of candidates. After that there is election. This method is known in the scientific and legal literature as the "Missouri system."

Appointment and election the same as methods of selection of judges have advantages and disadvantages.

Election of a judge. The system of election of judges has one indisputable advantage. It is that a judge elected in a general election is responsible to voters. Strong humanitarian ties are established between the electorate and the judge.

However, this system has much more disadvantages than advantages. They include the following factors. In the electoral system, influence on candidates by political parties and public organisations is great. Such influence will not contribute to the subsequent fair administration of justice, since the constitutional doctrine assumes the court's action only in accordance with the law. Partisan influence doubts its impartiality. At the same time, a voter, who is forced to make a choice, cannot actually learn about true, professional, and moral qualities of a candidate. Throwing and expensive election campaign will overshadow qualification characteristics of an applicant. In addition, a voter is often driven by a sense of justice, as he understands it. Sometimes this feeling is not formed influenced by knowledge and true facts. The judge should be guided in his activities not by emotions, but by the law. The judge elected in the district, in such conditions, will not be able to ignore an opinion of an electorate, and therefore, will not be able to strictly administer justice. It is impossible to ignore a reputational component of the electoral process. It is unlikely that the spectacle of candidates for judges agitating for themselves and invoking voters for elections will contribute to strengthening the reputation of the court.

Electoral system may injure the feeling of respect for law, justice and courts as bodies who perform it. In such system of selection, individuals who have only eloquence and a certain charisma but not professional qualities, can become judges. If it is necessary to make a choice, a voter often falls under the influence of illusions of external, but not deep factors.

Appointment of judges. The system of appointment is also imperfect. Possibly, its application is expedient at the higher level when recruiting the Supreme Courts. But at the local level, such a system does not always produce highly professional judges. The example of this is American practice. As Robert Lorch wrote: "When judges are appointed, then policy plays a bigger role that professional qualities. Someone said, "A judge is a lawyer who knows a governor." The system of appointment created more bad state judges that federal judges" [1].

The method of appointment of judges often leads to the situation when a candidate is appointed because of motives that are not related to administration of justice at all.

That is why the combination of the method of appointment and the election seems to be optimal for the selection of judges [2]. This combination of the best qualities of elections and appointments will allow to exclude low-qualified candidates.

In practice, this method of forming the judiciary can be implemented as follows:

1. A constitution should establish an independent body similar to Graduate Councils in France, Italy or to special Committees in the USA.

This constitutionally established body should be composed of the head of state, the Minister of Justice, the Prosecutor General, as well as legal scholars and representatives of the country's law schools with the highest international rating. Thus, the theory and practice of law will be combined, the political influence of the ruling elites will be minimised, a high level of public trust will be ensured, and high professionals will form the judicial system.

Selected candidates are appointed to vacant positions of judges for a period of 2-4 years. After that, the judges will run for office in the general election. There are no alternatives, and in essence they represent a referendum on a vote of confidence of the judge. The voter answers only "yes" or "no" in the ballot paper. A judge elected in this way will administer justice for a longer period, participating in the elections in the future, or will personify the law for life.

Judges of second or third instances as well as judges of Higher or Supreme courts are appointed among judges of lowest courts selected or appointed for a longer period of service or for life. Members of constitutionally established Councils of Committees appoint judges of such courts.

Proposed system preserves the best features of methods of appointment and election. At the first appointment of judges, members of a constitutional body can be guided not only by professional qualities of a candidate, but also by political preferences. This criterion will always be present in reality, and it cannot be ignored. At the same time, while running further in the elections, a judge will receive or will not receive support of voters, who will thus express their attitude to him.

In the Old Testament, the selection procedure for judges was assigned to Moses. Thus, in the Book of Exodus, it is said, "…thou shalt provide out of all the people able men, such as fear God, men of truth, hating covetousness; and place such over them, to be rulers of thousands, and rulers of hundreds, rulers of fifties, and rulers of tens.

And let them judge the people at all seasons…" [3]. Modern civilisation has not yet offered an ideal system for the selection of judges. In our opinion, the scheme presented is close to it.

Responsibility of judges. In modern constitutions and organic laws regulating a legal status of a judge, the principle of the irremovability of judges is applied as one of the basic criteria of functioning of judicial power. This formula implies an indefinite or lifelong appointment. However, "lifelong" should not be taken literally. In practice, a judge's career can be terminated upon reaching retirement age. It can be interrupted by a psychophysical state that does not allow justice to be enforced. Judicial activities may also be terminated in connection with the commission of a crime by a judge, a serious disciplinary offence or a gross violation of ethical and moral norms.

Thus, for example, the Basic Law for the Federal Republic of Germany refers to violations of the main constitutional provisions of the federation or federal states as one of the grounds for dismissal of a judge. In such cases, the Federal Constitutional Court on the proposal of the Bundestag solves the matter of dismissal of a judge [4].

The constitution of France of 1958, in article 4 "On Judicial Power" concisely, without saying practically anything about the basics of justice, only states the principle of irremovability: "Judges are irremovable" [5].

Nevertheless, the principle of irremovability should not be overemphasised. And the point is not only that there are meta-legal, quasi-legal or practical possibilities of pressure on the judge to force him to voluntarily resign or take another position. There are a lot of legal restrictions. However, with all reservations, the displacement or transfer of the judge is a very difficult task. Judicial impeachment is a very complicated procedure with serious guarantees protecting the judge from unreasonable bias. For example, in the USA, according to the second part of Section 2 of Article I of the Constitution, federal judges are appointed by the President on the advice and consent of the Senate [6]. Regarding the procedure and grounds for early dismissal, the Constitution contains only one provision, fixed in section 4 of article II [6]. It is worth noting that the procedure of impeachment has been applied to judges very rarely and only in relation to federal judges. The American professor L. Tribe in this regard wrote, "The constitution does not clearly indicate anywhere whether the congress or the president, or both, own the right to remove from office any other appointed officials other than federal judges and subordinate employees."[7;8]. Consequently, the procedure of impeachment cannot be considered even theoretically the primary procedure of removing federal officials. It is unlikely that the chairman of the federal district court could dismiss a judge only with the consent of the senate. Nevertheless, it took a special decision of the US Supreme Court, in which it completely rejected the suggestion that the constitution introduced impeachment as the only way to early dismiss federal officials [9].

Analysis of views of A. Hamilton set out by him at the time in the "Federalist" is very interesting in this regard. The author describes his vision of a role and place of judicial system of the USA headed by the Supreme Court. In the opinion of Hamilton,

the constitutional scheme of judicial power has three main features that determine its relationship with the legislative and executive branches of government. Firstly, the constitutional method of appointment of federal judges involves the participation of the president and the senate in this procedure. Secondly, the judges actually hold their posts for life, because the formula "while behaving well" means the possibility of early removal from office only in accordance with the impeachment procedure. Thirdly, the separation of judicial powers between different courts and the establishment of their relationship with each other. In addition, A. Hamilton considered that the requirement of "good behaviour" as a condition for determining the tenure of judges "is a barrier against incursions and harassment by a representative body" [10]. Exactly irremovability of judges was considered by Hamilton reliable guarantee from against encroachments of legislative and executive powers. "This quality can be rightly considered as an invaluable component in the construction of the judicial system. And also much like the citadel of public justice and public safety" [11].

However, the factor of irremovability of judges also has negative aspects. Lawrence Friedman set them out in brief, "A decrepit or drinking judge, or even a madman, has the theoretical right to remain in office. The government loses dozens of important cases every year and at the same time the regime silently swallows a bitter but inevitable pill" [12]. However, even before being appointed, candidates for judges are very seriously tested, because, according to the Canons of US judicial ethics, "justice should not be administered by a person whose character is incompatible with this function" [13].

It should be added that in the United States, in addition to the impeachment procedure, a judge can also be removed from office for the following reasons:

1. If a judge conducts deplorable actions from the perspective of law and ethic, and for the resignation of a judge voted at least 2/3 of the legislators of the upper chamber of the state legislature;

2. By decision of the State Supreme Court, if provided for by the state constitution;

3. By decision of a special court for the lawsuit about which complaints were filed. In such cases, the Commission of Judicial Qualifications, acting under strict secrecy, participates in the investigation of a complaint. It is explained by the interests of protecting the reputation of judges. investigated complaint.

4. Also, the removal of judges can be conducted due to the deprivation of the licence of a practising lawyer.

5. The removal of a judge by a governor on demand of legislative power;

6. The removal of a judge by the legislative power due to incapacity, i.e. due to the restriction of the rights or capacity of the judge. It goes without saying that this is not the same as impeachment, which means that a judge is dismissed for committing acts that violate the law.

In the countries of continental Europe, usually the age limit is set, after which the judge or other official of the judicial power automatically resigns. Disciplinary respon-

sibility of judges, their career and appointment as well as matter of reorganisation of courts are the responsibility of the special bodies of judicial self-government. How much such organs are important can be judged by their composition. In Italy, for example, in accordance with Article 104 of the Constitution, the High Council of Magistracy consists of the President of the Republic, the Chairman and the Prosecutor General of the Court of Cassation, as well as elected members.

The composition of the High Council of Magistracy in France is approximately the same. It consists of Chairman – President of the Republic; Vice-Chairman – Minister of Justice, six judges, six prosecutors, three lawyers, appointed respectively by the President of the Republic, the Chairman of the National Assembly and the Chairman of the Senate.

The fundamental principles of the functioning of the courts remain unshakable. These include, above all, the principle of the judicial process, that is, strict adherence to the procedure established by law for the consideration and resolution of cases; principle of publicity, that is, publicity and openness of court sessions. We note, in particular, the principle of connectedness of judges only by law, which means not only that a judge should not receive instructions from anyone, including higher courts, but also that regulations subordinate to the law are relevant to court only to the extent that, in his opinion, comply with the law. Legal scholars Yu.P.Ur'yas and V.A. Tumanov wrote in this regard, "In modern complex social reality, the principle of the subordination of a judge to the law remains dominant. But the increased role of judicial practice as a source of law lies behind him; the inadmissibility of "denial of justice" by virtue of the "silence of the law"; the distinction between the law and law that has penetrated into constitutional texts (Article 20 of the Basic Law of the Federal Republic of Germany); increasing the number of unforeseen situations in the field of ecology, medicine, genetics; recognition of the primacy of international law over national law; the presence of so-called violating legislation, legally valid, but contrary to the generally accepted principles of morality and humanity. All these problems significantly complicated the question of the judge's connectedness by law, the limits of his internal freedom, the limits of judicial discretion" [14].

This demonstrates that despite the palette of our world, its history and distinctive features of development, the courts, by administering justice, base their activity on the laws and general principles developed by civilised humanity over the centuries. The order of formation and responsibility of judiciary should be reflected in national constitutions. It is obvious that in modern conditions of development of the system of separation of powers, social responsibility and the political role of the judicial system is increasing immeasurably.

Under these conditions, the delegation of the right to the Supreme Courts to remove judges for committing misconduct, as is the case in some US states, does not seem to be justified. In such cases, it is possible to form closed, narrowly corporate judicial

communities, where manifestation and protection of one's own interests prevail over the universal principle of justice.

That is why, in some cases constitutional bodies who select candidates for judicial posts and thus forming a qualified judiciary can be empowered to remove judges prematurely.

In other cases, special bodies can be formed that empowered by constitution to act in other situations. However, new conditions cannot reject the centuries-old experience of constitutional legal regulation. The irremovability of judges, as a principle, must remain unshakable. Their removal from office can be carried out only if a complicated procedure is complied, which would exclude the elimination of judges under the influence of circumstances of a political or personal nature.

The source of power and sovereignty of the state is people. All actions of authorities are based on this postulate. In the constitutions of France, for example, in article 2 "On sovereignty" this provision is expressed briefly and concisely. In particular, it is said, "The motto of the Republic is "Freedom, Equality, Brotherhood", and its principle is the rule of the people, the people and for the people" [4]. Protection of the interests of people should be the main principle of democratic government. The practical implementation of this principle is reflected in the right of citizens to defend by the court and defend their rights in court. The constitutional right of citizens to protection covers not only the trial itself, but all stages of pre-trial proceedings in a case. The sixth amendment to the US Constitution, adopted in 1791, prescribes that in all cases of criminal prosecution the defendant has the right to the assistance of a lawyer for his defence [6]. Since then, this principle has been incorporated into most constitutional texts, international covenants and conventions on human rights. The European Convention for the Protection of Human Rights, adopted in 1950, in part 3 (c) of Article 6, enshrines the right of a person charged with a criminal offence to "defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require" [15].

CONCLUSIONS

All democratic states profess these principles in the administration of justice. Only justice, as an essential element of general humanitarian fairness, is the goal and means of civil society. The principles of justice are the same for all courts of every democratic country. When dividing the functions of state bodies, only the courts can create an effective balance to other branches.

Representatives of judicial power understand that the primary objective is developments of mechanisms and skills to increase unity of judicial power. The progress towards this slows down the lack of analytical and research capacities of the courts, underdeveloped legislation and search tools for judgments, and the imperfect system of judges'

professional training. Appropriately constructed system of an appellation is very significant factor in order to make possible that the higher courts focus on compliance with the principle of unity of judicial practice. Everyone is interested in the proper functioning of the sphere of justice – from ordinary citizens to representatives of big business. A robust and independent judiciary is necessary for the country that seeks to become a member of a civilised Europe. By adopting the CPCS, the Council of Judges of Ukraine clearly demonstrates to society the readiness of the judiciary to change.

Thus, the theory of the separation of power is enshrined in many constitutions, but specific forms of its implementation quite different. While in some countries the combination of the same organs of the functions of various authorities is considered inadmissible, in others there are different traditions and ministers, as a rule, are members of the parliament. In many countries, the possibility of giving executive power the right to issue laws is excluded. There are countries in which, under certain conditions, the issuance of laws by the executive bodies is permissible.

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ПРОБЛЕМИ ЗАБЕЗПЕЧЕННЯ РОЗГЛЯДУ КРИМІНАЛЬНОГО ПРОВАДЖЕННЯ НА ПІДСТАВІ УГОД НЕЗАЛЕЖНИМ І БЕЗСТОРОННІМ СУДОМ

Анотація. *Конвенція про захист прав людини та основоположних свобод містить положення про те, що кожен має право на справедливий і публічний розгляд його справи упродовж розумного строку незалежним і безстороннім судом, встановленим законом, який вирішить суперечку щодо його прав та обов'язків цивільного характеру або встановить обґрунтованість будь-якого висунутого проти нього обвинувачення. У конструкції права на справедливий суд гарантія розгляду справи незалежним та безстороннім судом має першорядне значення. Не випадково в усіх національних законодавствах дане положення знаходить своє закріплення як загальна засада судоустрою та судових проваджень. В статті досліджуються питання забезпечення права особи на справедливий і публічний розгляд його справи незалежним і безстороннім судом, встановленим законом, при направленні прокурором до суду обвинувального акту з підписаною сторонами угодою про визнання винуватості. В роботі використані методи моделювання, абстрагування, узагальнення. Проблема визначення суду, який розглядатиме кримінальне провадження при винесенні ухвали суду про виділення справи в окреме провадження у зв'язку укладенням угоди про визнання винуватості розглядається у системному зв'язку із правотлумачною практикою Європейського суду з прав людини, яка формулює підходи до розуміння понять «суд створений на підставі закону» та «неупереджений суд». Розроблені пропозиції, спрямовані на алгоритмізацію процесуального порядку виділення в окреме провадження кримінального провадження щодо особи (осіб), з якою досягнуто угоду, та визначення суду, який розглядатиме це провадження. Встановлено, що при укладенні угоди про визнання винуватості під час підготовчого провадження з однією особою, яка вчинила злочин у співучасті, кримінальне провадження щодо цієї особи обов'язково підлягає виділенню в окреме провадження, яке реєструється як таке, що надійшло до суду в день постановлення ухвали суду про виділення та підлягає автоматизованому розподілу в загальному порядку. Виявлено, що суддям, які розглядали провадження на підставі угоди, важко абстрагуватися від обставин, які стали їм відомі під час ухвалення вироку на підставі угоди та бути неупередженими, адже у них вже склалося уявлення про обставини кримінального правопорушення та винуватість обвинувачених.*

Ключові слова: інститут угод; угода про визнання винуватості; угода про примирення; кримінальне провадження на підставі угод; неупереджений суд; безсторонній суд.

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PROBLEMS OF ENSURING THE CONSIDERATION OF CRIMINAL PROCEEDING ON GROUNDS OF TAKING A PLEA BARGAIN BY INDEPENDENT AND IMPARTIAL COURT

Abstract. *The Convention on Human Rights and Fundamental Freedoms contains the provision that everyone is has a right to a fair and public consideration within a reasonable period of time by an independent and impartial court established by law that resolves a dispute over his civil rights and duties or establishes the validity of any charge against him. In the structure of the right to a fair trial, the guarantee of the case consideration by an independent and impartial court is of paramount importance. It is no coincidence that in all national legislations this provision finds its consolidation as a general foundation of the court system and court proceedings. The article investigates the issue of ensuring the right of an individual to a fair and public trail by an independent and impartial court established by law after sending by a prosecutor a bill of indictment to the court with a plea bargain by parties. Methods of modelling, abstraction and generalisation were used in the research work. The problem of determining the court which will consider a criminal proceeding at the time of passing judgement on singling out a case in the individual proceeding in connection with taking a plea bargain is considered in the systemic connection with law-interpretive practice of the European Court of Human Rights which formulates approaches to understanding the concepts of "court established on grounds of law" and "impartial court". Developed proposals are aimed at the algorithmisation of procedure for singling out in the individual proceeding the criminal proceeding against an individual (or in-dividuals) with whom the bargain was taken, and the judgement of the court which will con-sider a case. It is established that when taking a plea bargain during the preparatory proceed-ing with one individual who committed a crime of complicity, the criminal proceeding against this individual must be singled out in the individual proceeding which is registered as received by the court on the day of the court judgement on singling out and is subject to automated dis-tribution in the general order. It is established that it is difficult for judges, who considered the proceeding on grounds of the bargain, to abstract away from the circumstances that became known to them at the time of passing judgement on grounds of the agreement and be impartial because they already have an idea of the circumstances of the criminal offence and the guilt of the accused.*

Keywords: *Institution for Bargains, agreement on guilty plea, agreement of reconciliation, criminal proceeding on grounds of agreement, independent court, impartial court.*

INTRODUCTION

The introduction of the Institution for Bargains in the criminal proceeding into the legal system of Ukraine is related to taking into account by our state Recommendation No. R (87)18 of the Committee of Ministers of the Council of Europe to member states On the Simplification of Criminal Justice of September 17th, 1987. This institute was ambiguously taken by the legal community, but later became quite

popular law enforcement practice. However, as of 2017 the prosecution authorities send every eighth bill of indictment to the court with the agreements on reconciliation or guilty plea (721, or 12.6 %); almost every fifteenth bill of indictment (8007, or 6.5 %) is sent to the court with agreements on guilty plea by the police authorities; for authorities of the State Fiscal Service of Ukraine this indicator is 408 out of 813 (or 50.2 %) and for the authorities of the Security Service of Ukraine is 241 (or 22,8 %) [1].

Given the novelisation of the criminal procedural legislation, the operation of the Institute for Bargains in the criminal proceeding for a short time, its demand for by law enforcement practice, the problems which arise in the implementation of the norms that establish this institution, scientists are constantly turning to the consideration of the most pressing issues of proceeding on grounds of agreements [2–4]. The evidence of the relevance of this Institute introduced by the legislator is an appeal to it at the level of dissertation research only for the past few years of the following scientists: V. Povzyk (*Legal Consequences of Guilty Plea by a Suspect or an Accused: Comparative-Legal Research*, 2013); O. O. Leliak (*Plea Bargain in Criminal Proceeding of Ukraine*, 2015); R. V. Novak (*Criminal Proceeding on Grounds of Bargains in Ukraine,* 2015); O. V. Stratii (Psychological and Legal Particularities of Criminal Proceeding on Grounds of Bargains, 2015); H. Ye. Tiurin (*Organisational and Legal Bases of the Prosecutor's Participation in the Criminal Proceeding on Grounds of Bargains*, 2017); H. Yu. Saienko (*Proceeding on Grounds of Bargains in Criminal Proceeding of Ukraine*, 2017), A. S. Trekke (Criminal Proceeding on Grounds of a Plea Bargain, 2018); I. O. Kislitsina (A Prosecutor's Role in the Criminal Proceeding on Grounds of Plea Bargains: Issues of Theory and Practice, 2018) and the others. The essence of bargains in the criminal proceeding; procedural order of their taking; determination of the scope of rights and duties of the parties of the bargain; ensuring the victim's rights in the proceeding on grounds of bargains; issues related to the legal consequences of non-compliance with the plea bargain and the like were investigated by such domestic scientists as Yu. P. Alenin, V. I. Boiarov, I. V. Hloviuk, V. H. Honcharenko, Yu. M. Hroshevyi, P. M. Karkach, L. M. Loboiko, V. T. Maliarenko, V. T. Nor, D. P. Pysmennyi, M. A. Pohoretskyi, P. V. Pushkar, D. B. Serheieva, O. Yu. Tatarov, I. A. Titko, O. M. Tolochko, V. M. Trofimenko, A. R. Tumaniants, L. D. Udalova, M. I. Khavroniuk, O. H. Shylo, M. Ye. Shumylo, O. H. Yanovska and many others.

Despite the fact that the criminal process can include certain theoretical development of topical issues of the Institute of Bargains in criminal proceedings, law enforcement practice periodically faces the presence of gaps in regulatory control, legal uncertainty of individual provisions, absence of unity in understanding by law enforcers of some or other provisions of Chapter 35 of Criminal Procedure Code of Ukraine (hereinafter referred to as the CPC of Ukraine or the CPC) *Criminal Proceeding on Grounds of Bargains.*

One of such complex problems of law enforcement, which is ambiguously solved in practice, is the problem of interpretating and application of the provision contained in Part 8, Art. 469 of the CPC of Ukraine, that is, determination of the procedural order of singling out in individual proceeding the criminal proceeding concerning the individual (individuals) with whom the bargain was taken and ensuring the appropriate structure of court which has to consider these proceedings. In particular, it is possible to cite such an example from judicial practice. When terminating the criminal proceeding in which two individuals (Individual_1 and Individual_2) were informed of suspicion of committing a crime under Part 2 Art. 307 of the Criminal Code of Ukraine, the prosecutor drew up a bill of indictment and sent it to the court. At the same time, along with a bill of indictment a plea bargain which was taken with Individual_2 was sent to the court as well. In the preliminary case consideration, the local court passed judgement on grounds of the bargain on Individual_2 and in the same composition it continued consideration of criminal proceeding against Individual_1 and passed judgement of guilt on Individual_1 [5].

Given that plea bargain or guilty plea can be initiated at any time after an individual is informed on suspicion at the stage of pre-trial investigation and by the time the court enters the deliberation room at the trial stage, a fair question arises regarding determining the moment of singling out in the individual proceeding against the individual with whom a plea bargain was taken. In addition, it should be solved the following question: whether the court should have been in view of the provision of Part.8, Art. 469 of the CPC to single out the materials of the case against Individual_1 Individual_2 in the individual proceeding? Is the court which passed judgement on grounds of bargain entitled to consider criminal proceeding against Individual_1? Are there any grounds to assert that one or both of the sentences were taken by the illegal composition of the court?

Therefore, the article's aim is the analysis of the legal content of Part 8, Art. 469 of the CPC of Ukraine in order to provide its interpretation in a system connection with the other norms of the current criminal procedural legislation as well as with law-interpretive practice of the European Court of Human Rights (hereinafter reffered to as the ECHR) which formulates approaches to understanding the concepts of "court established on grounds of law" and "impartial court". In addition, the aim of the article is to develop proposals aimed at algorithmisation of the procedural order of singling out in the individual proceeding the criminal proceeding against an individual (individuals) with whom a bargain was taken and the ruling of the court which will consider these proceedings, ensuring in this way the right of the accused to a fair and public consideration of their cases within a reasonable period of time by an independent and impartial court established by law.

1. MATERIALS AND METHODS

To achieve the aim set in the article and formulate reasonable conclusions, in the process of work it was used a complex of general scientific and special methods

of scientific research which are traditional for legal science: dialectical, formal-logical, system-structural, hermeneutical, modelling, abstraction and generalisation. Dialectical method, having included the entire system of categorical apparatus of dialectics and guided in the process of cognition by the principles of reflection, activeness, comprehensiveness, the ascent from the single to the general and vice versa from the general to the single, interrelation of quantitative and qualitative characteristics, determinism, unity of induction and deduction, analysis and synthesis, allowed to find out the essence of the problem which arise at the time of ensuring the consideration of a criminal proceeding on grounds of bargains by independent and impartial court and provide an integrated approach for the entire research. The ascent of thinking from the specific to the abstract with the subsequent transition from the abstract to the specific made it possible to establish the essential, typical and generalised features which are proper to understanding the essence of an independent and impartial court, to single out individual and specific features which are proper to a criminal proceeding on grounds of bargains. Formal-logical (dogmatic) method became the basis for the relealing and improvement of the concepts that make up the content of the Institute for Criminal Proceeding on grounds of bargains and consideration of a criminal proceeding on grounds of bargains by an independent and impartial court. Applying the system-structural method of analysis of social phenomena allowed to consider a criminal proceeding on grounds of bargains since the moment of preparation of a bill of indictment by the prosecutor up to the moment of its adoption for consideration by the court as an integral internally determinated of the systemic mechanism as well as highlight its stages.

With the help of hermeneutical method legal meaning of individual norms of the criminal procedure legislation, shortcomings of regulatory control of criminal procedure legal relations are revealed, discrepancy of law enforcement practice regarding singling out the criminal cases in individual proceedings is stated, the approaches to understanding the meaning of individual standards through law-interpretive practice of the ECHR are considered. Methods of modelling and abstraction allowed to project an algorithm of the prosecutor's actions and the court which are aimed at preventing violations of the person's right to a fair trial. Method of generalisation provided an opportunity to unite single facts in unified whole and formulate valid conclusions, improve regulatory control of the issues under examination and overcoming the problems existing in law enforcement.

The above methods were applied in interrelation which contributed to the completeness of the research and the validity of the formulated scientific findings and proposals.

2. RESULTS AND DISCUSSION

2.1. Particularities of the procedural order of taking a bargain

Bargain is a mutual voluntary agreement of the parties of criminal proceeding that is formalised in the relevant procedural document and aimed at settlement of the

criminal law conflict, reaching agreement on the determination of the punishment agreed by the parties to the individual who is guilty of committing a criminal offence, and imposing additional obligations on him [1-4]. The consequence of such an agreement is the application of a differentiated procedure of criminal proceeding and passing judgement on grounds of plea bargain.

A plea bargain between a prosecutor and a suspect or an accused can be taken if, as a rule, the damage is caused to the state or public interests in criminal proceeding for criminal offences, crimes of small and medium gravity, serious and the gravest crimes (Part 4, Art. 469 of the CPC). Taking a plea bargain can be initiated at any time after an individual is informed on suspicion and up to the moment the court enters the deliberation room for passing judgement [6; 7].

If a criminal proceeding is conducted against several individuals who are suspected or accused of committing one or more criminal offences, and the agreement on taking a plea bargain is reached not with all suspects or the accused, the bargain can be taken with one (several) of suspects or the accused (Part 8, Art. 469 of the CPC).

Also, the CPC of Ukraine stipulates the obligatory requirement that criminal proceeding against the individual (individuals) with whom agreement was reached is subject to singling out in the individual proceeding (Part 8, Art. 469 of the CPC). Since the provision of Part 8, Art. 469 of the CPC is general, it is possible to conclude that the obligation to single out in the individual proceeding the proceeding which can be conducted this or another office-holder who has the relevant competence depending on the stage of the criminal process. However, if the agreement is reached at the stage of pre-trial investigation, it is the obligation of the prosecutor who has taken a plea bargain, but at the stage of preliminary proceeding or judicial consideration it is the court's obligation.

It should also be noted that the literal interpretation of the provisions of Part 8, Art. 469 of the CPC to conclude that it is a criminal proceeding, but not some certain papers on its case that is subject to singling out. Besides, the criminal proceeding *against the individual (individuals)* with whom the agreement was reached is subject to singling out as well.

The Plenum of the Supreme Specialized Court of Ukraine on Civil and Criminal Cases (hereafter reffered to as the HSCU) in its resolution of 11.12.205 No. 13 On the Practice of Conducting Criminal Proceedings by the Courts on grounds of bargains. In particular, the Court noted, ‘’5. If a criminal proceeding is conducted against one individual who is suspected/accused of committing several individual criminal offences among which there are a serious or the gravest crime as well as a crime of minor gravity in the result of which the victim was harmed, a plea bargain can be taken with regarding a crime of minor gravity. *A criminal proceeding in this case should be singled out in the individual proceeding* the decision about which the prosecutor presents for consideration, and the judge passes judgement".

‘’9. ... In case if a criminal proceeding is conducted against several individuals who are suspected/accused of committing one or more criminal offences, and agreement on taking a bargain was reached not with all suspects / the accused, in accordance with the requirements of para. 1, Part 8, Art. 469 of the CPC, a bargain can be taken with one (several) of suspects / the accused. A criminal proceeding against an *individual (individuals) with whom the agreement on a plea bargain was reached*, on grounds of the prosecutor’s decision or the court judgement, is subject to singling out in the individual proceeding depending on at what stage of criminal proceedings the parties initiated the process of taking a bargain’’ [8].

Thus, if a prosecutor in the criminal proceeding against two individuals took a bargain with one suspect, by his decision he should single out the criminal proceeding against this induvidual in the individual proceeding, a bill of indictment against the induvidual with a signed plea bargain should be immediately sent to the court (Part 1, Art. 474 of the CPC). Besides, in accordance with the requirements of the Regulations on the Procedure for Maintaining a Single Register of Pre-Trial Investigations approved by order of the Prosecutor General’s Office of Ukraine from 06.04.2016 No. 139 when singling out from the criminal proceeding the case papers regarding a certain individual, the information on such singling out is fixed in *newly-created criminal proceeding* with a new number assigned. In this case, a requisite "singled out" is used (para. 12) [9]. A bill of indictment against the individual who committed a crime of complicity with the individual who took a plea bargain with the prosecutor and with the individu-al who refused to a plea bargain , also, according to the requirements of the CPC, should be sent to the court in the general order. The prosecutor’s strict compliance with the requirements of the law must ensure the legality of the composition of the court which will consider a case since the court receives two criminal proceedings with different numbers. In the case we consider, the prosecutor did not comply with the requirements of Part 8, Art. 469 of the CPC.

If a plea bargain was taken in the court consideration, according to paras. 2.21, Section 2 *Regulations on recordkeeping in local general courts, appellate courts of regions, appellate courts of the cities of Kyiv and Sevastopol, the Appeallate Court of the Autonomous Republic of Crimea and the Higher Specialized Court of Ukraine for Civil and Criminal Cases* (hereinafter reffered to as the HSCU) [10], in case of singling out the materials of criminal proceeding in the individual proceeding, new court case (case papers of criminal proceeding) is registered as received by the court on day of the adoption of the relevant procedural document (resolution, judgement) of the court. It is assigned a new single unique number. *After that, the case is subject to automated distributing in the general order.* The copies of procedural documents from the previous case certified by the judge, which are important for this case, are added to the new case.

Therefore, in case of taking a plea bargain during preparatory proceeding with one individual who committed a crime of complicity, the criminal proceeding against this

individual (*with whom the agreement on plea bargain was reached*) is subject to singling out in the individual proceeding which is registered as received by the court on the day of the court judgement and is subject to automated distribution in the general order.

2.2. Statement of the fact of violation of the right to a fair trial

Going back to the practical situation that is given above, we recall that the court in the preparatory proceeding did not pay attention to the need of singling out the case in the individual proceeding, passed judgement on grounds of a plea bargain as well as appointed a trial, and subsequently, considered the case against the second accused and found a guilty verdict. Considering the issue of which court (composition of the court) is entitled to execute justice in the current situation, it can be noted that the court did not comply with the requirements of the law aimed at ensuring the consideration of the case by the court established by law. Perhaps this is a consequence of the absence of legal certainty in the regulatory control of the procedure for singling out the case in the individual proceeding if the prosecutor and the suspect (an accused) reached an agreement on plea bargain. When modeling the algorithm of the court's actions in the current situation, it can be assumed that the court had to single out in the individual proceeding the case on Individual_2 with whom an agreement is reached. After that it had to be registered as received by the court, be given a new single unique number and be sent for the execution of automated distribution in the general order. Non-compliance with this procedure led to the violation of the right to a court established by law.

Para 1, Art. 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter reffered to as the CPHR) [11] *Right to a fair trial* stipulates that ''Everyone has a right to a fair and public consideration of his case within a reasonable period of time by an independent and *impartial court established by law* which will resolve a dispute about rights and obligations of civil nature or establish the valid-ity of any criminal charge against him...".

According to the Law of Ukraine On Judicial System and Status of Judges, "Every-one is guaranteed the protection of his rights, freedoms and interests within a reason-able period of time by an *independent*, impartial and fair court *established by law*" (Art. 7) [12].

Article 21 of the CPC of Ukraine *Access to Justice and the Binding Nature of Court Judgements* declares that everyone is guaranteed the right to a fair consideration and resolution of the case within a reasonable period of time by an independent and *impartial* court *established by law*.

So, the immanent feature of the court in the context of the right to a fair trial is, first, the legality of the composition of the court which considers the case, and second, its unbiased character (impartiality).

As for the first requirement of § 1, Art. 6 of the CPHR, that is, *court established by law*, it is possible to state the following.

The analysis of the practice of the ECHR and legal literature makes it possible to conclude that the criteria for determining the concept of "court established by law" are: 1) legal basis for the existence of the court; 2) legal personality of the court (its jurisdic-tion and powers); 3) the proper composition of the court, that is, the appropriate number of judges and the legal grounds for their participation in a specific process [13].

As noted by the ECHR in one of its judgements, ‘’according to case law of the Court, the term ‘established by law’ in Art. 6 of the CPHR is aimed at ensuring that "the judicial branch of power in the democratic society is not dependent on the executive branch, but is guided by the law adopted by Parliament"..24. The phrase "established by law" applies not only to the legal basis of the very existence of the "court", but also to the observance by such a court of *certain rules governing its activities"* [14]. Thus, failure to comply with the procedural order of the court ruling which must execute justice leads to the illegality of the judgement passed by it.

As for the sentence that was passed by the court for Individual_1, it can also be noted that, from our point of view, the court was neither unbiased, nor impartial, as required by law. This fact was paid attention to by the Plenum of the HSCU, having noted that despite the fact that the sentence imposed on grounds of the plea bargain agreement (in respect of one of several individuals) has no prejudicial significance for the criminal proceeding against the other individuals, and *guilty plea of the first individual is not the proof of guilt of the latter ones* (para. 3, cl. 9, 10 of the Resolution of the Plenum of the Supreme Specialized Court on Civil and Criminal Cases On the Practice of Consideration of Criminal Proceeding by the Courts on Grounds of Plea Bargains dated 11.12.2015 No. 13), the participation of a judge (judges) in the consideration of criminal proceeding against two individuals, with one of whom the plea bargain was taken, calls into question their impartiality [8].

According to the requirements of Art. 472 of the CPC, in the guilty plea agreement specifies its parties, formulation of suspicion or charge and its legal qualification with specification of the article (part of the article) of the law of Ukraine on criminal liabil-ity, circumstances essential for the relevant criminal proceeding, unconditional rec-ognition by the suspect or the accused his guilt in committing a criminal offence, obligations of the suspect or the accused to cooperate in exposing a criminal offence committed by another individual (if appropriate agreements were reached), conditions for partial discharging the suspect or the accused from civil liability in the form of compensation to the state of damage in the result of committing a criminal offence by him, arranged punishment and consent of the suspect or the accused to its imposi-tion or the imposition of punishment and release from its enduring with the test, the consequences of the conclusion and approval of the agreement under Art. 473 of the CPC and the consequences of failure to comply with the agreement.

Therefore, for the court (or judges) that considered the plea bargain agreement in which the individual during the consideration of the criminal proceeding recognised all the circumstances of the criminal offence allerged to him, executing justice in respect of his complice, it is objectively difficult to abstract away from the circumstances that became known to it at the time of the passing judgement on the basis of the plea bargain and be impartial because it (the court) already has an idea of the circumstances of the criminal offence and the guilt of the accused.

In dictionaries, when interpreting the word "impartial", the connotation is that it is one that does not have a deceptive, negative or pre-formed opinion [15], impartial, devoid of prejudice, subjectivity, uninterested, unbiased[16]. As noted in cl. 23 of the conclusion of the Consultative Council of European Judges, "the impartiality of the court provides for the performance of judges 'duties without any favouritism or bias or sympathy" [17]. As far back as in 1984, in Case of Piersack v. Belgium, the ECHR formulated two criteria – objective and subjective – for evaluating the impartiality of judges [18]. This approach of the ECHR is reflected in the well-known Case of Bilukha v. Ukraine (No. 33949/02, November 9th, 2006): "49. According to the established practice of the Court, the existence of impartiality in accordance with para. 1, Art. 6 must be determined by subjective and objective criteria. According to the objective criterion, among the other aspects, it is determined if the court as such and its composition ensured the absence of any doubt in its impartiality" [19].

Also, in Case of Ferrantelli and Santangelo v. Italy No. 19874/92 of September 7th, 1996, the ECHR established that doubts and fears of the applicants for the impartiality of the court were justified. The presiding judge and rapporteur in their case at the national level was the same judge who a few years ago, being a presiding judge and rapporteur, dealt with the case against their complices, and in the judgement concerning the latter, much attention was paid to the applicants [20]. Thus, without going into details on consideration of the issue of the court's partiality, we will note that on our belief, the composition of the court that examined the case on Individual_1 after passing judgement on grounds of the plea bargain, does not stand the test on the subjective criterion of impartiality developed by the ECHR because the judges had the belief regarding the facts of the crime committed by Individual_1 and Individual_2 in comlicity, the actual circumstances of the case, form of guilt, and therefore, the accused could not count on justice during the court consideration of his case.

CONCLUSIONS

Criminal proceeding on grounds of plea bargains is a modern popular practice form of resolution of the criminal law conflict. Despite the fact that the theory of criminal procedure can assert a certain theoretical development of topical issues of the Insti-tution for Bargains in criminal proceeding, law enforcement practice is

faced with the presence of regulatory gaps, legal uncertainty of individual provisions and absence of unity in understanding by law enforcers of the rules of law which are included in Chapter 35 of the CPC *Criminal Proceeding on Grounds of Bargains*. In case if a criminal proceeding opened against several individuals who are suspected or accused of committing one crime, and agreement on taking a plea bargain is not reached with all suspects or accused, an agreement can be concluded with one individual. The criminal proceeding against an individual with whom an agreement was reached is subject to singling out in the individual proceeding. Given the fact that the provisions of Part 8, Art. 469 of the CPC is general, the obligation to single out the criminal proceeding in the individual proceeding can be fulfilled by the official who has the appropriate competence for this, depending on the stage of the criminal process. However, if the plea bargain was taken at the stage of pre-trial investigation, it is the obligation of the prosecutor who took a plea bargain, but when it comes to the stage of preparatory proceeding or court consideration it is the obligation of the judge (court). At the stage of pre-trial investigation, the information on this singling out should be fixed in the new criminal proceeding, with giving a new number and a requisite "singled out". When complying with the requirements of law stipulated by Part 8, Art. 469 in the trial stage, the judge (court) is obliged to single out the case in the individual proceeding, to register it as received by the court on the day of the court judgement, and send it to the automated distribution in the general order. Failure to comply with this requirement of the law results in illegality of court judgements rendered by the court and violation of the right of an individual to a fair trial. One and the same composition of the court is not entitled to consider the criminal proceeding of individuals who committed a crime of complicity if there was taken a plea bargain with one of suspects (the accused).

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АБСТРАКТНЕ МИСЛЕННЯ В ЮРИДИЧНІЙ ОСВІТІ В КОНТЕКСТІ ВПРОВАДЖЕННЯ ТЗНПК

Анотація. *Демократизація сучасної освіти передбачає широке застосування комунікативних практик у викладанні та освоєнні студентами навчальних курсів. Сучасні глобалізаційні процеси ставлять перед суспільством потребу у формуванні відповідних умов індивідуального розвитку людини, її соціалізації, створенні нової інтелектуальної стратегії. Доцільність вироблення нових інтелектуальних стратегій зумовлює необхідність докорінного перегляду теоретичних уявлень про саму людину, виведення на новий рівень вивчення людини, її інтелектуальних перспектив. Існує два види мислення: мислення практичне або ручне, і мислення теоретичне або абстрактне – мають принципово різну психологічну природу. Взаємовідносини цих двох видів мислення проходять через всі етапи розвитку особистості: від школи до інституту, від інституту до професійної діяльності. Для професійної роботи юриста вміння адекватно застосовувати абстрактне мислення дуже важливе. Важливість розвитку теоретичного мислення в надбанні вищої освіти й подальшому застосуванні його в професійній діяльності розуміють розробники тестів на загальні навчальні правничі компетенції (ТЗНПК). Встановлено, що реформа правової системи України, яка здійснюється в контексті євроінтеграційних прагнень нашої країни, стимулює ряд заходів державного рівня щодо забезпечення належної якості підготовки фахівців другого (магістерського) рівня вищої освіти за правничими спеціальностями. В роботі розглянуто ряд завдань, запропонованих для вступу в магістратуру в 2018 році. Проведений авторами логіко-методичний аналіз тестів на загальні навчальні правничі компетенції 2018 року показав, що вони побудовані на високому методичному рівні та відповідають критеріям надійності, валідності та верифікації, як й вимагає тестологія. Одночасно зауважено, що необхідно підбирати тексти для 1 секції та умови завдань для 3 секції вільні від внутрішніх змістовних протиріч, та чіткіше формулювати умови завдань, особливо в 2 секції, щоб уникнути розбіжності в їх розумінні.*

Ключові слова: тест загальної навчальної правничої компетентності (ТЗНПК), абстрактне мислення, практичне мислення, логічне міркування, логіка.

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ABSTRACT THINKING IN LAW EDUCATION IN THE CONTEXT OF INTRODUCTION OF THE TGELC

Abstract. *Democratisation of modern education implies wide application of communicative practices in teaching and mastering by students of educational courses. Modern globalisation processes put before the society the need for the formation of appropriate conditions for the individual development of a person, his socialisation and the creation of a new intellectual strategy. The expediency of developing new intellectual strategies necessitates a radical revision of theoretical concepts of a person himself, bringing to a new level of study of a person and his intellectual prospects. There are two types of thinking: practical or manual thinking and theoretical or abstract thinking, and they have fundamentally different psychological nature. The relationship between these two types of thinking go through all stages of personality development: from school to Institute and from Institute to professional activity. For the professional work of a lawyer, the ability to adequately apply abstract thinking is very important. The developers of the tests for general educational legal competence (TGELC) understand the importance of developing theoretical thinking when getting higher education and its further applying in the professional activity. It is established that the reform of the legal system of Ukraine which is conducted in the context of the European integration aspirations of our country stimulates a number of state-level measures to ensure the proper quality of education of specialists of the second (master's) level of higher education for law specialties. The research work considers a number of tasks proposed for the master's degree programme admission in 2018. Logical-methodical analysis of tests for general educational legal competences in 2018, conducted by the authors, showed that they are made up at the high methodological level and meet the criteria of reliability, validity and verification, as required by testology. At the same time, it is noted that it is necessary to chose the texts for Section 1 and the conditions of tasks for Section 3 free from internal substantive contradictions, and to formulate the conditions of tasks more clearly, especially in Section 2, to avoid differences in their understanding.*

Keywords: test of general educational legal competence (TGELC), abstract thinking, practical thinking, logical reasoning, logic.

INTRODUCTION

Psychology distinguishes two types of thinking: thinking practical or manual, and thinking theoretical or abstract. The theory of activity in psychology, based on the conception of L. S. Vyhotskyi, traditionally emphasises the different nature and character of these two types of thinking. If manual thinking is manifested in a specific practical situation as, for example, M. M. Ladyhina-Kots [1] demonstrated in her experiments which have become widely known, theoretical thinking should be grown up in the process of targeted education and this has been proven in the theory of

developmental education [2; 3]. Psychological theory of activity shows that a person has only the makings of abstract thinking which, in some cases, will manifest itself, without creating the proper conditions, however, educational environment aimed at the formation of abstract thinking in the process of targeted education, mastering theoretical thinking is effective and massive (almost 100% of students in the experiments under the direction of V. V. Repkin)[4].

L.S. Vyhotskyi proceeded from the fact that the initial in thinking is the formation of concepts.Life and scientific concepts, as noted by L. S. Vyhotskyiand in the future O. N. Leontiev, have fundamentally different psychological nature and they are formed through the use of various psychological mechanisms. For effective education , which involves the development of thinking as a psychological mechanism, according to the theory of L. S. Vygotskyi, it is necessary to focus on the assimilation of scientific rather than life concepts [2]. The students and followers of L. S. Vygotskyi have different in the development of its conception.N. A. Menchynskafocused on what a child could do on his own, and this is due to the formation of life concepts [5]. Theoretical concepts are formed with the help of an adult, and this help for the researcher is at the second place.According to D. B. Elkoninand V. V. Davidov, the basis of the developmental education conception is the formation of scientific concepts as a key to the success of theoretical thinking development. V. V. Repkin who headed the experiment on introduction of the theory of developmental education into school practice of the educational process at the premises of 17 schools of Kharkiv City, sharing his experience to primary school teachers, started his methodological classes with the phrase: ‘’I do not care if a child will learn to count and solve a task, but I do care that his thinking develop” [6; 7]. This phrase sounded shocking for teachers, however, according to the logic of the developmental education conception, it was natural: if a child develops thinking, andit is the development of thinking that V. V. Repkin focused on, then everything else, namely, to reason, analyse, solve tasks, know the multiplication table, understand the texts and write essays a student will be able to do easily and quickly thanks to his thinking.

Psycho-pedagogical concept of “zone of proximal development’’ introduced by L. S. Vygotskyis a key aspect for developmental education. Thus, if the main pedagogical idea of the zone of proximal development is aimed at evaluating the prospects for the development of a child’s educational opportunities, the psychological idea justifies the prospects for the development of thinking of an individual.

The relationship of two types of thinking, that is, abstract and manual go through all stages of personality development: from school to Institute and from Institute to professional activity [8–10]. The task of Zh. Buridanabout a hungry donkey is a good example of two kinds of thinking.The task is simple: a hungry donkey is standing on the road.On its left and right there are two absolutely identical haystacks.All conditions are the same, hay is the same and haystacks are the same, the sun is overhead, the wind does not bring the smell. Theoretically, the donkey is not able to decide to what stack

it should go and eat, a rational decision is absent. The answer of Zh. Buridan:the donkey will die of hunger.However, in practice, the donkey will not die of hunger, but will go either to the left or to the right – hunger, as it is known, breaks stone walls... A person, being in such a situation, turns a practical situation of insolubility into a situation of abstract thinking: the person makes arrangements with himself – I will throw a coin: if there is an eagle, I will go to the right, if there is tail – to the left. They say, The Christian monks in such situations chose the right side, it is based on biblical tales: on the right hand of Christ the righteous will stand.So, if it is impossible to solve a practical problem at the level of manual thinking, a person is able to use abstract thinking. Thus, a person does not remain at the stage of practical thinking, abstract thinking is manifested in solving practical situations where animals do not rise to the theoretical level.

The ability to adequately apply abstract thinking is very important for a lawyer. For example, V. O. Chovhan,when investigating the legal nature of restrictions on the rights of prisoners, analysed and critically evaluated the relevant international standards: the ECHR practice, standards of the European Committee for the Prevention of Torture, soft law of the UN and the Council of Europe, soft law of the UN and the Council of Europe, implements theoretical thinking in his work and convinces a reader that it is impossible to transfer the laws that exist in theoretical thinking to the plane where practical thinking is implemented. V. O. Chovhanrightfully writes, ‘’the literature suggests that the narrowing of the content of human rights necessarily leads to the narrowing of their scope. Changes in the scope of human rights do not necessarily cause changes in the content of law” [11]. Further, the author deliberately tries to draw an analogy between the law of the inverse relationship between the content and the scope of the concept which works in logic as an objective law [12], with the relationship that operates in law: the narrowing of the content of human rights necessarily entails the narrowing of their scope and he concludes that this is impossible. ‘’The logical law of the inverse relationship between the content and scope of concepts according to which: the larger the scope of the concept becomes, the smaller its content is and vice versa… does not work out in respect of the content and scope of law because in this case we are talking about specific thinking as opposed to abstract thinking.Abstract thinking can exist, for example, regarding such abstract concepts as “right” or “freedom”. However, practical thinking (in the context of categories such as “content” and “scope” of rights) deals with existing objects, that is, objects that are taken in the ontological dimension and have the relevant specific concepts” [11]. This law, according to the author, does not work out when it comes to the rights of prisoners. Indeed, abstract-logical law can be automatically or artificially placed to neither a lower level of interpretation, nor to the sphere of practical thinking in which there are other laws. Thus, V. O. Chovhan proves by this example that abstract and practical thinking are different psychological properties.

Higher education suggests the existence of developed abstract thinking among future students.In the course of a bachelor’s degree programme a student definitely

improves and develops its ability to abstract thinking.The developers of the tests for general educational legal competence (TGELC) understand the importance of developing theoretical thinking when getting higher education and its further applying in the professional activity.

In Ukraine, since 2017 (in 2016, the Exterior Independent Testing (c) for applying for a master's degree programme took place selectively as an experiment) entrance tests are conducted on the technology of the EIT for admission to the second (master's) level for getting law education by the system of external state evalution, that is students write three tests: in a foreign language, in the specialty and the test for general legal educational competence. It is the last test that gives an idea of the abstract thinking development among applicants for admission to the master's degree programme [13; 14]. The introduction of the obligatory test that identifies the level of development of general educational and legal competencies will allow to to overcome the negative phenomena associated with the inability of a specialist whose competence is certified by a degree to distinguish abstract conclusions from life ones. Thus,the development of abstract thinking is the basis for professional education of a specialist.

1. MATERIALS AND METHODS

Thinking can be regarded as the process of thought's moving from the unknown to the known, the process that allows to find new knowledge. Thinking is the process of indirect and generalised human reflection of objects and phenomena of objective reality in their essential connections and relationship [12].To indirect cognition a person resorts when direct cognition is impossible. Indirect thinking is manifested in the fact that it requires a language and previous experience. Abstract (or theoretical) thinking is the mediated process of cognition preceded by the sensory stage of cognition.

A subject directly investigates sensory cognition. Sensory cognition has three forms: sensation, perception and imagination.is a reflection of the individual properties of objects and phenomena of reality (color, sound, smell, etc.).Perception (as the next level of sensory cognition) reflects the surrounding world as integral images. A necessary condition for the formation of information about the subject in the form of sensation and perception is the direct presence of an object or phenomenon. Imagination as a sensual image allows to get information about the subject even when it is not directly contemplated. This happens due to the fact that the information about the objects and phenomena which were perceived earlier can be restored in our imagination in the form of various images. These images are imaginations. However, can not differentiate between the individual and the general, the essential and the non-essential, the accidental and the natural. This is a function of abstract thinking.

The properties of abstract thinking include generalisation which allows to find essential features and combine objects into groups based on the presence of these common features; indirect character as fixation of the fact of independence of knowledge from

the subject; indissoluble connection with a language; abstraction as a distraction from non-essential features; analysis; synthesis; comparison. F. Baconnoted the fact that a bare hand can not work. For the work, a hand requires a tool that can be a hammer, a chisel or a pencil.Just like human brain will not be able to work without a tool.But does the brain need a shovel or pencils? Of course, no. However, the brain produces its own tools, namely, mental means. As a rule, it is almost impossible to see them just like human mind and human brain. But how can one establish that such mental means exist?

With this aim, we will consider an experiment conducted by the French logician, mathematician and psychologist Jean Piaget. The scientist took two beakers. One beaker had a wide bottom, the other had a narrow one. They poured the same amount of liquid, namely, water into both beakers. It is natural that in the beaker with a wide bottom, the water level was lower than in the one where the bottom was narrower. However, what is clear for an adult person is not always clear for a child.A child aged 4 or 5 is invited to the room and asked to determine in which beaker there more water. The child, looking at the water level, said that in the first beaker (where the bottom is wide) there was less water, and in the second beaker (in which the bottom is narrow) there was more water. J. Piagetsuggested to the child not to hurry and measure amount of water in the beakers.To do this, it was taken the third beaker with a bottom different from the first two, and the water from the first beaker poured into the third. The water level was marked with a piece of coal. After that it was poured back. The water from the second beaker was poured into the third one. And it turned out that there was the same amount of water in both beakers. What if the amount of water was different in the first two beakers? Then, with the help of the third beaker, it would be easy to determine where the water is more: in the first or in the second.

What is the third beaker in the experiment? The third beaker is a measurer. The measurer which measures the amount of water (there are no marks on it), but allows to compare the amount of water in both beakers: to determine where the water is more, where less or where is the same level of water. During a day, person carries out such a procedure of comparison a countless number of times. Such operations are carried out in thoughts, often unconsciously, that is, a person does not think about the way he does it [14].

For example, if we are offered such a task:

a = в

в = с

a ? c

We easily conclude by comparing “a” and “b”, “b” and “c” that a = c.

Or such a task:

a > b

b > c

a ? c

Quite easily we conclude that a > c.

What is b in these tasks? This element serves as a measure that allows to compare and measure the relationship between "a" and "c". But all this a person does in his minds, in thinking, but not in the space of reality as in the experiment of J. Piaget. Experiments reveal the properties of practical thinking, the last 2 examples focus on theoretical thinking.

Drawing up both logical and psychological tests to establish the properties of thinking and the level of development of thinking of individuals is a complex process. The creation of test is, without exaggeration, a science. Testology, as a branch of psychology, studies all the subtleties and aspects of the development and implementation of test methods [15]. New tests are necessarily verified (to make sure that the test is able to establish a certain property), are verified for reliability (the test works for all electorate of respondents) and validity (this is a characteristic of the accuracy of measurements carried out with the help of this test). In 2017, we analysed the TGELC 2016 and 2017 and revealed a number of shortcomings [16]. The notebooks of the TGELC 2018 [17;18] are drawn up, undoubtedly, at the high methodological level and meet the criteria of reliability, validity and verification. Let us consider a number of tasks proposed for admission to the master's degree programme in 2018.

2. RESULTS AND DISCUSSION

The main notebook of the TGELC 2018 [14] began with the text with very interesting content, rich in philosophical theme and constructed in logical and methodical way.All 6 questions for it are clearly formulated, the answers are provided in accordance with the content, the answer to everyone of them is unambiguous. The next 2 texts of Section 1 *Critical Thinking* are also interesting, relevant on the theme; the questions posed to them do not cause different interpretations.

However, similar Section 1on critical thinking of the TGELC 2018 (an entrance exam to the higher educational establishment) [18] has some shortcomings. First, two texts, which are given for comparison, have contradictions in the content. Text A contains the following:'' According to the law, among personal non-property rights, fundamental is the right to life, and therefore, the right to dispose of it which is interpreted as the possibility to expose it to significant risk or even make the decision on its termination". However, from the recognition of the right to life as fundamental, it does not follow that there is a right to dispose of it and especially make a decision on its termination. It is rather on the contrary, the fundamental right to life provides its saving, appreciating, but definitely not termination.

Further, according to Text A:'' A person is recognised as the highest value, and therefore, his real well-being, the right to self-determination, freedom, respect for dignity, a dignified death must be guaranteed and ensured in full". If a person is recognised as the highest value, it does not follow that a person has the right to dispose of his life; and it is logical to assume that best of all for a person natural death because natural is worthy, but definitely not "humane death". And definitely surprises "logical" reasoning

of paragraph 4:'' in fact, in civilised countries, "compassionate murder" is practised regardless of whether it is permitted by law or not. According to statistics, 40% of the deaths of patients occur by making medical decisions on termination of life for the absence of other options.It can be assumed that in the countries where euthanasia is prohibited, where there is no legal protection against the misuse of euthanasia, the situation is worse". So, first, the author suggests that in civilised countries, doctors break the law, conducting euthanasia when it is prohibited by law; second, he says about "statistics", but does not specify where these statistical facts are taken from; third, makes an unreasonable conclusion that in the countries where euthanasia is prohibited, the situation is worse, that is the illegal use of euthanasia is even more frequent than in 40% of the deaths reported by the author.

Text B has informative contradictions as well. First, the definition surprises:''euthanasia is a person's right to death".There is a right to life.But what about a right to death?" The right for death is not fixed as a fundamental human right. It is not mentioned in the international human rights documents – declarations, conventions and covenants," says Alexander Podrabinek [19].Second, quoting statistical data, the author indicates that 187 respondents were interviewed that is a very small number for conclusion. Besides, only in 10 out of 187 cases the pain was called the only reason", that is, pain is an objective reason specified in 5.3%, and in 94.7%, these are subjective reasons for choosing euthanasia, namely, undignified death, dependence on the environment and fatigue from life. All this testifies to the unreliability of the conclusion on activation of the implementation of euthanasia. Third, contradiction in the author's reasoning in para.10:''opponents of euthanasia give examples when a hopeless patient recovered or the dead was resuscitated. Of course, there are such cases, but it is impossible to draw absolute conclusions", that is, the author decides that one can not pay attention to the presence of the probability of patient's recovery. And further: ''it rather shows that life should be fought for despite everything". And if so, one should forget about euthanasia, but not, on the contrary, popularise this idea.

Some misunderstandings arise in questions to the mentioned texts. Thus, question 7. Some misunderstandings arise in questions to the mentioned texts.

A Religion and ideology as opponents of legalisation of euthanasia.

B Confirmation of the relevance of legalisation of euthanasia in Ukraine.

C Euthanasia in the international and domestic context.

D History of the formation of attitudes to euthanasia in the legislation.

E Moral aspect of legalisation of the use of euthanasia.

According to the protocol, the correct answer is C. However, text B does not deal with the domestic context at all. From the above answers to question 7 option E is the most appropriate; we assume that there are shortcomings in the test.

To question 8 among the options of answers, the following is correct: ''The famous motto "Heal!" formulated by the ancient Greek doctors contains a deep philosophical meaning that defines the role of medicine in the society, and therefore, doctors are

categorically against premature termination of patients' lives". We agree that this option of answers is correct in respect of the formulated question, but the oldest the principle of medical ethics, which is attributed to Hippocrates, sounds in a different way: "Do no harm'' or primum non nocere (verbatim: ''first of all - do no harm''. Motto ''Heal'' does not exist, since ancient times the motto has been as follows: ''Doctor! Heal yourself'' that gives a different content to the ancient Greek motto.

Section 2.Analytical thinking of the basic notebook of the TGELC 2018 and notebook of the TGELC of 2018 (an exam to the higher educational establishment) [17] gives interesting and adequate tasks on abstract thinking. However, to situation 3 of the basic notebook question 19 is offered. In how many years will there be the first year with the same amount of numerals like in 2018? However, it is not specified in what way the sum of numerals will be counted. According to the task, the amount should be calculated as follows: 2+0+1+8=11, but one can calculate the other way and bring the amount to one digit, that is, not leave the result 11, but continue to add:1+1=2. Depending on the method of summation, the result will be different, and this affects the choice of the correct answer. For question 19, both results will give the same result, and for question 20 the results will be different.

20. In how many years in this millennium will there the last time be a year with the same amount of numerals?

A 228
B 282
C 828
D 882
F 888

If we count to the number, the year will be 2900:2+9+0+0=11, and the correct answer is D, but if to add to numerals, then it will be the year of 2999: 2+9+9+9=29, 2+9=11, 1+1=2. However, the answers 2999 – 2018=981 are not offered. On the one hand, this is a positive point because the applicant can find out that his way of calculation does not correspond to the test, but the negative point is that the authors do not specify in what way one should calculate.

Three questions to situation 3 from the notebook of the TGELC 2018 (exam to the higher educational establishment) [18] seem to be extremely easy in the result of which some doubts arise about the correctness of the decision made.

Section 3 *Logical thinking* gives wonderful tasks on the manifestation of logical reasoning. Question 27 of the notebook of the TGELC 2018 can be solved both with the help of abstract thinking by constructing categorical syllogism, and using practical thinking by drawing volumes (Figure1).

''Prosecutor: The investigation established that the crime had been preceded by four events X, Y, Z, V, and discovered a group of persons suspected of this crime. In the result of the investigation, it was also found that none of the suspects who was not a participant in X event, was not a participant of event Y either, and all the participants

of V event were the participants of Z event, and that among the participants of X event there were no participats of Z event.

Does the truth of which statement logically follow from the information provided by the prosecutor?

A None of the suspects was the participant of V event and X event.

B Some suspects participated in Z event, but they did not participate in V event.

C Some suspects participated in X event, but they did not participate in Y event.

D Some suspects participated in at least three of X, Y, Z and V events.

E Some suspects participated in just one of X, Y, Z and V event'' [17].

Solution. We build a categorical syllogism on the grounds offered according to the problem's conditions:

1. All participants of V event were the participants of Z event.

2. None of the participants of X event was the participant of Z event.

Conclusion: None of the participants of X event was the participant of V event.

1.P A M

2.S E M

S E P

The second figure of the categorical syllogism is loyal modus CAMESTRES. We do the conversion of judgement which is in the conclusion: S E P → P E S (common-negative judgement becomes common-negative) − none of the participants of V event was the participant of X event. The correct answer is A [20].

Figure 1. Common-negative judgement

Question 27 of the basic notebook of the TGELC 2018, (examination period in the educational establishment). ''Investigator: A proceeding covers four events X, Y , Z, V. In the result of the investigation it was found that all the participants of Y event were the participants of X event, and all participants of Z event participated in Y event while none of the participants of V event was the participant of Y event.

Does the truth of which statement logically follow from the information provided by investigator?

A Among the participants of Z event there are no participants of V event.

B Some participants of V event did not participate in X event.

C Some participants of V event participated in X event.

D Among the participants of X, Y, Z and V events there are those who participated in four events.

E Among the participants of X, Y, Z and V event there are those who participated in just one event'' [18].

Solution. We build a categorical syllogism on the grounds offered according to the problem's conditions:

1. All participants of Z event participated in Y event.

2. None of participants of V event was the participant of Y event.

Conclusion: None of participants of V event was the participant of Y event.

1.P A M

2.S E M

S E P

The second figure of the categorical syllogism is loyal modus CAMESTRES. We do the conversion of judgement which is in the conclusion: S E P → P E S (common-negative judgement becomes common-negative) − none of the participants of Z was not не the participant of V event. The correct answer is A [20].

Question 22 of the basic notebook of the TGELC 2018. ''Speaker: In 1885, William Bentley was the first to photograph a snowflake using a device he had constructed from a camera and microscope. He was so impressed by its beauty that he took 5000 more pictures of different snowflakes. W. Bentley even tried to create a classification of forms of snowflakes, but nothing came out: all snowflakes were different. This uniqueness of snowflakes can be considered the basis for the recognition of the incomprehensible diversity of nature.

Expert: Actually, in nature, everything is unique: there are no two identical ants, two identical grains of sand, plants, stars, people, nothing. If two objects seem to be the same, a closer look will always show that they are still somewhat different. So, the twin brothers are different personalities, saying nothing about the fact that they have different fingerprints.

What is the difference between the views of the speaker and the expert according to this dialogue?

A The uniqueness of snowflakes gives grounds for the conclusion about the diversity of nature.

B Analysis of 5000 snowflakes provides the necessary basis for the conclusion about the uniqueness of the forms of snowflakes.

C Twin brothers have different fingerprints.

D Snowflakes have a unique property: they all have different forms.

E Any two objects of nature are always somewhat different from each other'' [17].

In the task there are two views. The main abstract of the speaker: 5 000 pictures of different snowflakes showed that all snowflakes were absolutely different. The main thesis of the expert is that two objects seem to be the same, but they are still somewhat different. Thus, divergence of views is that being in something different does not mean being completely different. The correct answer is D because here we are talking about

the uniqueness of snowflakes. It is easy to solve the task if to clearly formulate the main abstracts and compare them.

Question 29 of the basic notebook of the TGELC 2018. "Olexandr Perliuk: There are poets from God, and there are from Ivan Ivanovych. Which of the following statements does logically follow from the statement of Alexander Perliuk?

A If the poet is not of God, so he is a poet from Ivan Ivanovych.

B Every poet is either from God or from Ivan Ivanovych.

C Some poets are poets from God.

D There are no poets who would be neither from God, nor from Ivan Ivanovych.

E If the poet is not from Ivan Ivanovych, he is the poet of God" [17].

The question condition gives a strict disjunction of two alternatives, however, it is unknown whether there are still alternatives. So, option A can not be correct because there can be an alternative, so to say, the poet from Satan or the poet from Kuzma Andriiovych; on these grounds options B, D, E can not be correct. There is option C left which is a correct answer.

Due to the fact that the introduction of of the TGELC has been recognised as obligatory since 2017, no expert evaluation has been conducted yet, except for our previous research work [16; 21; 22]. Logical analysis of the TGELC 2018 showed the adequacy of the offered tasks to identify the level of abstract thinking and allows to state the fact of improving the professional skills of the authors of test tasks.

At the same time, we note that it is desirable to chose the texts for Section 1 and conditions of tasks for Section 3 free from internal substantive contradictions or conflicts, and to formulate more clearly the conditions of tasks, especially in Section 2 and avoid differences in their understanding.

CONCLUSIONS

Ukraine is one of the participants in the global market of educational services that determines the implementation of active state policy to improve the management of higher education, including to achieve the European standards of quality of higher education. Therefore, an urgent task is the formation of unified integrated information system for the collection and analysis of financial and statistical data on the activities of higher education establishments. It was established that this would make it possible to carry out a comprehensive assessment of the activities of higher education establishments on the basis of detailed monitoring of statistical and financial indicators as well as monitor the changes not only in the certain discrete period of time, but also in the dynamics.

Globalisation processes put before educational management a number of new important tasks on preparation of highly qualified specialists who have to meet the European standards of quality of the higher education. That is why, since 2016, the Ministry of Education and Science introduced a national entrance test: entry to the

master's level of higher education for law specialties is carried out using organisational and technological instruments for conducting external independent testing. In 2018, this entrance test was conducted for the third time. This enables to conduct a comprehensive standardised assessment of the competencies of applicants, to identify patterns and assess the impact of certain factors on the sphere of law education.

The test tasks offered in 2018 exactly correspond to the set goal, that is, to find out the level of abstract thinking of the bachelor. The notebooks of the TGELC 2018 are drawn up, of course, at the high methodological level and meet the criteria of reliability, validity and verification.

An important task of reforming the system of general secondary education is also the development of hub schools in Ukraine. The development of the network of hub schools is aimed at implementing the principle of equal access to quality education regardless of the student's place of residence as well as improving the quality of educational services provided by establishments of general secondary education.

The conducted research will be helpful for lawyers who care about the development of logical foundations of thinking, improving the scientific mental apparatus; teachers, introducing test methods in the educational process and bachelors who are getting ready for admission to the master's degree programme.

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ЗАСАДИ КРИМІНАЛЬНОГО ПРОВАДЖЕННЯ ЯК ВИМОГИ, ЩО ПРЕД'ЯВЛЯЮТЬСЯ ДО ДІЯЛЬНОСТІ ДЕРЖАВНИХ ОРГАНІВ, ЇХ ПОСАДОВИХ І СЛУЖБОВИХ ОСІБ (ПРОБЛЕМИ НОРМАТИВНОГО РЕГУЛЮВАННЯ)

Анотація. *Відсутність у кримінальному процесуальному законодавстві України визначення засад кримінального провадження зумовлює актуальність досліджуваної проблеми. Загальновідомо, що кримінальне процесуальне законодавство має розроблятися відповідно до конституційних засад судочинства, які обумовлюють регулювання кримінальних процесуальних відносин таким чином, що обов'язок забезпечення прав і законних інтересів людини покладається на органи досудового розслідування, прокурора, слідчого суддю та суд. Враховуючи публічну природу кримінальної процесуальної діяльності України, держава практично у всіх випадках здійснення кримінально караних діянь бере на себе обов'язок безпосередньо захищати права та законні інтереси учасників процесу, без узгодженості своєї діяльності з їх волею та бажанням. Тому у роботі проаналізовано засади кримінального провадження як вимоги, що пред'являються до діяльності державних органів, їх посадових і службових осіб. Розглянуто проблеми нормативного регулювання. Для досягнення поставленої мети в роботі були використані методи моделювання, абстрагування, проаналізовано різноманітні нормативні акти та літературні джерела. Встановлено, що публічність кримінального процесу ґрунтується на процесуально-посадовій активності суб'єктів, які здійснюють кримінальне провадження. Зазначено, що основні положення, виражені в засадах кримінальної процесуальної діяльності, мають неухильно дотримуватися усіма суб'єктами правозастосування у ході кримінальних процесуальних відносин. В роботі досліджена сутність кримінального процесу та його відмінність від інших галузей правової діяльності. Сформульовано окремі висновки та пропозиції, спрямовані на вдосконалення кримінального процесуального законодавства.*

Ключові слова: публічна природа кримінального процесу, проблеми нормативного регулювання, кримінальні правопорушення, карні діяння.

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PRINCIPLES OF CRIMINAL PROCEEDINGS AS REQUIREMENTS CONCERNING THE ACTIVITIES OF PUBLIC BODIES, THEIR CUSTOMS AND SERVICE PERSONS (PROBLEMS OF REGULATORY ADMINISTRATION)

Abstract. *The lack of the definition of the criminal proceeding principles in the criminal procedural legislation of Ukraine determines the relevance of the investigated problem. It is well-known that criminal procedural law should be developed in accordance with the constitutional principles*

of legal proceedings, which stipulate the regulation of criminal procedural relations in such a way that the obligation to ensure the rights and legitimate interests of a person is entrusted to pre-trial investigation bodies, prosecutors, investigating judges and courts. Given the public nature of the criminal procedure of Ukraine, the state assumes the obligation to directly protect the rights and legitimate interests of the participants of the procedure in almost all cases of penal acts without coordinating its activities with their will and desire. In this context an analysis of the criminal proceeding principles as requirements for the activities of state bodies and their officials is carried out. This addresses some statutory regulation issues. The article provides the author's definition of the criminal proceeding principles. It has been established that the publicity of the criminal process is based on the procedural and official activity of subjects who carry out criminal proceedings. It has been noted that the basic provisions, expressed in the principles of criminal procedural activity, should be strictly observed by all subjects of law enforcement in the course of criminal procedural relations. The work has researched the essence of the criminal process and its distinction from other branches of legal activity. The conclusions and proposals aimed at improving the criminal procedure legislation are formulated.

Key words: the public nature of the criminal process, the problem of regulatory regulation, criminal offences, criminal acts.

INTRODUCTION

The process of building an independent, sovereign, democratic, law-based state in the modern period is impossible without the creation of a coherent system of reliable state protection of the rights and freedoms of citizens. To implement this task, it is very important to intensify the implementation of law-making in order to improve the criminal procedural law, its democratisation by bringing its provisions in line with provisions of the Constitution of Ukraine and international legal standards [1–3].

One of the important events for the whole state was the adoption in 2012 of the new Criminal Procedure Code of Ukraine (hereinafter referred to as the CPC). This has become an important step towards reforming the criminal process. This legislative act incorporates the progressive achievements of the theory of criminal procedural law and significantly brought Ukraine closer to the European standards of criminal proceedings [4; 5]. The new CPC of Ukraine differs significantly from well-known perceptions of the criminal process in general. It contains a number of institutions that are a new trend in criminal proceedings, resulting in many procedural innovations and innovative procedures in the criminal procedural law.

Any activity by its nature is subject to certain laws, principles that define its orientation and character, that is, they are as if its guidance. The criminal procedural activity in Ukraine is not an exception. Regardless of subjects and stages of criminal proceedings it must comply with certain fundamental provisions, which in the field of criminal procedure are called "principles".

For many years the issue on principles of criminal proceedings has been the subject of discussion by scientists. However, in the 1960 Criminal Procedure Code of Ukraine, the principles did not differ from the general mass of requirements that indicated significant disadvantages of legislative technique. In this regard, the CPC of Ukraine

adopted on April 13, 2012, eliminated this gap. It for the first time consolidated in a separate chapter the principles of criminal proceedings. Each principle had its own content in a separate article of the law. This position of the legislator shows how much he attaches great importance to these basic provisions. They form a peculiar basis on which the criminal process is built, penetrate the legal matter of criminal proceedings and all processes taking place in the criminal procedural sphere.

1. MATERIALS AND METHODS

For a detailed analysis of the legal nature of the principles of criminal proceedings, the author used a variety of theoretical methods, analysed literary sources and regulations. Methods of analysis led to determination of the principles of the criminal process, which are the basis of formation of the whole system of criminal procedural law; fixed in the current legislation in the form of legal provisions; express most fully the content of criminal procedural law; extend their effect at all stages of the criminal process; are closely interrelated with the state policy in the field of criminal procedural activities, taking into account the provisions of international acts; carry out a protective and regulatory action regarding all criminal procedural norms.

The methods of research are predetermined by the purpose of the work, which involves the general dialectical method of scientific cognition of reality that implies consideration of phenomena in their relationship, unity and development. This helped to imagine and comprehensively explore the nature of the principles of the criminal process as requirements imposed on the activities of state bodies and officials. Historical and legal method provided insight into the tendencies of development of normative provisions and scientific views in time. The methods of modelling and abstraction were used during the development of scientific and theoretical models of changes to the criminal procedural legislation of Ukraine in order to improve the legal regulation of issues related to filling the normative content of the principles of criminal proceedings. The method of generalisation contributed to the consistent construction of individual facts into a single whole as well as to the formation of substantiated conclusions aimed at improving the legislative regulation of the issues under investigation, overcoming its conflicts and gaps. These methods were used in the interconnection and interdependence, which ensured the comprehensiveness, completeness and objectivity of the scientific results obtained.

The theoretical methods of research made it possible to determine that the principles of the criminal process should be considered as the leading element of the whole system of criminal procedural guarantees, as a combination of methods and means that provide for all and at each level the legal opportunities for the acquisition and real exercise of rights and freedoms. The significance of the general principles of criminal proceedings as norms of a higher degree of normativity is that they serve as a guarantee of justice; are a guarantee of compliance with rights, freedoms and legitimate interests of participants in criminal proceedings.

2. RESULTS AND DISCUSSION

2.1. The problem of determining the basic principles of the criminal proceeding

First of all, it should be noted that in the legal literature even until today, there is no unity in the views on the definition of the concept of the principles of the criminal process. In the CPC of Ukraine, there is not the definitions of this legal category, which has prompted many legal scholars to research this problem for a long time. Because the recognition of the entire directive contained in the legal norm often depends on correct use of one or another term, and numerous terminological units that coincide in their current laws, confuses the law enforcement.

Ukrainian and foreign processualists and criminologists devoted their studies to this problem: S. A. Alpert, M. M. Grodzinsky, Yu. M. Groshevoy, T. M. Dobrovolskaya, V. C. Zelenetsky, O. V. Kaplina, V. O. Konovalova, O. M. Larin, L. M. Loboyko, V. T. Malyarenko, V. I. Marinov, M. A. Markush, T. M. Miroshnichenko, M. M. Mikheenko, V. T. Nor, M. M. Polyansky, A. L. Rivlin, V. M. Savitsky, M. I. Siriy, M. S. Strogovich, V. M. Tertishnik, I. V. Tyrichev, A. R. Tumaniants, I. Ya. Foynitsky, M. O. Cheltsov, V. Yu. Shepit`ko, O. G. Shilo, M. E. Shumylo, etc. Despite the importance of the conducted researches, it must be admitted that there is still not the unity of thought regarding the definition of the concept of the principles of the criminal process. So, according to M. S. Strogovich, T. M. Dobrovolskaya, Yu. P. Yanovich, O. P. Ryzhakov, M. O. Gromov, V. V. Nikolaychenko and M. L. Yakub, the principles of the criminal process are understood as the legally executed leading (legal) provisions, which establish the most general and essential properties of the criminal process, expressing its nature and essence [6].

At the same time, V. M. Tertyshnik, L. B. Ismailov, G. V. Kudryavtseva, Yu. D. Livshits, V. V. Navgorotska, M. M. Mikheenko describes the principles of the criminal process as the basic ideas enshrined in the constitutional and procedural legislation, which determine the construction of the criminal process, its essence and democracy [6].

In the opinion of the author, it is worth to support the opinion of the scholars who define the principles of criminal proceedings as fixed in the norms of law determinative fundamental provisions concerning the regularities and the most essential properties of the criminal proceedings, which determine their importance as a means to protect rights and freedoms of a human and a citizen, and also to regulate activities of bodies and officials conducting the process [7].

This definition, in the opinion of the author, reflects the legal nature of the principles of criminal proceedings, which underlie the whole system of norms of criminal procedural law, express the essence, tasks, construction of the criminal process as a special system of state activity. This definition of the concept of basic principles emphasises the understanding of them as imperative provisions, requirements for activities of state bodies and officials. They are aimed at achieving the objectives of criminal proceedings. Exactly this feature of the principles of the criminal proceeding is the subject of discussion in this paper.

2.2. Public nature of the criminal proceeding

Criminal procedural activity is defined by its purpose and tasks, the essence of which, in turn, definitely depends on specific economic, social and political, ideological conditions. Adoption of the new CPC of Ukraine has contributed to a change in the state policy vector on the issue of prioritising the state interests and the interests of the individual in favour of the latter. However, the attribution of criminal procedural law to public sectors can be considered an axiom.

The criminal process is a kind of state activity. The state using its specially created bodies that counteract crime, protects the constitutional system, socio-economic, political and personal rights and freedoms of citizens, rights and legitimate interests of legal entities from criminal offences. Criminal proceedings can be carried out only by state bodies authorised by law: operational units, investigative bodies of pre-trial investigation, heads of pre-trial investigation bodies, prosecutors, investigating judges and courts. They are endowed with the necessary authority and, if there are legitimate reasons, they may resort to measures of state coercion. Decisions taken by them within the limits of their authority are obligatory for all institutions, organisations, officials and citizens [7].

In addition, it is worth noting that the whole criminal proceeding is public in its essence, since it is aimed at protecting the rights and legitimate interests of citizens who are violated by the most socially dangerous type of legal delinquency – a criminal act. Given this, the state virtually in all cases takes the responsibility to directly protect rights and legitimate interests of individuals without coordinating their own activities with will and desire of citizens, since satisfying the interest of society in overcoming crime is a condition and a guarantee of its normal functioning and development. The state, in the person of its bodies, undertakes to protect citizens, society from criminal manifestations, undertakes to be active in ensuring their protection. Due to publicity, public authorities should recreate the event in the fullest extent, establish and protect the legitimate interests of all participants in criminal proceedings.

It is also worth noting that publicity of the criminal procedural form can be considered as its essential feature, given the prevalence in the criminal process of publicity as its general principle and its direct impact on the construction of a criminal procedure, which primarily manifests itself in the process of official activity of individuals, who carry out criminal proceedings to solve its tasks [8].

Again, public law subjects are strictly bound by the law, their field of their activity is outlined in the legal framework. In the public sphere legal regulation is characteristic of a positive obligation, that is, subjects of public law are obliged to act in a certain way in order to achieve one or another purpose. Legislation defines clear conditions for the exercise of power. In the presence of certain circumstances, the subject of authority is obliged to implement it, otherwise it can be accused of inaction. The publicity of the criminal process is manifested in the procedural and official activity of the subjects who carry out the criminal proceedings, with the solution of his tasks. It is aimed at identify-

ing crimes and those who committed them, prosecuting such persons, bringing them to criminal responsibility, and taking criminal procedural decisions at their own discretion. This manifests itself in activities through the principles, the implementation of which guarantees the achievement of the tasks of the process, the establishment of all circumstances that are subject to proof. That is, the principles among other concepts of the process occupy one of the highest places in hierarchy as a manifestation of the essence of the process outside, in activity.

2.3 Obligatory nature of the grounds of criminal proceedings

The specifics of the principles of criminal proceedings are that they are of imperious (mandatory) character. It is necessary to emphasise the inalienable connection between the implementation of the principles and the achievement of the tasks of criminal justice. The tasks of the criminal proceedings, which were fixed in Art. 2 of the CPC of Ukraine can be divided into two groups. The first is stipulated by the provisions of the Constitution of Ukraine (Articles 3, 28–30, 62, 63, etc.) and is connected with the necessity: to provide protection of the person, the society and the state from criminal offenses; the need to protect rights, freedoms and legitimate interests of participants of criminal proceedings. The second group is defined by the public nature of the criminal process and imposes on its persons the duty to carry out a prompt, complete and unprejudiced investigation and judicial review, so that anyone who committed a criminal offence has been prosecuted for the fault of his/her own, no innocent person was punished, no person was subjected to unwarranted coercion and that every participant in the criminal proceedings had applied proper legal procedures [9].

In order to be a means to achieve the objectives of criminal proceedings, the principles must have the character of general liability. They have the meaning, only when they necessarily receive their consolidation in the norm of law. This ensures that they are rigorously enforced under the threat of adverse consequences for violators or under the threat of the abolition of decisions taken with such violations. Because of the normative sign, the main provisions expressed in the principles of criminal procedural activities must be rigorously observed by all actors of law enforcement in the course of criminal procedural relations.

As already noted earlier, the principles are the basis for building the entire criminal procedural law. In other words, they should be considered as a tool of criminal procedural form that is understood as the set of legal procedures, conditions and guarantees established by the law, which form the order of criminal proceedings and ensure the solution of its tasks [8]. The criminal procedural form provides the solution of the tasks of the criminal process. The principles of criminal proceedings form the basis of the criminal procedural form at all stages of criminal procedural activities.

To continue the above-mentioned, it is needed to recall that in the theory of state and law, principles are the most general and stable requirements that promote the es-

tablishment and protection of public values, determine the nature of law and directions for its further development [10]. The principles of law, notes S. P. Pogrebnyak, are the most basic and stable requirements that promote the establishment and protection of public values, determine the nature of law and directions for its further development [11]. In the science of criminal proceeding the position on understanding the principles as a requirement for this type of activity has been repeatedly expressed. So M. M. Polyansky understood the principle as one of the basic general requirements, which should correspond to the activities [12]. Principles are not just the "basic legal provisions", but the requirements, without which it is impossible to achieve the objectives of a particular activity [13]. Only a single understanding of these two parts – requirements and tasks – can reveal the essence of the principles of criminal proceedings. V. T. Nor defines the principles of criminal proceedings as requirements to the rules and methods of activity, primarily for the bodies and officials who conduct criminal proceedings, and guarantees the observance of rights, freedoms, and the legitimate interests of those who involved in proceedings [14]. L. M. Loboyko speaks of the principles of procedural criminal law as the initial provisions enshrined in legal norms, reflecting the political and legal ideas prevailing in the state, and determine the essence of the organisation and activities of the competent state bodies that conduct criminal proceedings [15].

A. S. Barabash determines that the principle is a requirement for activity, without which it is impossible to achieve the purpose of this activity, and which is addressed to authorities of the state; it is fixed in the norm of the criminal procedural law, and the nature of this requirement must be directly related to the purpose of criminal procedural activities, and, therefore, its implementation must guarantee the achievement of such a purpose [16]. Yu. M. Groshevy notes, "For individuals who apply the law, principles are not only a guide to action, but also a requirement to follow the prescribed direction in accordance with the idea that is currently leading in this society and the state [17].

The above does not allow us to agree with M. A. Gromovy and V. V. Nikolaychenko, who believe that the principle of criminal proceedings are addressed to citizens and relevant state bodies [18]. Perhaps such a position is inherent in the civil process, which attracts a dispositive method of legal regulation that gives a high level of individual freedom, but not for a criminal regulation, within which public interest is first and foremost implemented.

The abovementioned understanding of the principles of criminal proceedings corresponds to the proposal to use in the text of the articles, which fix the content of the principle, the word "obliged" that addressed to the state authorities. In some of the norms of the CPC of Ukraine, which contain substantial content of the principles of the criminal process, this provision has been consolidated (Article 9, Article 20, Article 23, Article 25, Article 28, Article 29). However, in the majority, every norm duplicates the rights of individuals, which are enshrined in the Constitution of Ukraine. It is clear that any law (including the CPC of Ukraine) must be based on the Basic Law

of our state. However, it is necessary to take into account the specifics of a certain sphere of activity.

In this regard, we propose to make some changes to the CPC of Ukraine in the following wording:

P. 1 art. 8. Rule of law "During a criminal proceeding, a court, an investigating judge, a prosecutor, a head of a pre-trial investigation body, an investigator, and other officials of public authorities are obliged to adhere strictly to the requirements of the rule of law, according to which an individual, his rights and freedoms are recognised as the highest values and define the content and direction of state activity".

P. 1 art. 10. Equality before the law and the court "During a criminal proceeding, a court, an investigating judge, a prosecutor, a head of a pre-trial investigation body, an investigator, and other officials of public authorities are obliged to ensure equality before the law and the court".

P. 1 art. 11. Respect for human dignity "During a criminal proceeding, a court, an investigating judge, a prosecutor, a head of a pre-trial investigation body, an investigator, and other officials of public authorities are obliged to ensure respect for human dignity, rights and freedoms of each person".

P. 1 art. 12. Ensuring the right to freedom and security of person "During a criminal proceeding, a court, an investigating judge, a prosecutor, a head of a pre-trial investigation body, an investigator, and other officials of public authorities are obliged to provide the person with the right to freedom and security of person".

P. 1 art. 13. Inviolability of a home or other property of a person "During a criminal proceeding, a court, an investigating judge, a prosecutor, a head of a pre-trial investigation body, an investigator, and other officials of state authorities are obliged to ensure the inviolability of a home or other property of a person".

P. 1 art. 14. Secret of communication "During a criminal proceeding, a court, an investigating judge, a prosecutor, a leader of a pre-trial investigation body, an investigator, and other officials of state authorities are obliged to ensure the secret of communication".

P. 1 art. 15. Non-interference in private life "During a criminal proceeding, a court, an investigating judge, a prosecutor, a head of a pre-trial investigation body, an investigator, and other officials of public authorities are obliged to ensure non-interference in each individual's private (personal and family) life".

P. 1 art. 16. Inviolability of property rights "During a criminal proceeding, a court, an investigating judge, a prosecutor, a head of a pre-trial investigation body, an investigator, and other officials of public authorities are obliged to provide each person with the inviolability of property rights".

P. 1 art. 17. Presumption of innocence and ensuring the proof of guilt "During a criminal proceeding, a court, an investigating judge, a prosecutor, a leader of a pre-trial investigation, an investigator, and other officials of public authorities are obliged to adhere to the requirements of the principle of presumption of innocence and to ensure the proof of guilt".

P. 1 art. 18. Freedom from self-disclosure and the right not to testify against close relatives and family members "During a criminal proceeding, a court, an investigating judge, a prosecutor, a head of a pre-trial investigation body, an investigator, and other officials of public authorities are obliged to explain to each person the right to freedom from self-disclosure and not to testify against close relatives and family members".

P. 1 art. 19. Prohibition to twice prosecute for a same offence. "During a criminal proceeding, a court, an investigating judge, a prosecutor, a head of a pre-trial investigation body, an investigator, and other officials of public authorities are obliged to adhere to the prohibition to prosecute twice one and the same offense".

P. 1 art. 21. Access to justice and the binding nature of court decisions "During a criminal proceeding, a court, an investigating judge, a prosecutor, a head of a pre-trial investigation body, an investigator, and other officials of public authorities are obliged to provide access to justice and binding judgments".

P. 1 art. 22. Competitiveness of parties and the freedom to submit their evidence to the court and bring to the court their conviction "A court, investigating judge, prosecutor, head of the pre-trial investigation body, investigator, other officials of the state authorities are obliged to ensure the conduct of criminal proceedings on the basis of competition, which provides for independent uphold by a prosecution and a defense of their legal positions, rights and legitimate interests by means provided by this Code".

P. 1 art. 24. Ensuring the right to appeal against procedural decisions, actions or inactivity "During a criminal proceeding, a court, an investigating judge, a prosecutor, a head of a pre-trial investigation body, an investigator, and other officials of public authorities are obliged to provide each person with the right to appeal procedural decisions, actions or inaction of the court, investigator of a judge, prosecutor, investigator in the manner prescribed by this Code".

P. 1 art. 26. Discretionary nature "During a criminal proceeding, a court, an investigating judge, a prosecutor, a head of a pre-trial investigation body, an investigator, and other officials of public authorities are obliged to provide each person with an opportunity to freely choose ways to exercise their rights implied by this Code".

P. 1 art. 27. Publicity and openness of court proceedings and its complete fixing by technical means "During a criminal proceeding, an investigating judge is required to ensure the transparency and openness of court proceedings and its full fixation by technical means".

Given the importance of the principles for the proper functioning of criminal procedural activities, it would be advisable, in our opinion, to add the definition of their concept to the CPC of Ukraine.

CONCLUSIONS

The generalisation of the foregoing makes it possible to conclude that the principles of criminal proceedings should be considered as requirements for state bodies and officials. As rules of law, the principles are of imperious nature. They contain mandatory requirements, the implementation of which is ensured by a combination of

legal means. The implementation of these requirements should ensure the achievement of the objectives of criminal procedural activities. The basic principles of the criminal process exist in the system, which should be understood as a collection of predominantly imperative requirements that are interconnected and create integral unity.

The specifics of the principles of the criminal process are that they are not just requirements, but the requirement that is imperative and imposed to activities of state bodies. This reflects the essence of the criminal process, its distinction from other branches of legal activity. In the criminal process the state bodies execute the principles. This is due to the fact that only they are responsible for the course and the result of the activity, only they have the most extensive powers, including the implementation of the principles.

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КРИМІНАЛІСТИКА В СИСТЕМІ НАУКОВИХ ЗНАНЬ

Анотація. *Зміни в соціальному, політичному і економічному розвитку суспільства сприяють розвитку наук. Криміналістика не є винятком. Тому в роботі розглянуто генезу та сучасний стан наукових поглядів щодо характеру міжнаукових зв'язків криміналістики, сутності її природи, визначення місця у системі наук. Наголошено на тому, що зазначені проблеми взаємозв'язані між собою і залишаються одними з найбільш дискусійних у загальній теорії криміналістики. Встановлено, що вітчизняна криміналістика розвивається поступально, має закономірну зміну системи, перехід її від одного стану до більш досконалого. Констатовано, що протягом історії розвитку науки криміналістики висловлювалися різні погляди щодо її природи. При цьому неодноразово змінювалися не лише наукові концепції, а й особисті погляди окремих учених. Автор звертає увагу на те, що до тепер учені-криміналісти не дійшли до узгодженої позиції з цих питань. Криміналістика передбачає використання творчого підходу, ситуаційної зумовленості, наявності альтернативи в обранні певних шляхів, засобів, методів чи прийомів. Встановлено, що ефективність розслідування грабежів та розбоїв залежить від правильного визначення слідчої ситуації; висунення та відпрацювання усіх можливих версій; організації взаємодії слідчого з оперативними підрозділами. Тому вона і пов'язана з різними науками. На сьогодні співіснують дві основні наукові концепції щодо природи криміналістики, за однією з них криміналістика визнається спеціальною юридичною наукою, а за іншою – наукою синтетичного (інтегрального) характеру. Зроблено висновок, що криміналістика, виходячи з предмета дослідження, її функцій і завдань, інтегрує в собі знання юридичних, технічних та природничих наук. При цьому криміналістика є єдиним сплавом знань, а не сукупністю наук, оскільки в ній не можна виділити суто правові та природничо-наукові або технічні розділи, тобто комплекси знань як якісь фіксовані структури, що зайвий раз пересвідчує про синтетичний (інтегральний) характер її походження.*

Ключові слова: природа криміналістики, диференціація та інтеграція знань, міжнаукові зв'язки, юридичні науки, синтетичні науки.

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CRIMINOLOGY IN THE SYSTEM OF SCIENTIFIC KNOWLEDGE

Abstract. *Changes in the social, political and economic development of society contribute to the development of sciences. Criminology is not an exception. The genesis and the current state of scientific views on the nature of inter-scientific links of criminology, the essence of its nature, its place in the system of sciences have been considered. The attention has been focused on the fact that these problems are interrelated and remain ones of the most debatable in the general theory of criminology. It has been established that domestic criminology is developing gradually, has logical change of the system, transits from one state to more perfect state. It has been stated that throughout the history of the development of criminology, different views were expressed regarding its nature. At the same time, not only scientific concepts, but also personal views of individual scientists changed repeatedly. Attention is drawn to the fact that, so far, criminologists have not reached an agreed position on these issues. Criminology implies using of the creative approach, situation conditionality, presence of alternatives when choosing certain ways, means, methods or techniques. It has been established that efficiency of investigation of robberies and brigandage depends on correct determination of an investigative situation; proposing and refining of all possible versions; organisation of interaction of an investigator with operational units. Therefore, she is associated with different sciences. Currently, two basic concepts coexist regarding the nature of criminology, according to one of them criminology is recognised as a special science of law, and according to the other – a science of synthetic (integral) nature. It has been concluded that criminology, based on the subject of the study, its nature and objectives, integrates the knowledge of legal, technical and natural sciences. At the same time, criminology is a unified fusion of knowledge, not an aggregate of sciences, since it is not possible to single out purely legal, natural or technical sections, that is, knowledge complexes as any fixed structures, which once again testifies the synthetic (integral) nature of its origin.*

Key words: nature of criminology, differentiation and integration of knowledge, inter-scientific links, legal sciences, synthetic sciences.

INTRODUCTION

The research of specifics of criminology knowledge, finding out its place in the system of sciences and determination of the nature of inter-scientific relations traditionally are the most relevant science-related problems, the solution of which is conditioned be the nature of criminology, the subject of its study, the range of objectives facing this field of knowledge. It should be noted that criminologists have not yet reached agreement on many key issues of the issue under consideration, which once

again proves that criminology is a complex and controversial object in its empirical existence that is not subject to a simple generalisation [1].

Therefore, the state of science of criminology, the degree of formation of its general theory, the productivity of the implementation of tasks and functions necessities to intensify research on the nature of this science, the specifics of its inter-scientific relations, the formation of a generalised scientific position on these problems.

Such legal scholars as R. S. Belkin, A. M. Vasiliev, A. I. Winberg, A. F. Volobuev, I. O. Vozhrin, M. V. Danshin, A. V. Dulov, E. P. Ishchenko, Z. I. Kirsanov, N. I. Klymenko, V. Ya. Koldin, O. N. Kolesnichenko, V. O. Konovalova, G. A. Matyusovsky, V. O. Obraztsov, A. R. Rosinskaya, M. V. Saltevsky, P. I. Tarasov-Rodionov, O. G. Filippov, B. M. Shaver, V. Yu. Shepit'ko, O. O. Eysman, O. O. Eksarkhopulo, M. P. Yablokov, I. M. Yakimov and others addressed the essence of the nature of criminology, the specifics of its inter-scientific connections in different years in their studies. At the same time, scientific views on this problematic constantly change, and criminology in different historical periods has been considered natural science, i.e. science of dual (dualistic) nature or jurisprudence. Recently there have been new views on the nature of criminology, for which it belongs to the hybrid sciences, and it is recognised as a science of integral or synthetic nature. By its nature criminology has multidisciplinary inter-scientific connections with a variety of branches of knowledge. At the same time, these links are not limited to purely legal orientation, but related to technical and natural sciences. In this regard, R. S. Belkin noted that the nature of criminology is not a complex of any constituent parts, not mechanical combination of data of various sciences, but deep synthesis, the alloy of knowledge within the subject and content of criminology [2].

2. MATERIALS AND METHODS

Outlined problematic is among researches aimed at solving complicated and topical scientific problems related to figuring out the nature of criminology, its inter-scientific connections, specifics of criminology knowledge, ways and means of scientific enquiry.

In order to achieve formulated purpose, the author used a set of general scientific and special methods of scientific cognition. Thus, using dialectical and historical methods of scientific learning allowed studying of evolution of scientific views on the nature of criminology, specifics of criminology knowledge, their place in the system of sciences and character of inter-science connections. Method of comparison created an opportunity to show the difference between the criteria and arguments presented by scientists in favour of attributing criminology to technical, natural sciences, law and hybrid sciences, that is, the sciences of synthetic (integral) nature. Such kind of research allowed to speak of an alloy of knowledge within the subject and the content of criminology, rather than about their adaptation, adaptation of criminology to own needs and tasks.

Using formal and logical method and systematic and structural method led to the conclusion that scientific connections of criminology with other branches of knowledge are of unilateral and bilateral character, which made it possible to distinguish and organise these branches of knowledge depending on the nature of the impact and the specifics of interpenetration, integration. Method of analysis provided generalisation of existing theoretical knowledge regarding the nature of criminology basing on the specifics of objects of its knowledge, which have a synthetic essence and study of which is impossible without the involvement of knowledge from various scientific fields.

3. RESULTS AND DISCUSSION

3.1 Scientific conceptions regarding the nature of criminology

Accumulation of scientific knowledge has led to the fact that criminology has outgrown its potential and gone beyond the bounds of "police science" or "science of crime investigation." As V. Yu. Shepit`ko emphasises, "means, methods and techniques of criminology are successfully used in other spheres (operational search, judicial, prosecutorial, expert, advocacy), or allow establishing facts laying beyond criminal law phenomena (use of criminology in civil, arbitration (economic) or administrative processes) "[3]. In this regard, V. G. Goncharenko and V. S. Kuzmichov considered criminology as an interdisciplinary legal applied science [4; 5].

Such scientists as O. Yu. Golovin, A. F. Volobuev, V. O. Konovalov, G. A. Matusovsky, A. S. Podsbyyakin, O G. Filippov, V. Yu. Shepit`ko, M. P. Yablokov and some others support the view that criminology is legal science of applied character or special legal discipline. In particular, M. P. Yablokov considers criminology as special legal science of applied nature [6], and O. G. Filippov stresses that the use of certain provisions of other sciences by criminology, including natural and technical ones, can in no way call into question its legal nature [7].

The supporters of the considered scientific concept in support of their position point to such arguments: a) criminology is legal science because its subject and objects of cognition are in the field of legal phenomena; b) criminology of legal science because its service function, tasks it solves are related to the legal sphere of activity of state bodies, to legal proceedings (investigation, trial); c) all recommendations developed by criminology for practice, are of strictly expressed legal nature, based on the law corresponding to its spirit and letter; they are designed in order to provide scientific assistance to investigators and to contribute to judicial authorities in finding the truth in a case; d) the legal nature of criminology manifests itself in the normative and legal function inherent in it as a branch of jurisprudence, under the influence of which many scientific recommendations of criminology are introduced in the content of legal norms; e) criminology is associated with many sciences – both social and technical – but these links are mostly individual and local, while the basis for criminology is law, jurisprudence, investigative and judicial practice [8]; e) historically, criminology was born within the limits of the legal and criminal-procedural science [9]; g) recommendations

of criminology are addressed to entities whose activities are solely legal, has legal regulation and nature; h) the future of criminology is only a legal application [1].

In view of the above, the special literature correctly drew attention to the fact that the essence of the legal nature of criminology is mainly due to the legal scope of its knowledge and the necessity to respect the law in the activities for the disclosure and investigation of criminal manifestations. At the same time, it is necessary to clearly delineate the scope of criminology knowledge and the source (nature) of its origin. In this regard, it is advisable to consider the nature of the science of criminology basing on the specifics of the objects of its knowledge. These objects have a synthetic essence, and their study is impossible without the involvement of knowledge from various scientific fields [10].

Analysing this state of affairs, R. S. Belkin mentioned that arguments of scientists in favour of the legal nature of criminology are controversial and do not give grounds for an unambiguous conclusion. In support of his opinion, he gives the following arguments:

1. Not the whole subject and not all objects of cognition of criminology are in the field of legal phenomena. For example, not all patterns of the mechanism of crime, criminal activity and especially occurrence of information about a crime and its members are in the field of legal phenomena. Some of them are patterns of any activity in general, patterns of the process of reflection, which are general in nature and do not depend on the scope of their actions, manifestations.

2. Criminology cannot be regarded as a legal science only in view of the fact that its official function and tasks, which it solves, belong to the legal field of activity of state bodies and to legal processes.

3. Not all recommendations developed by criminology for practice are of legal character, based on law, correspond to its spirit and letter.

4. Is it possible to consider the connection of criminology with other, non-legal sciences, "individual and local", and law, legal science, law enforcement practice – its main "fertile ground"?

That is why, in the opinion of R. S. Belkin, it is necessary to speak of an alloy of knowledge within the subject and the content of criminology, rather than about adaptation of data of other sciences by criminology, that is integral nature of criminology [9].

This view of R. S. Belkin was supported by T. V. Averyanova, O. Kh. Volynsky, Yu. G. Korukhov, V. P. Lavrov, O. R. Rosinskaya, who emphasised that it is impossible to distinguish in criminology purely legal and natural science or technical sections, knowledge complexes as some fixed structures. It is the alloy of knowledge but not totality of sciences; it is the science of the synthetic nature but not complex (since complexing implies combining of certain knowledge, not merging). Possibilities of criminology in solving legal problems directly depend on its ability to accumulate achievements of other sciences and provide their use for the disclosure and investigation of crimes [11; 12; 13].

Change of scientific paradigm regarding the nature of criminology has been perceived ambiguously by criminologists. Thus, in the opinion of O.Yu.Golovin, non-legal nature of criminology largely changes the perception of its system, and therefore such views of scientists cause serious objections [14]. O.O. Eksarkhopulo is convinced that the synthetic nature of criminology knowledge should not be considered as a ground for changing the place of criminology in the system of sciences. It must still be classified as the legal science [15].

Consequently, at the present time, two basic scientific concepts concerning the essence of the nature of criminology coexist: 1) the well-established, traditional, in which criminology is a special legal science; 2) innovative, which regards criminology as a science of synthetic (integral) character that "fully corresponds to the current trends in the transition from disciplinary research methods to problem-oriented, the use of ideas and methods of some sciences by others, the formation of new branches of knowledge, the creation of a universal scientific picture "[16].

3.2 Specifics of inter-scientific connections of criminology with other branches of knowledge

The multidimensional character of criminology, the diversity of its inter-scientific relations, the specifics of their implementation allows concluding that the scientific connections of criminology with other branches of knowledge are of two varieties: (1) unilateral is when criminological research uses data of other branches of knowledge without retroactive effect on the development of the latter criminology, that is, it refers only to the relationship of application; (2) bilateral is when data of other sciences find their transformation not only in criminological research, but also achievement of criminology has a reverse effect on these sciences, that is, it refers to the interpenetration, integration of scientific knowledge.

The first variety include the inter-scientific connections of criminology with philosophy, logic, ethics, psychology, sociology, science of management, prognostication, computer science, as well as such natural and technical sciences as physics, chemistry, biology, physiology, anthropology and others. As the special literature noted, philosophical categories contribute to understanding of the place and role of the scientific fact in the process of knowing the truth, they reflect the new, unknown to science connections and relations between the phenomena that science studies. Without addressing philosophical categories, it is impossible to build such criminological theories as forensic identification, diagnostics, causality and others [9]. In particular, the theory of forensic identification is based on two fundamental notions – equation and similarity, the mechanism of trace formation – on a feature and property, the formation of the expert's conclusion – on the probability and reliability. In this case, criminology can serve for philosophy only as a practical application, illustration of its theoretical developments.

Criminology uses also methods of formal logic in its researches [17] – analysis and synthesis, deduction and induction, analogy, generalisation, modelling, abstraction and

others, in order to form recommendations concerning investigative, court, expert and operative and search activity on building and testing versions, reconstruction of a situation and circumstances of an event. In addition, technical means, tactical techniques and methodological recommendation developed within criminology should meet criteria of ethic, i.e. to be moral [18;19].

The special field of relations of criminology is psychology – general and forensic. Data of this branch of knowledge is actively used in development of tactical and forensic techniques and recommendations. Some of them are the basis of formed criminological doctrines (theories), for example, doctrine on versions [20], the method of committing a crime and the corresponding to it skills [21]. V.Yu. Shepit`ko systemised tactical techniques on the basis of application of certain psychological criteria [22]. Psychological positions are also basis to form a tactic of conduct of certain investigative (search) actions, solving mental tasks faced by an investigator, a judge, an expert, a staff member of the operational units, and the establishment of psychological contact between participants in criminal proceedings.

Criminology uses sociological methods mostly to collect and process empirical data. Among the methods for collecting primary information, widespread methods are: the generalisation of materials of criminal cases (criminal proceedings), interviewing practitioners (written (questionnaires) and oral (interviewing), content analysis (text research). To establish statistical connections between objects that is researched correlation analysis is used. It is about the establishment of correlations between the elements of forensic characteristics of certain types of criminal offences and the construction on this basis of typical versions, serving as appropriate benchmark for investigators in the implementation of a specific criminal proceeding [23].

Criminology is closely tied to science of management, the provisions of which are implemented in the formulation of recommendations for the organisation of investigations of criminal acts in general and the scientific organisation of the work of the investigator [24]. In particular, in modern conditions, it is impossible to organise an investigation qualitatively and effectively, especially an investigation of multi-episode criminal procedures, without the use of managerial principles and approaches to solving these problems. In addition, the scientific organisation of work of an investigator is a key to the success of pre-trial investigation, saving time and procedural resources, especially during the period of adaptation of investigators to the substantially changed domestic criminal procedural doctrine.

Prognostics and informatics are relatively new fields of inter-scientific relations of criminology. Prognostics is the methodological foundation for the formation of criminological theory of forecasting, is considered as the basic, maternal science for the implementation of branch forecasting in this area of knowledge. Principles and methods of prognostics is determinative to forecast the development of science of criminology and its research objects in the future [25]. Criminology does not stand aside from the process of informatisation and application of the latest information technologies in its

research, which are either specially designed or adapted to the needs and tasks of criminology. For example, in order to ensure the exchange of information between the registration arrays of various types of accounting through the use of computer technology, development of effective information retrieval, information and reference, information modelling and information and consulting systems [26-29].

Close relationships with natural and technical sciences are inherent in criminology. And this is no accident, because one of the functions of criminology is transformation, creative processing and adaptation of the achievements of these branches of knowledge in order to create new scientific product. Thus, basing on fundamental researches of physics, chemistry, microbiology, and mechanics, the such approaches of criminology as optical, ultraviolet, infrared, luminescent, electron, X-ray, atomic microscopy operate, such as emission, spectral, laser, chromatographic, titrimetric analysis, etc. are used. According to the figurative statement of R. S. Belkin, this is a real manifestation of the "expansion" of natural and technical sciences in judicial proceedings [31]. And the main means of ensuring the implementation of this expansion, the direct channel of penetration of information from these areas of knowledge to criminal proceedings is criminology.

Integrative connections of criminology are manifested primarily with the sciences of the criminal legal cycle – criminal law, criminal process, criminology, the theory of operative and investigative activities, as well as such special branches of knowledge as forensic medicine, forensic psychiatry, forensic statistics, expert analysis. The sciences of the criminal legal cycle share the dame research object that is criminal acts. However, each one of them researches this object from own perspective, that is, has own subject of study, and it is known that the subject and object of research are different concepts and cannot be equated. The philosophical literature notes that several subjects may correspond to the same object, since the nature of the research subject depends not only on what object it reflects, but also on why this object was formed, for solving which problem. The subject can be said to be a special aspect of a real object [32].

The above provisions determine the nature of inter-scientific relations between the studied branches of knowledge. So, for criminology, the concept of crime, the features of its composition, developed in criminal law, is axiomatic. Principles of criminal law classification of crimes serve as a methodological basis for the construction of a forensic classification of them. In identifying the grounds for delimiting the criminal legal and forensic classification of crimes, it should be taken into account that the integration of the sciences of the criminal cycle affects the corresponding unity of their conceptual apparatus, theoretical concepts, problems and ways of their solution. In this regard, criminology organically absorbed a certain amount of knowledge of criminal law nature, which, of course, was useful for its theoretical and applied developments. At the same time, solving specific problems, which are faced by criminology, requires the development of a purely criminological classification of crimes. In addition, criminology on the basis of the study of forensic practice draws the attention

of lawyers to new ways and means of criminal activity, which are appropriate to determine as qualifying signs, and in some cases, criminologists even point to completely new manifestations of criminal activity that have not yet found their legislative settlement. (for example, raiding). That is why criminology is called the doctrine of the realities of criminal law [33].

The mutual task of criminalistics and criminology is the development of means of counteracting a criminal offence. The difference is in the scale of this activity. If criminology determines the state, dynamics, forms and causes of crime and measures for its prevention, then criminology develops technical means of prevention, as well as recommendations to the investigator in relation to the prevention of specific types of criminal manifestations. At the same time, it is worth mentioning that intensity of connections between criminology and criminalistics in this aspect recently has begun decreasing in connection with the exclusion of the functional duties of the investigator, prosecutor, judge for the implementation of preventive measures from the current criminal procedural law. If the CPC of 1960 required the pre-trial investigation and trial to establish the causes and conditions that contributed to the commission of the crime (Article 23 of the 1960 CPC) and to make a corresponding submission on their elimination based on these data (Article 231 of the 1960 CPC), then, according to the current CPC, such obligations to the participants in criminal proceedings are not foreseen at all. For some reason, the legislator referred them to the category of secondary and forgot to predict not only in the subject of proof (Article 91 of the CPC), but also in a separate article, which in our opinion is erroneous and needs its normalisation.

However, the current procedural legislation, on the contrary, contributes to implementation of inter-scientific connections of criminology with the theory of operative and search activity implying the procedure of covert investigative actions (Chapter 21 of the CPC). This expands the sphere of application of tactical and criminological techniques and recommendations and disseminates them to secret investigative (search) actions. The development of such methods and recommendations should take place taking into account the provisions of the theory of operational and investigative activities.

Traditionally, the tightest inter-scientific connection of criminology is manifested with criminal procedural law, because criminology is considered to be the praxeology of the criminal process. "The criminal process, emphasises Y.P. Ishchenko, offers normative models, sets certain limits, but does not reveal how this should be done. The process defines the most general form, certain abstractions. While criminology fills them with the necessary content" [34]. In this case, the technical means, tactical techniques and methodical recommendations developed by criminology must comply with the rules of the current Code of Criminal Procedure. In turn, scientific criminological concepts and practical recommendations contribute not only to optimising the procedure of pre-trial investigation and judicial proceedings, but also to improve criminal proce-

dural law. On the contrary, gaps in the legislation, the unconstitutionality of certain provisions, the presence of contradictions negatively affect the development of the necessary criminological means, techniques and recommendations.

Unfortunately, it is necessary to state that the current Criminal Procedure Code of Ukraine is not devoid of certain disadvantages, controversial provisions that do not facilitate the implementation of inter-scientific relations of the criminal process with criminology.

CONCLUSIONS

For today, there are legal and integral paradigms concerning the nature of criminology. As it is seen, the coexistence of these paradigms is to a certain extent forced; and it is explained, on the one hand, by a purely pragmatic motivation to attribute criminology to the legal sciences, but on the other hand, by that now there are well-known division of sciences into the natural, technical and humanitarian, but there is no such a kind of science as synthetic science (integral) character. But this state of affairs, in our opinion, is temporary and in the future, in the conditions of successful formation of the class of integral sciences, it will find its solution in favour of the latter. In the work it is established that psychology is a special field of criminology connections. Because it allows developing tactical and criminological techniques and recommendations. Data of these sciences contributes to development of criminological technical means, tactical techniques and methods of investigation of a certain types of a crime related to the assignment of cause of death, time of death, the severity of bodily injuries, the presence of mental illnesses, which prevent a person from correctly understanding the significance of his/her actions, managing them and predicting their consequences (medical element of insanity), significant deviations in the healthy psyche, intellectual age of a person, the presence of a state of a physiological affection or its simulation, and solving of many other issues of great importance to establish the truth. At the same time, criminology not only uses data of these sciences, but also helps to determine focuses of relevant forensic, forensic psychiatric and forensic psychological research. It has been established that criminology has close relations with the science of management and methods of formal logic. Since the scientific organisation of a work of an investigator is a guarantee of the success of the pre-trial investigation.

Criminology is also connected with such legal sciences as civil and civil procedural law, administrative and administrative procedural law, criminal executive law, etc. Criminology has already gone beyond the cycle of criminal science. Recommendations of criminology are essential not only for the investigation of crimes. This also concerns the possibility of using special knowledge in a civil or administrative process, conducting various court actions, full fixation of court proceedings by technical means, etc.

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ПРАВА ТА СВОБОДИ ОСОБИ ТА ГРОМАДЯНИНА В КОНСТИТУЦІЯХ ФРАНКОМОВНИХ ДЕРЖАВ АФРИКИ

Анотація. *Конституційні права та свободи є фундаментальною основою існування та розвитку народу, а тому держава зобов'язана створювати ефективні організаційно-правові механізми для їх реалізації. У статті проведено порівняльний аналіз конституцій франкомовних держав африканського континенту, які були введені в дію відразу ж після отримання ними незалежності у 1950-1960-ті роки, та оновлених Основних законів наприкінці XX – початку XXI століть. Авторами було встановлено, що перші конституції у викладі прав і свобод осіб та громадян обмежувались, в основному, найважливішими міжнародними деклараціями про них та розділами про суверенітет держави. Їх зміст орієнтувався у першу чергу на визначення організації державного механізму, його найважливіших ланок та стрижневі поняття держави й суверенітету, що обумовлювалось безпосереднім звільненням від колоніальної залежності, поспішністю у державотворенні й відсутності відповідного досвіду. Нові ж Основні закони без будь-якого винятку вирішують питання щодо прав і свобод людини у багатоаспектному обсязі. Вони забезпечують більшу роль держави в економічній сфері, визнають пріоритет людини у її взаємовідносинах з державою, містять широкий перелік прав і свобод осіб і громадян, розподіляють їх на громадянські, політичні, соціально-економічні, культурні, встановлюють гарантії їх реалізації та механізми захисту, регулюють відносини між суспільством та державою, не допускають зрощення державних і партійних інститутів, узурпації будь-якою політичною партією державної влади, уводять положення про соціальну державу, про зовнішньополітичну діяльність держави та про співвідношення національного і міжнародного права. Такі зміни обумовлювались нагальними потребами вирішення гострих проблем внутрішньополітичного характеру та впливами процесу глобалізації. Вони свідчать про значний розвиток конституцій африканських франкомовних держав у напрямку до визначальних правових цінностей сучасності.*

Ключові слова: франкомовні держави, конституції, африканський континент, права людини і громадянина, свободи людини і громадянина.

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RIGHTS AND FREEDOMS OF PERSONS AND CITIZENS IN CONSTITUTIONS OF FRENCH-SPEAKING COUNTRIES OF AFRICA

Abstract. *Constitutional rights and freedoms are fundament of people's existence and development, that is why a state is obliged to create efficient organisational and law-based mechanisms*

to their implementation. The article provides a comparative analysis of the constitutions of the French-speaking states of the African continent, which were put into effect immediately after states had gained independence in 1950-1960-s, and updated Major Laws in the late XX – early XXI centuries. The authors have come to the conclusion that the first constitutions in the presentation of the rights and freedoms of individuals and citizens were limited, mainly, to the most important international declarations about them and sections on the sovereignty of the state. Their content was focused primarily on the definition of the organisation of the state mechanism, its most important links and the core concepts of state and sovereignty, which was conditioned by the liberation from colonial oppression, the haste in state creation and lack of relevant experience. The new Basic Laws solve without exceptions issues regarding rights and freedoms of citizens and persons in many aspects. They provide a greater role for the state in the economic sphere, recognise the priority of the person in relations with the state, contain a wide list of rights and freedoms of individuals and citizens, divide them into civil, political, socio-economic, cultural, establish guarantees of their implementation and mechanisms of protection, regulate relations between society and the state, do not allow the merging of state and party institutions, usurpation by any political party of state power, introduce provisions on the social state, on foreign policy state and the ratio of national and international law. Such changes were conditioned by the urgent needs of solving the acute problems of the domestic political nature and the impact of the globalisation process. They demonstrate the significant development of the constitutions of the African French-speaking States towards the determinative law-based values of modern time.

Keywords: french-speaking states, constitutions, African continent, human and civil rights, human and civil freedoms

INTRODUCTION

Formation of structure and content of first African states constitutions has been influenced by numerous factors, in particular, English, Romano-Germanic, customary, religious law, national traditions, everyday arrangement, etc.; and the Basic Laws of the late XX – early XXI centuries have been influenced by changes that have affected political, social and cultural development, and the challenges of the globalization process. Today, there are 48 states on the continent, 15 constitutions of which are declared in the official English language, 12 in French, 9 in Arabic, 4 in Portuguese, 1 in Amharic, 8 in two languages (11 languages in the Republic of South Africa, most of which are English and Afrikaans). Therefore, the most numerous were the countries (31 out of 48) with the national European languages, namely, English, French and Portuguese, under the influence of which the general and Romano-Germanic law has formed on the African continent. The constitution of Arab-speaking states was formed under the influence of European secular and Arab religious law. The large number of states and the limited length of the article compel its authors to dwell only on the consideration of the rights and freedoms set forth in the constitutions of the French-speaking countries, which, in the opinion of V.M. Shapovalov, "are recognised at the modern stage of development of theory and practice of constitutionalism by fundamental entities of constitutional regulation" [1]. The relevance of the issue

is exactly in acuteness of this issue and lack of researching trends in its evolution. The novelty of the study is determination of features of presentation of the rights and freedoms of individuals and citizens of African French-speaking states by their first and updated constitutions, as well as the differences between them, the signs of which are the benchmarks for the development of modern practices of constitutionalism. The article is of value for comparatists, international lawyers, human rights activists, African country researchers, lecturers in comparative jurisprudence and constitutional law, students.

1. MATERIALS AND METHODS

With the objective to determine features of presentation of the rights and freedoms of individuals and citizens of African French-speaking states, the authors used different theoretical methods and techniques of research. First of all, first and updated constitutions of the states have been analysed on the basis of regulatory and structural and complex approaches. This has determined peculiar to them basic features of presentation of various human rights and freedoms, as well as commonality and differences. The main method was comparative analysis of the research object that is the core of achieving the purpose. It was his application that provided the establishment of common features and differences as inherent in each separate Basic Law, and each of their two groups.

The method of analysis has determined that the French Republic for the first time used the method of written constitutions, which not only determined functions of bodies of new state, but also proclaimed and constitutionally consolidated a list of fundamental rights. Since then, this method has been used almost by all states of the world. The list of international rights is much broader than in the constitutions of those states, which had been adopted long before the emergence of international human rights law. International law could not fail to take into account experience of socialistic countries or welfare states and, consequently, it proclaims also social and economic rights not known to American constitutionalism. Institute of Human Rights of Ukrainian constitutionalism, which on the one hand, could not but be influenced by socialist ideas, on the other hand, by international human rights standards, also includes a wide range of social and economic rights.

Systematic method, according to which requirements the issues of the study has been formulated, contributed to reviewing constitutions as homogenous units. Principles of retrospective analysis, history and determinism provided determination of the reasons for the unequal presentation of the rights and freedoms of citizens by the first and updated constitutions, and the striving for objectivity in the presentation of the material conditioned their impartial consideration. The principle of analogy turned out to be very important. Its essence is to determine among ten old and ten updated constitutions of the prime example of representation of the issues studied in the article and to add rele-

vant one to each one of them. It is this principle that ensures the optimal length of the article at the expense of nineteen sources and merging them into two groups based on the identification of their defining characteristics.

2. RESULTS AND DISCUSSION

2.1. Rights and freedoms of persons and citizens in post-colonial constitutions

In first Basic laws of French-speaking states, representations of rights and freedoms of persons and citizens differed markedly. Only three of ten contained individual sections devoted to this issue, in addition two – Guinean and Togo – in the text "On fundamental rights and freedoms of citizens", "On Civil Liberties and Human Personality", and one – Congo (Léopoldville, since 1966 – Kinshasa) – in the form of an annex – "Basic Law on Civil Liberties" [2-4]. The Constitution of the Republic of Guinea gave the right to elect and to be elected to all citizens, without distinction in race, sex or religion for compliance with the statutory conditions, as well as to use freedom of speech, press, assembly, association, demonstrations, freedom of conscience within the framework of laws. It guaranteed habeas corpus, inviolability of the home, privacy of correspondence, equal rights of citizens to labour, rest, social security and education, freedom of trade unions and strikes. It provided the punishment for any act of racial discrimination or racist or regionalist propaganda, as well as asylum to foreigners in the event of persecution for political activities, as well as in the field of science and culture. Citizens undertook to defend their Motherland, adhere to the Constitution and other laws of the republic, pay taxes and fulfill their public duties [2].

The Basic Law of the Togolese Republic declared the human personality sacred, and the duty of the state was its defence and protection, all citizens were equal in rights, regardless of sex, origin, race, language, beliefs and convictions, it recognised and guaranteed the inviolability and integrity of rights man as an individual, as well as within the framework of public associations in which his personality manifests itself. Everyone had the right to free development of a personality provided that he or she respected the rights of others and complied with the public order and to apply the principles of habeas corpus [3]. Inviolability of the home, privacy of correspondence, telephone conversations, postal and telegraphic departures, freedom of movement, choice of place of residence, right of ownership, freedom of expression in oral and written form, subject to observance of laws, freedom of association, protection of marriage and family, freedom of conscience and religion. The state was obliged to assist parents in the upbringing of their children, protect young people from exploitation, and ensure the right to education [3]. The right to work and protection of the citizen from the restriction of his origin, religion or belief, the right to a fair remuneration for work, which ensures the dignity of a person and his family, was proclaimed. The responsibilities include the protection of the Motherland, the integrity of its territory, payment of taxes and participation in public expenditures [3].

The Basic Law of the Republic of the Congo (Léopoldville) was somewhat different from the previous provisions on the rights of citizens, both in their scope and in a noticeable detailing of the provisions. Thus, article 1 claimed that the law is the expression of the indisputable commitment of the people of the country to human rights and democracy. He is inspired by his primordial care of ensuring respect for the human personality regardless of race, colour, sex, language, religion, nationality, political or other beliefs, social origin, property status, birth or any other status. It seeks to determine the rights that certain individuals enjoy in Congo and to provide their enforcement or contribution to enforcement by authorities [4]. Apparently, such a paper arose because of the absence of the Preamble in the Congolese Constitution (Léopoldville), in contrast to the nine other major laws of the French-speaking states, which set out the stated principles.

All citizens of Congo were proclaimed free and equal in their dignity and rights [4]. Article 3 in paragraphs 1-4 of sub-paragraphs a-b taught the principles of habeas corpus [4]. Art. 4 saw the essence of the right to freedom in the fact that nobody can be held in slavery or bonded dependence, forced to work, with the exception of those in prison. Art. 5, five paragraphs and five subparagraphs in details, laid the terms of deprivation of liberty [4]. In the same way Art. 6, 7, and 8 explained the rights of a person in the case of a fair trial and prosecution against her [4]. Further inviolability of the home, the secret of correspondence, telephone and telegraph communications, the right to marry and to create a family of elderly citizens, freedom of thought, conscience, religion, protection from religious education, the right to education, inviolability of property, participation in peaceful gatherings and associations were guaranteed [4]. The state was obliged to strive to provide every citizen with the right to work, free choice of work, protection against unemployment, decent working conditions, able to provide a decent person the existence of the family. In cases of war or serious disorders that threaten the internal security of the state, the government and the provincial authorities were given the right to violate the provisions [4].

The last seven constitutions proclaimed the basic principles of the rights and freedoms of individuals and citizens in the Preamble and partly in other sections: the Ivory Coast, Dagomey, Congo (Brazzaville), Niger, Togo, Mali did in the Preamble and Chapters on State and Sovereignty [3; 5-9]; Gabon did in the Preamble and in the "Preliminary chapter" [10]; the Central African Republic did in the Preamble, the chapter "On the foundations of society" and the section "On state and sovereignty" [11]. Thus, the Preamble of the Constitution of the Ivory Coast Republic declared that its people, "claims its commitment to the principles of Democracy and Human Rights as defined by the Declaration of Human Rights and Citizenship in 1789, the Universal Declaration of Human Rights of 1948. It expresses his desire to cooperate in peace and friendship with all peoples who share his ideals of Justice, Freedom, Equality, Brotherhood and Solidarity between people" [5]. Chapter 1 "On State and Sovereignty" said, in particular, about the right to vote of all citizens, political rights, equality of all before the law

regardless of origin, race, gender, religion, membership in political parties [5]. Similar provisions were inherent in other Preambles and Chapters, although they differed somewhat in scope. "The content of the old constitutions emphasised the domestic legal scholar V.M. Shapoval, was oriented primarily on the definition of the state mechanism organisation and its most important links ... The concepts of state and sovereignty are core for the theory and practice of constitutionalism... the determinant and the inherent quality of the power in within the limits of its territory and its independence in relations with other states" [1]. According to his statements, preambles of many constitutions of countries that develop refer to international treaties and other acts of universal and regional character, in particular, Charters of the UN and the Organization of African Unity, the Universal Declaration of Human Rights, etc. That is why the provisions of the preamble are of normative character [1]. The researcher added that REFERENCES in Preamble of the Constitution of France to the Declaration of Human Rights of 1789, "looks like a peculiar compensation of absence in its structure of sections or even articles devoted to rights and freedoms", that affected Basic Laws of some French-speaking states of Tropical Africa [1].

2.2. Updated constitutions on rights and freedoms of persons and citizens

All new constitutions without exceptions contain preambles, chapters on rights and freedoms of persons and citizens and on state sovereignty. "In the process of state and legal development of countries of the world, as V.M. Shapovalov explains this phenomenon, there is the tendency to complicate the structure of Basic laws; this fact indirectly proves the expansion of the sphere of constitutional regulation" [1]. In this, the Basic Law of the Congo (Kinshasa) differs by the peculiar structure. The "rationale of the bill" opens it, which states that, since independence, on June 30, 1960, the Republic of the Congo was undergoing periodic political crises due to the failure of certain powers to recognise the legitimacy of the Constitution, and from 1996 to 2003 – a series of wars to achieve development opportunities countries. On December 17, 2002, in Pretoria, in the process of the Inter-Congolese Dialogue, the Global and Inclusive Agreement has been conducted, which implied the adoption of a new democratic Constitution [12]. It is worth mentioning that the dual representation of the section "On State and Sovereignty", which is not found in other basic laws of the French-speaking countries of Africa. In the first case, paragraph 1 "On State and Sovereignty" put forward the purpose of strengthening the disturbed by the continuous wars of national unity, on the one hand, and the creation of a centre for stimulation and development from below, on the other hand. The principle of pluralism is consolidated, its guaranteeing by the Constitution that sees the treason in the creation of a single party institution. Chapter 2 "On nationalities" guarantees support for the principle of exclusivity of Congolese nationality – citizenship, acquisition and loss of which are determined by the organic law [12]. Paragraph 2 "On human rights, fundamental freedoms, responsibilities of citizens and the state", affirms

commitment of the Democratic Republic of the Congo to human rights and fundamental freedoms as proclaimed by international legal documents to which it has acceded and which it incorporated into the text of the Constitution. In this part, in line with the requirements of the times, the Constitution provides a "solid innovation" in the form of "man-woman" [12]. Paragraph 3 "On the organisation and implementation of power" formulates "the main concerns and care" that should dominate in the organisation of these institutions, namely, ensuring the harmonious functioning of state institutions, conflict prevention, introduction of a rule of law, resistance to any attempt of dictatorial management, guaranteeing good governance, fight against injustice, and ensuring democratic alternation. Also, Methods are provided to achieve such a purpose. Paragraph 4 "On revision of the Constitution" emphasises the inability to review the above provisions [12].

Preamble follows all this, which states that "injustice and its consequences, lawlessness, regionalism, tribalism, clan system and old-boy network in their numerous manifestations is in the foundation of the general shift of values and the decline of the country" [12]. The decisiveness to maintain and strengthen independence and national unity, while respecting the diversity and the positive features of the people is reaffirmed. Again the affiliation and commitment to the Universal Declaration of Human Rights, the African Charter on Human and Peoples' Rights, the United Nations Convention on the rights of the child and the rights of women, international instruments for the protection of human rights, as well as respect for the mutual identity, the principles of the sovereignty and territorial integrity of each state is confirmed. Again the inalienable and integrated right of the people to organise and develop political, economic, social and cultural life in accordance with the national spirit is strengthened [12]. The repetition of the provision "On state and sovereignty", states the affiliation of people, its implementation in referendums by aggregate, equal and secret vote. The Republic of the Congo is called "law-based, independent, sovereign, unite, indivisible, social, democratic and secular state". The official language is French and national are Kikongo, Lingala, Swahili and Chimba, development of which the state provides without any discrimination as well as support and protect other languages of the country. Also, the principle of decentralisation and conferment of legal personality to territorial entities are emphasised [12].

Repeated text about rights and freedoms is divided into four chapters: Chapter 1. "On civil and political rights" (p.11-33); Chapter 2. "On economic, social and cultural rights" (p.34-49); Chapter 3. "On collective rights" (p.50-61); Chapter 4 "On civil obligations" (p.62-67) [12]. Civil and political rights are that all people of the country are born free and equal in rights and dignity provided that political rights can be used only by the Congolese, with the exception of cases established by law. All Congolese are equal before the law and have the right to equal defence. During education, public service or any other activities, any Congolese cannot be discriminated on the basis of religion, origin, family, social conditions, place of residence, opinions or political beliefs,

belonging to a certain race, ethnicity, religion or belief, to cultural or linguistic minorities. Government bodies in every way protect the rights of women [12].

A human is proclaimed sacred, protected by the state, has the right to live, physical security, free development subject to compliance with the law. Nobody can be subjected to cruel, inhuman degrading treatment, to be held in slavery, to be forced to labour. The principles of habeas corpus and the right to protection are guaranteed. Everyone has the right to freedom of thought and expression, conscience, religion, conviction, demonstrations and petitions, privacy and free movement [12].

Economic, social and cultural rights are sacredness of private property, the guarantee of private entrepreneurship, protection from unemployment, fair wages, freedom of association in an organization, entry into trade unions, the creation of a family, the protection of minors, the right to education, to cultural life, health care, food security, the protection of the elderly, decent housing, access to drinking water and electricity. The order of implementation of such rights is determined by the organic law [4]. Collective rights include providing and implementing peaceful and harmonious coexistence of all ethnic groups of the country, the unpolluted environment [12].

Civic duties cover the necessity to know laws, protect the Motherland, respect other Congolese, to preserve property, possessions and protect the interests of the state and other citizens [12]. In fact, the firs Basic law of Congo (Kinshasa) of 1960, at that time Congo (Léopoldville), also differs with its noticeable peculiarity of the structure. Firstly, he was not referred to as the Constitution, as in all the other French-speaking countries, but the "Basic Law on the Congo's structure"; secondly, it was part of the three acts that had provisions on the rights and freedoms of citizens, and, thirdly, the Law carried it beyond the text as a separate law-application entitled "Basic Law on Civil Liberties" [4; 13].

There are certain differences in other constitutions too. Foremost, they all set out, to a greater or lesser extent, the rights and freedoms in the preambles and sections on the state and sovereignty, as well as in sections devoted to this issue. Names of chapters are also different, in particular, "Fundamental freedoms, rights and obligations" in the Constitution of Guinea [14]; "Fundamental foundations of society" in the Basic Law of the Central African Republic [15]; "Fundamental Principles and Rights" – the Constitution of Gabon [16]; "Human dignity. Rights and Obligations Related to It" – the Constitution of Mali [17]; "On Rights and Duties" – the Constitution of Benin [18]; "Freedom, Rights and Duties" – the Constitution of Cote d'Ivoire [19]; "On the Rights and Duties of Man" – the Constitution of Niger [20]; "On Civil Rights, Freedoms and Duties" – the Constitution of Togo [21]. The constitutions are distinguished by the number of articles devoted to the rights and freedoms: Congo (Kinshasa) – 57 [12]; Togo – 41 [21]; Benin – 32 [18]; Niger – 25 [19]; Mali – 24 [17]; Guinea – 19 [14]; Central African Republic – 17 [15]; Cote d'Ivoire – 6 [21] and Gabon – 1 [16]. However, with greater diversity or noticeable conciseness, the constitutions of the French-speaking states declare fundamental rights and freedoms in combination with the most

important principles of international instruments with the peculiarities of national traditions and other influences.

CONCLUSION

Therefore, comparative analysis of texts of first constitutions of African French-speaking states makes it possible to state that representing in the presentation of the rights and freedoms of individuals and citizens, constitutions were limited, mainly, to the most important international declarations about them and sections on the sovereignty of the state. Their content was focused primarily on the definition of the organisation of the state mechanism, its most important links and the core concepts of state and sovereignty, which was conditioned by the direct liberation from colonial oppression, the revolutionary haste in legal registration of the newly acquired independence and the lack of necessary experience of state-building. Adopted in four-five decades new Basic Laws solve without exceptions issues regarding rights and freedoms of citizens and persons in many aspects, approaching to relevant standard of European constitutions. They ensure the big role of the state in economic sphere, recognise priority of a human in relations with the state, contain a big list of rights and freedoms of persons and citizens, divide them into civil, political, socio-economic, cultural, establish guarantees of their implementation and mechanisms of protection, regulate relations between society and the state. The updated constitutions do not allow the merging of state and party institutions, prevent the usurpation of any political party of state power, introduce provisions on the social state, the foreign policy activities of the state and the relationship of national and international law. Such changes demonstrate significant development of constitutions of African French-speaking states towards determinative law-based values of modern time. Such evolution has been conditioned for decades by the urgent needs of resolving the acute issues of the internal political nature, in particular, the cessation of civil wars, armed interethnic and interconfessional clashes, mass disturbances through the impoverishment of the population, the prevention of coups, dictatorial regimes with continuous military and extraordinary states, the avoidance of nepotism, corruption, etc., and on the other side, effective impacts of the globalisation process.

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ПРАВОВА ДОКТРИНА ДОТРИМАННЯ ТРУДОВИХ ПРАВ

Анотація. *Неодмінною умовою побудови оптимальної моделі правової та соціальної держави в Україні є створення ефективних механізмів реалізації та захисту трудових прав, які посідають центральне місце у системі прав особи. Але однією з основних проблем є створення та вдосконалення системи гарантій, які забезпечать реалізацію та захист громадянами права на працю. Тому основна мета роботи полягає у аналізі підходів до розуміння сутності правової доктрини щодо дотримання трудових прав. Для досягнення поставленої мети автором були використано формально-логічний, системний, порівняльно-порівняльні методи. Сфокусована увага на тому, що правова доктрина дотримання трудових прав працівників відображає систему методів оцінки стану забезпечення трудових прав через призму відповідності духу закону. Встановлено, що правову доктрину необхідно розглядати як систему ідей, наукових поглядів, теорій про право, які розроблюються юридичними науками. Порівняльно-правовий аналіз міжнародних трудових норм та законодавства України щодо основних трудових прав дозволив встановити, що законодавство України не повністю відповідає вимогам міжнародних трудових норм про основні трудові права, хоча в окремих випадках, зокрема, щодо захисту прав дітей та підлітків, містить навіть більш високі стандарти. Окреслено три значення розглядуваної доктрини. Під правовою доктриною дотримання трудових прав працівників розуміються: загальні наукові правові концепції забезпечення трудових прав працівників; правові концепції забезпечення трудових прав працівників, сформовані судами; точки зору вчених-трудовиків з приводу окремих питань, проблем механізму забезпечення трудових прав. Виявлено її консервативність, викладено вираження доктрини дотримання трудових прав в законодавстві. Окрема увага приділяється основним проблемам дотримання трудових прав. Однією з яких є укладання між роботодавцем та працівником цивільно-правового договору на виконання робіт та надання послуг, а не трудового договору.*

Ключові слова: доктрина в трудовому праві, дотримання трудових прав, охорона трудових прав, права працівників, трудові права.

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LEGAL DOCTRINE OF COMPLIANCE WITH LABOUR LAW

Abstract. *Indispensable condition to construct the optimal model of law-based and social state in Ukraine is creation of efficient mechanisms of implementation and protection of labour rights that are central in the system of rights of an individual. However, one of the main issues is cre-*

ation and improvement of guarantee system that ensure implementation and protection of labour rights. That is why the purpose of the study is to analyse approaches to understanding of the essence of the legal doctrine of observance of labour rights. In order to achieve the purpose, the author used formal and logical, systematic, comparative methods. The attention is focused on the fact that the legal doctrine of compliance with labour rights of employees reflects a system of methods for evaluation the state of ensuring labour rights through consistency with the spirit of the law. It has been established that the legal doctrine is needed to be considered as the system of ideas, scientific views, theories on law that are being developed by legal sciences. Comparative analysis of international labour norms and the legislation of Ukraine on main legal rights has led to the conclusion that Ukrainian legislation does not fully correspond to requirements of international labour norms on the main labour rights, though in certain cases, in particular, concerning protection of children's and adolescents, it has even higher standards. The author outlines three meanings of the doctrine. The legal doctrine of observance of employees' labour rights can be understood as: 1) general scientific legal concepts of ensuring labour rights; 2) legal concepts of ensuring labour rights formed by courts; 3) the views of legal scholars on certain issues of the mechanism of ensuring labour rights. The author reveals its conservatism, depicts the manifestation of the doctrine of observance of labour rights in legislation. Special attention is paid to the main problems of compliance with labour rights. One of them is conduction of a civil and legal treaty between an employee and an employer for works and services instead of an employment contract.

Keywords: doctrine in labour law, observance of labour rights, protection of labour rights, employees' rights, labour rights.

INTRODUCTION

Ensuring labour rights of workers of various segments of the economy is a strategic goal of any state. The main effective tool in this vector is the legal doctrine of compliance with labour rights of workers, which should penetrate the natural labour and legal fabric. It is impossible not to notice that the process of labour and legal reform in Ukraine is not completed due to subjective and objective factors. It is worth agreeing with the assertion that the draft Labour Code of Ukraine (hereinafter referred to as the draft LC of Ukraine) does not fully take into account the developments in the legal doctrine of compliance with workers' labour rights, and therefore rethinking is required, and in some cases a reassessment of certain approaches highlighted in the draft LC of Ukraine. Participating in various legal events (legislative, judicial, scientific) it is possible to come to the conclusion that the legislator, the courts, and scientists agree that the draft LC of Ukraine should not create the illusion of taking into account the doctrine of methods, measures for the protection of labour rights. Without appropriate consideration of the doctrine of compliance with labour rights, the draft Labour Code of Ukraine will look like a modern eclectic.

The doctrine of compliance with labour rights should not be isolated in the crystal tower of labour and legal science, because the effectiveness of labour law depends on science, labour legislation and judicial practice in their logical interaction [1-3]. Unfortunately, today we are witnessing a number of cases of lack of such interaction. Not

always achievements of scientific and judicial doctrine are being taken into account in the development and adoption of normative legal acts that adversely affects law enforcement [4-6].

As a result, the science of labour law and legislator continue to search for a balanced approach to the implementation of the doctrine of compliance with labour rights. That is why the outlined state of the existing block of legal problems and discussions about understanding the doctrine of compliance with labour rights give a powerful impetus to creation of new perspectives through the prism of scientific intelligence.

The purpose of this work is to analyse the essence of the doctrine of compliance with workers' labour rights and the main problems of compliance with labour rights.

1. MATERIALS AND METHODS

In the modern world, the problem of ensuring respect for and compliance with human rights is of general importance. Ensuring human rights and freedoms is not only an internal matter, but the goal of the whole world community, for which the doctrines, standards of human rights and freedoms are a global problem. Human rights and freedoms are the universal legal values for which the establishment of common international legal standards in the field of the protection of individual rights is characteristic.

For a detailed study of the subject, the author used a variety of general scientific and special methods of cognition, the choice of which is due to the peculiarities of the object, subject, purpose and objectives of the study. The basic labour rights of employees and their interconnections have been studied using the dialectical method. The application of the historical legal method allowed to analyse the evolution of labour rights, their legislative consolidation and to substantiate the need for further scientific research of this problem.

Formal and logical and systematic methods allowed to study the peculiarities of labour rights in the system of human rights. Analysis of labour legislation in different countries was conducted using a comparative method. It has been established that the signs of legal identity are inherent in labour rights, which have common features with other basic human rights. Labour law extends only to subjects of individual and collective labour relations. The implementation of labour rights depends on the level of economic development and is connected with the fulfillment of certain responsibilities in the field of social policy by the state. Some labour rights are formulated in the form of estimated basic provisions, such as the right to fair and favourable conditions of work, the right to a fair and satisfactory reward that ensures a decent life for a human and his/her family and additional social welfare if necessary.

2. RESULTS AND DISCUSSION

The legal doctrine of compliance with labour rights of workers reflects the system of methods for assessing the state of labour rights through the prism of the spirit of

the law. The legal doctrine of compliance with labour rights of workers can be considered in three dimensions. In the first sense, the legal doctrine of the compliance with workers' labour rights, is understood as the *general scientific legal concepts of ensuring the labour rights of workers*. They are formed by scientific schools of labour law. In Ukraine, there are Kiev, Kharkiv, Lviv, Odessa School of Labour Law. In Ukraine, as a rule, this does not stand out as a source of law, as it is considered within the framework of the methodological coordinates of the principles of labour law. For a long time, it was believed that the general concepts of ensuring labour rights of workers are inherent in not Anglo-Saxon, but only in the continental system of law. However, Van Erp refutes this approach, pointing out that in this given (general concept) doctrine as a source of law is characteristic to the legal systems of both types [7].

In the second sense, the legal doctrine of compliance with workers' labour rights is understood as the *legal concepts of ensuring the labour rights of employees formed by the courts*. In other case, courts use the so-called "rubber standards" as a basis, use the right to court and form one or another concept of ensuring labour rights. Otherwise, the court forms the concept of ensuring labour rights on the basis of imperative rules of law. Recently, Ukrainian labour legislation implements many imperfect, and sometimes imperfect imperative norms, which are not properly integrated into the regulatory canvas that leads to parallel regulation of the ensuring of labour rights, inconsistency with the content of the norms of various legal acts. For example, the legislator at the level of the three laws fixes various definitions of the term "worker" (Article 1 of the Law of Ukraine "On Labour Protection", Article 1 of the Law of Ukraine "On Trade Unions, their Rights and Guarantees of Activity", subsection 14.1.195, Art. 14 of the Tax Code of Ukraine), which is inadmissible from the point of view of legislative technique, because it complicates the application of law for not only to the participants of labour relations, but also for courts.

In both cases, the Supreme Court can establish the limits of a particular judicial concept of ensuring labour rights, which crystallises the constancy of the concept. Thus, courts block the mistakes of other bodies of state power, abuse of labour rights. In the third sense, the legal doctrine of employees' labour rights reflects the *views of scholars of labour on certain issues and problems of the mechanism for the provision of labour rights*. These points of view may be the basis for the judicial doctrine in this area.

The legal doctrine of the compliance with labour rights of workers is inextricably linked with the doctrine of preventive labour rights protection, the doctrine of self-defence of labour rights, the doctrine of good practices (when an agreement is in the field of labour, an employment contract is concluded with the use of a dependent position of an employee, abuse of trust of an employee), personal freedom of an employee. All of them are outlined by the only concept of protection of labour rights.

It is incorrect to assume that the doctrine of compliance with workers' labour rights cannot be found in labour law. Undoubtedly, this is facilitated by the work of scientists

and the general practice of the courts. However, it should be noted that a legislator, as a rule, restricts the scope of the application of doctrine in the law, taking into account the normative principles and labour and legal freedoms of labour law. At the level of law, the doctrine under consideration should be reflected in standards that are not in doubt both from the part of the scholars of labour law and from the court. That is, the normative provisions of the doctrine of observance of labour rights should be cut in one single key as a science of labour law and judicial practice, which has recently been rarely observed. A striking example of the imbalance of approaches is the Draft Labour Code of Ukraine, which does not take into account the scientific and judicial doctrine of the protection of labour rights (in particular, the system of ways to protect labour rights, the mechanism of protection of labour rights in case of non-fulfillment or improper performance of an outsourcing contract or outstaffing contract, etc.) is not reflected.

The legal doctrine of the compliance with labour rights of workers is endowed with a sign of mobility, because unlike the law, it is not limited by the state or the system of law of a certain type. There are cases of reception by the national law of states of legal doctrines of self-defence of labour rights, preventive protection of labour rights, industrial actions, etc.

At the same time, the legal doctrine of the compliance with workers' labour rights should be considered conservative. This state of affairs is primarily due to the fact that in the individual labour relations there is no equality of the parties to the employment contract. That is, an employee is always a "weaker" party of an employment contract. Moreover, the employer, as a rule, basing on economic factors, has an interest in abusing the law within the framework of an employment contract. The conservatism of the doctrine of compliance with labour rights manifests itself in the presence of more stringent restrictions on the freedom of the labour contract, the imperative rules governing the subjective labour relations. This approach allows us to adhere to high international standards in the field of labour.

The formation of a legal doctrine for the compliance with workers' labour rights is dictated by the need to ensure the proper implementation, protection of subjective labour rights of employees. This is due to the fact that labour rights of an employee are subject to the will of an employer and there is a tendency to unfair infringement of the rights in question. Also, labour relations, to a greater extent, are endowed with signs of risk to an employee's life and health. For example, in case of violation by an employer of norms of labour legislation on labour protection, etc.

It is worth noting that in the legal doctrine it is necessary to distinguish between two main approaches to the problem of compliance with workers' labour rights.

According to the first approach, the labour rights of workers are considered the basic principles of all labour legislation, they are defined as constitutional guarantees of labour rights, but as objects of protection are not allocated separately, as they are an integral (and at the same time important) element of a holistic mechanism for the pro-

vision of these rights. This position is followed by the overwhelming majority of modern Ukrainian scholars of labour (V. M. Andriyev, N. D. Hetmantsev, I. V. Lagutina, A. M. Yaroshenko, S. M. Prilipko, etc.).

According to the second approach, the labour rights of workers, by virtue of their special legal nature, are the object of protection and defence. First of all, scientists who are engaged in studying problems of compliance with constitutional rights and freedoms of a human and citizen within the limits of constitutional law are inclined to him. It is defended by V. O. Demidenko, T. O. Zavorotchenko, L. M. Lipachov, I. L. Litvinenko, O. V. Pushkin, S. Ye. Fedik, etc.).

Today, this awareness is partly taking place in labour law, that is confirmed by, in particular, theoretical developments, for example, developments of V. I. Shcherbyna concerning the allocation of general, based on the security norm of the Constitution of Ukraine, and the specific security legal relationships in labour law where the legal relationship include own object – relevant rights. The supporter of such an approach is also E. V. Krasnov, who analyses international standards and labour rights enshrined in the Constitution of Ukraine. As we see, the second doctrinal approach is currently underdeveloped, therefore, in determining the positions of scientists regarding the compliance with labour rights of workers, we will mainly deal with the views and observations of scientists who support the first concept; they introduce their own corrections, proposals and remarks taking into account the new doctrinal position in the labour law regarding the expediency of isolating the labour rights of workers as an independent object of guarded legal relations.

Innovations in the market economy have significantly limited individual freedom of a worker in terms of protecting rights and legitimate interests. An employee is not in a position to satisfy interest in joining dispute with an employer regarding the protection of employee's labour rights and legitimate interests guaranteed by the Constitution and sectoral legislation. The state authorities, in turn, without active actions of an employee, do not interfere in the process of their implementation. In connection with the above, from the point of view of N. D. Hetmantseva, it should be noted that under present conditions, virtually there is no force capable of providing effective protection of workers' labour rights [8].

In this sense, it would be appropriate to recall comments of V. S. Venediktov, who, while investigating the compliance with labour rights, stressed that the changes taking place in society and the economy, the emergence of various forms of entrepreneurial activity, the loss of state functions of a single employer, reducing the level of control on its part in the workplace have led to the fact that guarantees for hired workers have often turned into anti-guarantees that formally protect workers, but in reality significantly reduce their chances in the labour market. [9]. It should be noted that N. D. Hetmantseva also draws attention to the failure to comply with legal safeguards in the field of the protection of workers' rights and points out that new economic realities allow employers to strengthen their positions in social and labour relations, mainly by reduc-

ing the level of legal guarantees of employees. In today's conditions, it is very difficult to make employers comply with the rights of workers laid down in labour legislation. This is explained by the fact that in most cases it is difficult for an employee to find suitable employment, and therefore he is forced to do his utmost to maintain a work relationship with an employer who benefits from his position [8].

The low level of compliance with workers' labour rights is also due to the fact that using gaps in legislation employers try to level the boundary between subjective labour and civil legal relations. The above is manifested in that an employer and an employee conclude not of an employment contract but a civil-law contract for the performance of works or services. However, in reality, an individual, who has entered into such a civil law contract with the counterparty, carries out the organisational arrangements of the latter, adheres to the rules of his internal labour regulations. In other words, such an individual is in fact an employee of the counterparty, but due to the application of the civilised contract structure, it lacks legal and labour protection, the right to protection, and the preventive protection of labour rights. In this case, it is necessary to agree with the thesis of Professor D. Fadj, who noted that today the classical question of labour law on whether such a person is an employee was transformed into the question of whether a certain legal norm is applicable to a certain person [10]. Indeed, under the substitution of a labour contract with a civil law, it is needed to stimulate the transformation of labour legislation into the widening of the boundary of means of protection by providing such a person with an additional set of rights with signs of labour rights. In particular, in Canada, at the level of the judicial precedent, these individuals have the right to a longer notice of termination of contractual relations on the initiative of a legal entity (employer), not including the provisions of the civil law contract. [11] Under these circumstances, the Canadian labour and legal doctrine and jurisprudence suggest that account be taken of the criteria for distinguishing between labour and civil relations. Thus, D. Berner, J. Velje and S. Jobin, relying on precedents, suggest applying the criteria of economic reality, the intention of the parties, the personal performance of work [12].

B. A. Shelomov also points out this problem. He noted that the legal reform is intended to ensure the rule of law in all spheres of society's life. At the same time, the scientist stressed that recently the number of violations of labour and other social rights of citizens, cases of illegal dismissals has increased considerably, untimely payment of wages and the sending of employees to forced unpaid leave has taken place in large numbers, and in many commercial organisations, labour relations are not executed in accordance with the law order [13]. The statistics also demonstrate the similar problems. Thus, only in January-October of 2017, at the level of the State Labour Organisation in Ukraine, 1605 employees were found who were admitted to work without proper registration of labour relations [14]. A. Chernobay, studying the issue of illegal employment in Ukraine, emphasises that there is no precise indicator of the balance of labour resources in the state, which, of course, contributes to the violation of the norms of

legislation on the conclusion of labour contracts, the conclusion of civil law contracts instead of labour ones, or, in general, the lack of any contract between an employee and an employer. According to assessments of various sources, in particular, data of the Ministry of Social Policy of Ukraine, the World Bank, the Institute of Demography, now in many sectors from 2 to 4.7 million people are illegally employed that is 14 – 33% of officially employed. According to the World Bank, almost 5 million able-bodied Ukrainians work without official registration of labour relations. First of all, the researcher emphasises, it is about building industry, trade, restaurant business, catering establishments, transportation of passengers in minibuses and taxis, repair shops, agriculture. [15]

CONCLUSIONS

To conclude, the legal doctrine of compliance with labour rights of workers is possible to be considered in three senses: 1) as the general scientific legal concepts of ensuring the labour rights of workers; 2) as legal concepts of ensuring the labour rights of workers formed by the courts; 3) from the perspective of the views of scholars of labour on certain issues and problems of the mechanism for the provision of labour rights. Features of the mobility and conservativeness of the doctrine of compliance with labour rights are outlined. Taking into account the analysis of judicial practice and the fact that scholars have unanimously asserted that there are both latent and explicit legal problems in the implementation of the doctrine of compliance with labour rights, it must be stated that Ukraine faces an urgent need to reform the labour legislation in view of the Basic Law and international labour standards.

In today's conditions, there is the necessity to introduce at the level of the labour legislation the doctrine of preventive protection and defence of labour rights that is developed by scholars and national courts. The legislator taking into account the doctrine of compliance with workers' labour rights is called upon to fix the right to preventive protection and defence of labour rights; the main elements of the mechanism of preventive protection and defence of labour rights: the ways, measures of preventive protection and defence of labour rights.

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ІНФОРМАЦІЙНА ТЕОРІЯ ДОКАЗІВ ТА ПРОБЛЕМИ ВИКОРИСТАННЯ ЕЛЕКТРОННИХ ЗАСОБІВ ДОКАЗУВАННЯ У КРИМІНАЛЬНОМУ ПРОВАДЖЕННІ

Анотація. *В статті розглядаються актуальні для сучасної науки кримінального процесуального права та правозастосовчої практики питання використання в кримінальному провадженні цифрових доказів. Авторами підкреслюється, що розвиток цифрових технологій, електронних форм комунікації, мережі інтернет, транснаціональний та транскордонний характер злочинів, що вчиняються в сфері комп'ютерної інформації, специфічний характер утворення цифрових слідів, дають можливість констатувати значне розширення можливостей використання в доказуванні цифрових доказів, а також обумовлюють необхідність звернення до вирішення проблем доказування, що виникають в умовах цифровізації, в тому числі спираючись на надбання інформаційної теорії доказування, яка дозволить адаптувати доказову діяльність у кримінальному провадженні до будь-яких майбутніх інноваційних досягнень, науково-технічного прогресу та визначити місце цифрових доказів серед процесуальних джерел доказів. Під час дослідження виявлені чинники, що негативно позначаються на правозастосовчої практиці, призводять до визнання отриманих у кримінальному провадженні доказів недопустимими. Підкреслюється, що пізнавальний потенціал в аспекті розвитку кримінальної процесуальної науки має інформаційна теорія кримінальних процесуальних доказів. Спираючись на те, що цифрові технології засновані на методах кодування та передачі інформації за допомогою подвійного коду шифрування, який дозволяє не лише передавати інформацію, але і розпізнавати її після цього, автори роблять висновок, про доцільність використання більш широкого поняття «цифрова інформація» та «цифровий доказ» на відміну від поняття «електронна інформація» або «комп'ютерна інформація». З метою формування релевантних висновків, автори звертаються до законодавства зарубіжних країн. За результатами дослідження сформульовані висновки та запропоноване визначення поняття цифрового доказу та зроблено висновок про необхідність виокремлення цифрового доказу як самостійного процесуального джерела доказів.*

Ключові слова: докази у кримінальному провадженні; цифрова інформація; електронна інформація; електронний документ, інформаційні технології.

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INFORMATIONAL THEORY OF EVIDENCE AND THE PROBLEMS OF USING THE ELECTRONIC MEANS OF PROVING IN CRIMINAL PROCEDURE

Abstract. *Article deals with the topical for modern science of criminal procedural law and law enforcement practice question of use in criminal procedure digital evidence. Authors highlight that development of digital technologies, electronic forms of communication, Internet, transnational and transboundary nature of crimes, which are committed in the sphere of computer information, specific nature of creation of digital tracks, gives the opportunity to state the considerable broadening of the possibilities to use in proving digital evidences, and also cause the necessity of addressing to the solving the problems of proving, which appear in the conditions of digitalization, including the heritage of informational theory of proving, which gives the possibility to adapt the probative activity in criminal procedure to any future innovative discoveries, scientific and technical progress and define the place of the digital evidence among other procedural sources of evidence. During the research, it is found the factors, which influence negatively on the law enforcement practice, lead to recognition the evidence obtained in criminal proceeding as inadmissible. It is emphasized, that the cognitive potential in the aspect of development of the science of criminal procedure has the informational theory of criminal procedural proves. Relying on the fact that digital technologies are based on the methods of coding and transporting information using double code of encryption, which gives the possibility not only transport the information, but also recognize it after that, authors make the conclusion about suitability to use wider concept of "digital information" and "digital evidence" instead of concepts "electronic information" or "computer information". In order to formulate relevant conclusions, the authors refer to the legislation of foreign countries. The results of the study are formulated in the conclusions, where authors suggest definition of the concept of digital evidence and state the need to distinguish the digital evidence as an independent processual source of evidence.*

Key words: evidence in criminal procedure; digital information; electronic information; electronic document; informational technologies.

INTRODUCTION

The development of digital technologies, electronic communications, the Internet has caused significant impact on social life and legal rules. Computers, mobile phones,

artificial intelligence, the use of electronic money and cryptology have become commonplace for many of us. In the conditions of digital reality, the law as a whole and the criminal procedural law in particular gradually change. However, despite the updating of the criminal procedural law, it still does not meet the needs of the present. During proven activity in criminal proceedings, the latest technologies of fixing traces of a crime, and the identification of persons who committed it are increasingly being used, but not always received information is used as evidence in court or may be grounded in a court decision. Factors that negatively affect law enforcement practices, in our opinion, are of a systemic nature and are, first of all, due to the lack of proper legislative tools; and secondly, to the theory of proof that meets the needs of time, contains the concept of evidence and proving, according to which the procedural status of "digital information" becomes clear. In addition, legal terminology, which is contained in the law or which is used in the legal doctrine, has dialectical unity with the process of law enforcement. Meanwhile, it should be noted that there is no unity in the approaches to understanding such concepts as "computer evidence", "digital evidence", "digital information", "electronic document", "computer information", "electronic media" "a document made using computer technology", etc. All above mentioned obviously requires addressing the problem of evidence in a digitalisation environment, which will allow the adaptation of proving activity in criminal proceedings to any future innovation achievements and determination of the place of digital (electronic) evidences among procedural sources of evidence.

Problems of legal regulation of use of digital (electronic) information as evidence in various aspects were investigated in the works of O. S. Aleksandrov, V. D. Arseniev, M. S. Alekseyev, V. S. Balakshin, A. R. Belkin, J. P. Borulenkov, V. B. Vekhova, B. Ya. Gavrilova, V. P. Gmyrka, L. V. Golovko, V. Ya. Dorokhov, N. A. Zygury, Z. Z. Zinatullin, S. V. Zuev, A. Yu. Kalamayko, I. O. Krytska, O. S. Kuchin, V. O. Lazareva, P. A. Lupinskaya, O. P. Metelev, I. D. Naidis, P. S. Pastukhov, C. B. Rosinsky, M. S. Strogovich, D. M. Tsekhan, S. A. Sheifer, A. V. Shilah and others. The growing scientific interest in the above-mentioned problems should be noted as a positive point. At the same time, the scholars mainly concern only certain aspects, the doctrine of criminal procedural law is not studied comprehensively, in particular, at the dissertation level, in which the problems of the legal nature of electronic means of proving, their classification, epistemological and methodological basis of use in proving would be solved; proposals regarding effective legal regulation of the use of digital information would be formulated; the legal regulation of the use of digital technologies in the course of proving in the criminal process of foreign states would be analysed, etc.

Consequently, the purpose of the article is to develop scientifically grounded approaches to solving problems arising when using electronic means of proving in a criminal proceeding; their consideration through the prism of the information theory of evidence; definition of the ratio between the concepts of ""digital" and "electronic" evidence", "digital" and "electronic" information; development of features of digital

evidence; definition of its concept; establishment of the place of digital evidence in the system of procedural sources of evidence; study of foreign experience of legal regulation of use digital evidence in proving.

1. MATERIALS AND METHODS

In order to achieve the purpose of the article and to formulate substantiated conclusions, in the process of work a complex of general scientific and special methods of scientific research, which are traditional for legal science was used: dialectical, formal and logical, hermeneutical, generalisation and comparative and legal. The dialectical method, absorbing the entire system of categorical apparatus of dialectics and operating during the cognition with the principles of reflection, activity, comprehensiveness, ascension from the individual to the general, and on thecontrary from the general to the one, the interconnection of quantitative and qualitative characteristics, determinism, the unity of induction and deduction, analysis and synthesis, made it possible to study the problems arising from the use of digital evidence in criminal proceedings from the point of view of the integrity of this legal phenomenon and the interconnectedness of its element. Ascension thinking from specific to abstract, with the subsequent transition from abstract to specific, allowed establishing essential, typical and generalised features, characteristic for understanding the legal nature of digital evidence, to emphasise their individual and specific features. The formal and logic method became the basis to disclose and improve the notion of digital evidence, to compare it with other concepts used in legislation and doctrine. With the help of the hermeneutic method, the legal content of certain norms of the criminal procedural and civil procedural legislation was established, the fact that legal terminology does not correspond to the modern achievements of the technical sciences was revealed. Using the comparative legal method, the authors learned the legislative tendencies of foreign states. The method of generalisation made it possible to consistently integrate single facts into a single whole and formulate substantiated conclusions aimed at improving the normative regulation of the issues under investigation, and overcoming the problems that are encountered in enforcement practice. These methods were used in the interconnection, which contributed to the completeness of the research and the validity of the formulated scientific conclusions and proposals.

2. RESULTS AND DISCUSSION

2.1 Information theory of evidence as promising vector of scientific researches in terms of digitisation of the proving process

In the theory of procedural law of the end of 19th – early 20th the notion of "evidence" was defined as everything that filled the world with matter, all that may be perceived by us from the spiritual world [1]; or as totality of grounds to believe that there are

circumstances, which must be established in the present case [2]. Such an understanding of the notion of "evidence" was due to the time, corresponded to the development of the science of procedural criminal law, and therefore significantly differed from that existing in the domestic doctrine of the criminal process and legislation.

In the Soviet period, there was view of evidence as facts learned by a court during the administration of justice. Such a vector of understanding of evidence was developed by such scholars as A. Ya. Vyshinsky, M. O. Cheltsov, S. V. Poznyshev [3-5]. However, such an understanding of evidence was not devoid of deficiencies. Emphasising that the above definition of evidences leaves the question of the origin of the fact unclear, it as if appears before a subject of proving to be in the finished form, M. S. Strogovich proposed the "double" concept of the notion of evidence, the essence of which was that the notion of evidence unites: 1) a fact on the basis of which necessary circumstances of crime are established and 2) the source provided by law from which a subject of proving obtains the facts [6]. M. S. Strogovich understood sources of facts as types of evidence common to modern science of the criminal process: testimony, expert opinions, material evidence, protocols, reviews, other written documents, etc.

In the 60s of the last century, in conditions of rapid development of technological progress, the issue on informational nature of evidence became topical. V. Ya. Dorokhov was the first who mentioned this aspect of evidence; he can be considered the founder of the information theory of evidence. According to this theory, evidence is reviewed not as a fact, but as information about the fact that it is an information signal [7]. The information theory of V. Ya. Dorokhov is based on the theory of reflection, the main thesis of which is the postulate that the outside world objectively exists and can in principle be known. The author concluded that evidence is result of interaction of two material objects, each of which leaves own mark on others. Therefore, the mechanism of evidence formation is in system of "double reflection". First of all, objects of the surrounding world interact with each other, leaving trace-reflection on one another or in the consciousness of witnesses of interaction – this is the "primary reflection". Later, the traces left are revealed by a subject of evidence and are already reflected in his/her mind during the review of the place of the event, interrogating eyewitnesses, which is a "secondary reflection". Information, in the opinion of V. Ya. Dorokhov, being in its essence a reflection of past events, is of signal nature and cannot exist separately from matter: its existence is always conditioned by presence of information source and its receiver. The same evidence is the unity of information (information) and their source (material carrier) [8].

Consequently, within informational theory, evidence is information (data or message) that is transmitted through signal and is an encoded equivalent of an event, recorded by a carrier of information and expressed in the form of conditional physical symbols, which creates a certain ordered set [9]. Such understanding of evidence can be perceived by modern science, which has faced the necessity of the transformation of approaches to understanding evidences in criminal proceeding, that in its turn is

conditioned by significant changes in economy and society as a result of digitalisation and the forthcoming fourth industrial revolution [10].

2.2 The essence and features of electronic evidence, its place in the system of procedural sources of evidences

The Law of Ukraine of October 3, 2017, "On Amendments to the Commercial Procedural Code of Ukraine, the Civil Procedural Code of Ukraine, the Code of Administrative Justice of Ukraine and other legislative acts" introduced such a means of proof as an electronic evidence in the procedural codes [11]. The legislator uses unified approach to understanding of "electronic evidence" as information in electronic (digital) form that contains data about circumstances important for a case, in particular, electronic documents (including text documents, graphic images, plans, photographs, video and audio, etc.), websites (pages), text, multimedia and voice messages, metadata, databases, and other data in electronic form. The law provides that such data may be stored, in particular, on portable devices (memory cards, mobile phones, etc.), servers, back-up systems, and other places of data storage in electronic form (including the Internet).

At the same time, the legislator has neglected the need for such changes in the criminal procedural law, which has already been discussed among legal scholars and practitioners. On January 17, 2019, Verkhovna Rada of Ukraine adopted draft law № 9484 "On Amendments to the Criminal Procedure Code of Ukraine and the Criminal Code of Ukraine (regarding the improvement of the order of application of certain measures for the enforcement of criminal proceedings)." Despite the fact that the developers announce in the explanatory memorandum that the draft law provides for amendments to the CPC of Ukraine in terms of clarifying the special terminology in the field of information technologies, the text does not define the notion of electronic (digital) evidence or at least electronic (digital) information [12].

In our opinion, the absence of appropriate changes to the criminal procedural legislation can only be explained by the conservatism of the domestic legislator. Thus, law-enforcement practice is forced to adapt the current CPC to the needs of the present, and "electronic evidence" in criminal proceeding are considered material evidences or documents that not always corresponds to the nature of the latter (art. 98, 99 of the CPC) [13]. Such "adaptation" does not always find support in the courts, and the evidence obtained is deemed inadmissible. Thus, it is obvious that there is a need to improve the legal definition of the notion of evidence in criminal proceedings, taking into account the specifics of digital information, as well as the normative consolidation of the special regime for its use and verification. It also confirms the thesis that it is necessary to allocate electronic (digital) evidences as a separate procedural source of evidence and the inability to identify them with material evidences and documents.

It is known that terminology has the important place in doctrine and law-making. Each legal term has a legal sense and with the help of a legal notion reflects an essence

of a legal phenomenon or process. Therefore, it is no coincidence that terminology used in legislation and science is the subject of close attention and discussion. This is about equation or, on the contrary, separation of the concepts of "digital" and "electronic" evidence. Thus, M. O. Efremova defines "electronic information" as information (messages, data), presented in electronic and digital form, regardless of the means of their storage, processing and transmission [14]. A similar position is taken by V. M. Shchepetylnikov, who believes that the totality of social relations connected with the circulation of information cannot be exhausted by the use of the term "computer", since the computer is only one of the varieties of electronic computing technology. In this regard, the author prefers the use of the term "electronic information" [15].

The opposite position is taken by the American scientist Joseph Rotenberg, who argues that the notion of "digital information" is more appropriate because information theoretically can exist in non-electronic form, for example, with the use of optical and quantum technologies, and "electronic information" is not necessarily digital [16]. S. P. Kushnirenko also emphasises the expediency of using the term "digital information". According to his understanding, digital information is any information presented in the form of a sequence of digits available for input, processing, storage, transmission through technical devices [17].

Ukrainian legislator equates the notions of "digital" and "electronic" information and, consequently, there are "digital" and "electronic" evidence, in particular, in the norms of the Civil Code of Ukraine. Basing on the legislator's approach domestic scientists also equate these notions, using the terms "electronic" and "digital" evidence as synonyms [18].

In our opinion, such the position is more convincing according to which it is appropriate to use the broader notion of "digital information" and "digital evidence", since digital technologies are based on methods of encoding and transmitting information using a dual encryption code (0 and 1), which allows not only the transmission of information, but also it recognition after receipt. Electronic information (and computer information) is only a kind of digital information and correlates with the latter, respectively, as kind and class.

Taking into account requirements of time, modern scientists try to develop the definition of the notion of electronic evidence. In particular, A. I. Zozulin understands digital information as information that is encoded in a dual system of computation and is transmitted using any physical signals [19].

Also it is proposed to understand as digital evidence any information (messages, data) that is in electronic form on the basis of which a court, prosecutor, investigator basing on a certain established procedural order, determines the presence or absence of circumstances to be proven during the criminal proceedings, as well as other circumstances relevant to a criminal case [20].

On the basis of the formulated definition, the authors propose a number of features of electronic evidence, among which are the following: 1) they are represented in en-

coded form in one of the objective forms of information existence – electronic; 2) they are always mediated through technical material carrier beyond which their existence is impossible; 3) simultaneously several participants of the criminal proceedings may have access to them and acquaint with them; 4)evidence is quickly transformed into non-electronic forms and vice versa; for example, they can be printed on paper and scanned from a paper carrier; 5) there is a possibility to copy them on any type of electronic media and to send on any distance; 6) evidence is collected, investigated and used for the purpose of criminal proceedings only with the help of special scientific and technical means – means of storage, processing and transmission of computer information, information and telecommunication networks and terminal equipment [20].

In general, it is worth agreeing with the proposed features of digital evidence and emphisisng that, in our view, key one is the absence of material form because they cannot be felt due to the lack of material expression. Meanwhile, digital evidence can exist in intangible form on technical media. These features distinguish electronic evidence from written and material evidence. In addition, it should be added that digital information is more vulnerable to third-party intervention, it can be easily destroyed or changed. The process of creating and storing information is also specific; it makes it easy to change a carrier without losing content and, on the contrary, provides the ability to make changes to the content without leaving traces on a carrier. In addition, the transmission and copying of digital information is possible without removing a carrier using which this information was created.

2.3 Features of using digital information in foreign countries

To create updated domestic model of proving, which corresponds to modern level of achievements of science and technology, from the perspective of search the ways to solve similar problems, it is important to analyse foreign practices in order to learn from advanced countries. In addition, the transnational and transboundary nature of crimes in the field of computer information, the use of computers as tools for committing a crime, the specific nature of the creation of digital traces outside the jurisdiction of one particular state entails the development of intergovernmental cooperation and, possibly, the formation of a unified international application law information technology in criminal proceedings.

The use of digital evidence in the United States, which is considered a pioneer in computerisation, is governed by the Federal Criminal Procedure Code [21], the Federal Rules of Evidence [22], Manual on Searching and Seizing Computers and Obtaining Electronic Evidence in Criminal Investigations [23], the Federal Law "Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism" (so called "the USA Patriot Act") [24], the Foreign Intelligence Surveillance Act [25], as well as judicial precedents. In the United States there are also a number of rules, instructions, and techniques aimed at regulating the use of electronic evidence.

Unlike in the Ukrainian legislation, in the United States there is no legal definition of evidence. The norms of the federal rules of evidence also do not contain any mention of digital or electronic evidence, which is explained by the fact that this act was adopted in 1975, but the evaluative concepts and their functional interpretation allow the distribution of the provisions of the Rules to the current needs, as evidenced by the textbooks, practical comments and scientific articles. Also, the absence of exhaustive list of evidence in the procedural legislation of the USA gives such an opportunity [22].

In the doctrine, evidences are defined as information that is able to establish or refute a fact [26]. Article 401 of the Federal Rules of Evidence establishes a rather evaluative notion that evidence is appropriate if it can, in any form, make any fact which has an effect on the qualifications of an offence to be more likely or less probable than in the absence of this evidence [27]. In this, evidences are divided into three categories: 1) real or physical evidence that consists of tangible objects that can be seen and touched; 2) testimony of witnesses, which may be provided in court proceedings on the basis of personal observation or experience; 3) indirect evidence, based on additional information, observation of reality, which can confirm the conclusion, but does not prove it (so they are considered as indirect).

Definition of digital (electronic) evidences is also developed in the theory of American criminal proceeding. Digital (electronic) evidence is any evidentiary information stored and transmitted in digital form, which a party to a lawsuit may use in a court session [28]. The legislation does not provide list of procedural actions that are used to collect digital evidences.

Usage of digital evidence in the process of proving in the USA is regulated in details in Manual on Searching and Seizing Computers and Obtaining Electronic Evidence in Criminal Investigations (Chapter V). In the Manual, electronic documents as evidences are divided into non-hearsay and hearsay [23].

By the origin and content there are two main groups of computer evidences: 1) evidences as a result of activity of a person stored on an electronic carrier and containing information filled in by a user; 2) evidences created by a computer in accordance with in accordance with the program laid down (*computer-stored evidence, human generated computer evidence*);

Non-hearsay evidence includes those that generated by a computer without a human participation; such evidences are divided onto two categories: *computer-generated records* (records created by a computer) and *computer-stored records* (records that are stored in a computer) [29].

The result of human activity (personal letters, memos, accounting documents, etc.) are reviewed as *hearsay.*

In this, the Manual establishes a list of requirements for an electronic document as procedural evidence. Before accepting an electronic document as evidence, a process participant must prove its authenticity, which allows to establish the admissibility and

conclude that the authenticity is correct. This approach is due to the fact that evidences created by a human is more vulnerable to interference and changes than the evidence that is created directly by a computer. Consequently, the main thing in the American proof theory is the possibility of verifying the evidence that conditions its admissibility.

In France, according to Part 1 of Art. 427 of the CPC of France, the presence of crimes can be established using any type of evidences that allow a judge to make a decision based on his/her own conviction. Consequently, the CPC of France does not contain an exhaustive list of types of evidence. In addition, the CPC of France consolidates the freedom to collect evidences, any act of an investigating judge which he/she considers necessary to do, except in cases explicitly prohibited by law, may be admissible [30].

In the CPC of Germany, although direct digital information is not isolated as an independent source of evidence, based on the CPC, it can be concluded that such information can be collected during any procedural action: seizures, mailboxes, telephone conversations, searches, examination of documents, telecommunications control, computer search, possible criminals, etc. [31].

CONCLUSIONS

The development of digital technologies, electronic forms of communication, the Internet, the transnational and transboundary nature of crimes committed in the field of computer information, the use of computers as tools for committing a crime, the specific nature of the formation of digital traces, including beyond the jurisdiction of a particular state, make it possible to ascertain the significant expansion of the possibilities to use digital evidences in proving, as well as condition the necessity to address the problems of proving that arise in the conditions of digitalisation, including relying on the acquisition of the information theory of evidence, which will allow to adapt evidence in criminal proceedings to any future innovation achievements, scientific and technological progress and determine the place of digital evidence among procedural sources of evidence.

Factors that adversely affect law enforcement practice lead to the recognition of evidence obtained in criminal proceedings as inadmissible, they are of systemic nature and related to the lack of proper legislative tools. The theory of evidence, which meets the needs of the time, contains the concept of evidence and proving, according to which the procedural status of "digital evidence" becomes clear, as well as the lack of unified terminology and awareness of its legal content.

The scientific potential in the aspect of the development of criminal procedural science is the information theory of criminal procedural evidences, which, based on the information theory, explains the essence of judicial evidence as information signals coming from the objective reality in a mind of a subject of evidence and contributes to the formation of the corresponding cognitive images.

The essence of electronic evidence must be investigated through their peculiarities, inherent features that reflect the specifics and legal nature of electronic evidence, and using which they can be distinguished as an independent form of evidence.

Relying on the fact that digital technologies are based on the methods of encoding and transmitting information using dual encryption code, which allow not only transmitting of information but also recognizing it, there is the logical conclusion it is more expedient to use more wide term "digital information" and "digital evidence". Electronic information (and computer information) is only a kind of digital information and correlates with the latter, respectively, as kind and class.

It is necessary to understand as digital evidence any information (messages, data) that is in electronic form on the basis of which a court, prosecutor, investigator basing on a certain established procedural order, determines the presence or absence of circumstances and facts relevant to a criminal proceeding, an investigation of which can be conducted using special program and technical means.

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ОРГАНІЗАЦІЙНО-ПРАВОВІ ФОРМИ ДІЯЛЬНОСТІ ЮРИДИЧНИХ ОСІБ КОРПОРАТИВНОГО ТИПУ

Анотація. *Підприємницька діяльність в Україні почала формуватися в умовах відсутності попереднього досвіду її правового регулювання у зв'язку із тривалим соціалістичним періодом. Відносини між фізичними особами та організаціями, які об'єдналися в одну корпорацію потребують особливого регулювання, і одним із засобів, за допомогою якого стало можливим регулювання відносин щодо створення та діяльності корпорацій, є конструкція юридичної особи. Тому основна мета роботи полягає у виявленні особливостей організаційно-правової форми діяльності юридичних осіб корпоративного типу. Аналіз норм чинного законодавства, які містять термін «організаційно-правова форма», показує неоднозначність його застосування у контексті різних правових норм Загальновідомо, що до змісту корпоративних правовідносин включаються не лише корпоративні права, але й відповідні корпоративні обов'язки учасника товариства. Встановлено, що чинне цивільне законодавство України не надає нормативного визначення організаційно-правової форми юридичних осіб, не встановлює критеріїв її формування. На підставі ретроспективного аналізу нормативно-правових актів проаналізовано трансформацію законодавчого підходу до визначення правової природи корпоративних прав – від визнання за ними природи абсолютного речового права до визначення їх як симбіозу майнових і немайнових прав, зумовлених володінням часткою у статутному капіталі юридичної особи корпоративного типу. Виявлено, що господарським кодексом України закріплені основні форми в яких діють суб'єкти господарювання (підприємства колективної власності, господарські товариства, приватні підприємства, фермерське господарство, іноземне підприємство тощо). В роботі проведена класифікація організаційно-правових форм юридичних осіб, які групуються за відповідними критеріями. Але критерієм розмежування та класифікації певного кола організаційно-правових форм юридичних осіб виступає правовий режим майна юридичної особи створеної в той чи іншій організаційно-правовій формі.*

Ключові слова: корпоративні правовідносини, кооперація, самоорганізація моделей юридичних осіб, акціонерне товариство.

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LEGAL FORM OF ACTIVITY OF LEGAL ENTITIES OF CORPORATION TYPE

Abstract. *In Ukraine, entrepreneurship started forming in the absence of the previous experience of its legal regulation in connection with the long socialist period. The relationship between individuals and organisations that have merged in one corporation needs special regulation, and one of the means by which it became possible to regulate relations on the creation and operation of corporations, is the construction of a legal entity. Therefore, the main purpose of the work is to identify the legal form of the activities of legal entities of a corporate type. The analysis of the norms of the current legislation, which contain the term "legal form", shows the ambiguity of its application in the context of different legal norms It is well-known that the content of corporate legal relationships includes not only corporate rights, but also the corresponding corporate responsibilities of company's member. It is established that the current civil law of Ukraine does not provide normative definition of a legal form of legal entities, does not establish the criteria for its formation. On the basis of a retrospective analysis of normative legal acts, the transformation of the legal approach to the definition of the legal nature of corporate rights has been analysed – from the determination of the nature as the nature of absolute substantive law to the definition of it as a symbiosis of property and non-property rights caused by the ownership of a share in the authorised capital of a legal entity of a corporate type. It has been found out that the economic code of Ukraine fixed the main forms within which economic entities (collective-ownership enterprises, economic companies, private enterprises, farming, foreign enterprise, etc.) operated. The classification of legal forms of legal entities, which are grouped according to the relevant criteria, has been carried out. But the criterion for the delineation and classification of a certain range of legal forms of legal entities is the legal regime of property of a legal entity established in one or another legal form.*

Keywords: corporate legal relations, cooperation, self-organization of models of legal entities, joint-stock company.

INTRODUCTION

Legal entities as legal fiction in the absence of a physical form of its existence, acquires a different, abstract reflection of the ordering of its internal content. The combination of cumulative will and capital of a human being in the integral legal structure of a legal entity, with the separation of the legal interest of such a legal entity from the interest of individuals who created it, requires the formation of features, the implementation of which compensates the lack of the specific in the structure of a

legal entity. Traditionally, in the theory of civil law, such features are organisational unity, ringfenced assets, independent legal liability, participation in civilian turnover on own behalf [1].

At the same time, modern development of institution of legal entity shows that the classical formula of the characteristics of a legal entity requires meaningful improvement. The abstraction of the legal entity from the human substrate offset its importance in the apparent control of a person by its activities. Conditionality of consequences of activity of a legal entity on the behaviour of an individual who is behind her "veil" is beyond doubt. Property liability of a legal entity is not personalised in relation to it. An individual influencing the nature of the legal entity's activity, its decisions-making, and the consequences of them, also takes responsibility for such activity. Consequently, the liability of a legal entity is limited in nature, the threshold of which is determined by a size of its authorised capital or a size of contributions of its participants (founders) to ensure the activity of the legal entity. Exceeding the established threshold of a size of a harm done receives subsidy compensation at the expense of the participants (founders) of the legal entity.

Also, it is worth to mention that connection of a human with a legal entity is wider than just creation of a latter. Legal interest of participants of corporate legal relations with regard to a legal entity and its activities is maintained throughout the life of a legal entity. The implementation of such interest implies legal possibilities of protecting it in a jurisdictional or non-jurisdictional form. For example, an application to a court with a derivative action for the invalidation of an agreement entered into with a legal entity, the participant (founder) of which is the plaintiff.

In this case, the autonomy of participation of a legal entity in civilian turnover is offset by legal possibilities of corporate relations associated with it, participation of individuals to act in a procedural manner independently on behalf of a legal entity, but in their own interests. Thus, the autonomy of participation of a legal entity in civilian turnover is not absolute. Such autonomy is provided not only by functioning of bodies of a legal entity, but also by initiative of participants of corporate legal relations, who consider it advisable to achieve the effectiveness of corporate governance by a legal entity through committing independent legal actions in its favour.

The autonomy of a legal entity is completely offset if ownership of its corporate rights belongs to such entity as the state.

It is brightly fixed in the Law of Ukraine "On management of state-owned objects". According to the article 11 of this legislative act, a state-owned joint-stock company formed in the process of transformation of a state-owned enterprise, 100% of whose shares belongs to the state, has no right to give the property assigned to it free of charge to other legal entities or citizens, except in cases stipulated by law. To dispose of property belonging to capital assets, a state joint-stock company has the right only with the prior consent of a body that manages corporate rights of the a and only on a competitive basis, unless otherwise provided by law. A state-owned joint-stock company has the

right to dispose in another way of property belonging to capital assets only within the limits of authority and in the manner prescribed by law [2].

In addition, state-owned commercial enterprises and state-owned enterprises which, in accordance with Article 1 of the Law of Ukraine "On Scientific and Scientific and Technical Activity" are classified as scientific institutions, as well as scientific and technological complexes, which are based on state ownership, are required not less than 50% of net profit from its activities to direct to the initiation of scientific and scientific and technical activities, the financing of innovations and the expansion of its own material and technical base.

Consequently, the relations between a legal entity and its founder (participant), conditionality of its legal behaviour by his/her will is obvious.

1. MATERIAL AND METHODS

Theoretical methods of research have determined the features of legal form of activity of legal entities of corporative type. Finally, limitation of the autonomy of a legal entity as a subject of civil law is regulative requirements regarding dividend payments. Using method of legal comparison, it has been established that economy code, depending on means of foundation and formation of the statutory fund in Ukraine, divides enterprises into unitary and corporate ones. A unitary enterprise is created by one founder, who allocates the necessary property, forms a statutory fund in accordance with the law that is not divided into shares, approves a charter, distributes revenues, directly or through the manager appointed by a founder, manages the enterprise and forms its labour collective on the basis of labour hiring, solves the issue of reorganisation and liquidation of an enterprise. State, communal, enterprises based on a property of a citizen's association, a religious organisation or a private property of the founder are unitary. As it is seen, a corporate enterprise differs from the unitary by a number of founders. A corporate enterprise, unlike the unitary, is formed by two or more founders. But in some cases, a corporate enterprise can be formed by one person. Therefore, this criterion may not always be used to differentiate these concepts.

Using method of analysis, it has been established that economic companies, in the authorised capital of which are corporate rights of the state, by May 1 of the year following the reporting, make a decision on the deduction of not less than 30 % of net profit to pay dividends. Economic corporations, 50% and more of the shares (stakes) of which are in the authorised capital of economic partnerships, the state share of which is 100%, pay dividends directly to the State Budget of Ukraine in the period no later than July 1, of the year following the reporting year, in the amount of base norms of deduction of the share of profit directed on payment of dividends, but not less than 30 % , in proportion to the size of the state share (stake) in the authorised capital of economic partnerships, the shareholder of which is the state and owns they control a block of shares. At the same time, the number of dividends on the state share untimely paid

by an economic company in authorized capital of which there is the corporate rights of the state, and an economic company 50 and more percent of shares (stakes) of which are in the authorised capital of an economic company, in which share of the state is 100 % , the central executive body, which ensures the formation and implementation of state policy in the field of management of state-owned objects, is charged a penalty payable to the general fund of the States of the Ukrainian budget in calculating the double discount rate of the National Bank of Ukraine from the amount of the underpayment calculated for each day of delay of payment starting from the next day after the due date and on the day of payment inclusive.

2. RESULTS AND DISCUSSION

2.1 Features of legal form of a legal entity

In civil turnover a legal entity has own image. It exists in a certain legal form. Form is a way of organizing and a way of being of an object, process, phenomenon. It is the internal ordering of its content which is determined by functionality of a legal entity, the specifics of its substantive activity. Traditionally, in the theory of civil law, this phenomenon was called the legal form of a legal entity. This phenomenon means external form of organisation of activity of a legal entity in civil turnover. This form is a legal model of the organisations of the legal entity's activity that absorbs the essential features of the latter, which ensures its existence in the legal environment. Thus, a legal entity, depending on the purpose of its activities, the legal regime of its property, the forms of participation of participants (founders) in its activities, obtains the appropriate legal possibilities of functioning, which, in aggregate order, finds its consolidation in a separate identified form.

In this context O.R. Kibenko notes that legal parameters of legal forms of a legal entity include: the procedure for company establishment, legislative restrictions on the circle of participants; composition of constituent documents; the procedure for making changes to them; requirements of the legislation on capital (minimum size, order of formation, types of deposits, support of a size of own capital); legal regime of property (the possibility of allocating the share of a participant); legal status of a participant of a company (rights, duties, responsibility for obligations of a company); publicity of activities, order of reorganisation and liquidation, etc. [3].

It is needed to state that the current civil legislation of Ukraine does not provide normative definition of the legal form of legal entities, does not establish criteria of its formation. The development of the modern national legislation is characterised by individual normative and legal regulation in the field of relations under study.

Almost every type of a legal entity, which is mediated by one or another sphere of economic activity, is created in the legal form, which is established by a special act of the civil legislation of Ukraine.

Such regulation is resulted in the individual establishment of a certain legal form in relation to one or another type of legal entity by special regulatory acts of the legis-

lation of Ukraine. Identification by acts of their respective legal features.

Thus, the Law of Ukraine "On Banks and Banking" [4] stipulates that banks in Ukraine are created in the form of a joint-stock company or a cooperative bank. The Law of Ukraine "On Consumer Cooperation" [5] states that the consumer society as the primary link of consumer cooperation is the organisation of citizens who, on the basis of voluntary membership and mutual assistance at the place of residence or work, are united for joint management in order to improve their economic and social status.

In its turn, public associations are created as a public organisation or a public union, as described in Article 1 of the Law of Ukraine "On Civil Associations" [6]. The Law of Ukraine "On Trade Unions, Their Rights and Guarantees of Activity" refers to public associations such legal form of their activities as a trade union that means a voluntary non-profit organisation, uniting citizens associated with common interests by the nature of their professional (labour) activity (training) [7].

Its individual form is political party as a lawful voluntary association of citizens-supporters of a national program of social development that aims to promote the formation and expression of political will of citizens, participate in elections and other political events [8]. A charitable organisation can be established as a charitable company, a charitable institution or a charitable foundation [9].

The tradition of independent legal regulation of activities of certain types of legal entities, the establishment of their legal forms, is not new for a national legislation. The analysis of the legislation of foreign jurisdictions of certain European countries, in particular France and Germany, confidently allows to assert the independent legal regulation of the activities of non-commercial legal entities, certain types of business entities, in particular banks. There is no doubt that the legal regulation of activities of certain types of legal entities requires independent regulatory consolidation. Within the limits of a single codified act legal rules cannot be systemised, which in details define a separate sphere of legal regulation. In the process of codification, the foundations of legal regulation of an array of social relations are established, the methodological principles of branch formation are determined. It determines the contours of further streamlining of relations with other legal acts, norms of which may be of a complex nature, contain a public-legal order that is atypical for the corresponding act of codification. Consequently, autonomous legal certainty of legal forms of legal entities is not so much a question of methodological correctness, as the quality of legal technique of the legislator. It is worth to agree with the thought of O.I.Zozulyak that the approach of a legislator to differentiation of legal forms of legal entities is unclear, but it makes it possible to state that almost every law produces a new legal form, while the majority who claim to be independent are often allocated artificially, when there are in fact no clear civilist attributes that would influenced a particular feature or exclusivity of their position as subjects of civil law and the possibility of separation into an independent legal form. As an example, the author takes charitable organisations, political parties, trade unions, etc., which by their nature are public organisations. Or there is another

example: housing and building, housing, garage cooperatives, which by their legal nature are consumer societies but create an independent legal form [10].

In our opinion, it is worth noting that according to Article 83 of the Civil Code of Ukraine, legal entities are formed in the form of associations, institutions and in other forms established by law. A company is an organisation created by combining persons (participants) who have the right to participate in this partnership and can be created by one person.

In its turn, an institution is an organisation created by one or by several persons (founders) who do not take part in its management by combining (allocating) their property to achieve the goal determined by the founders at the expense of this property.

Companies engaged in entrepreneurial activity in order to obtain a profit and its subsequent distribution among participants (business partnerships) can be created only as economic partnerships (full partnership, limited partnership, limited liability company, joint-stock company) or production cooperatives.

Non-entrepreneurial companies are companies that do not intend to make a profit for its subsequent distribution among the participants. Features of a legal status of certain types of non-business companies are established by law.

The conducted analysis demonstrates that non-business company is in its essence public association that act in legal form of public organisation, public association, etc. [6]. However, the Civil Code of Ukraine does not use this conceptual apparatus. For today, a significant part of the legal forms of legal entities that define and ensure activity of entities is not correlated with the main codified act of the civil law of Ukraine. The unclear moment in the Civil Code of Ukraine is the ratio in of such categories as a company that is considered as the legal form of a legal entity and business partnerships that can be created only as economic partnerships (full partnership, limited partnership, limited liability company, joint-stock company) or production cooperatives, as well as non-entrepreneurial societies with cooperatives, except for production associations, citizens' associations with public associations, etc.).

Another unclear and even mistaken point is classification of legal form given in the Commercial Code of Ukraine.

Firstly, the Commercial Code of Ukraine does not provide legal forms for the implementation of non-commercial economic activities. Article 53 of the Code states that non-commercial activities may be carried out by economic entities on the basis of ownership or right of operational management in organisational forms determined by an owner or an appropriate management body or local self-government body taking into account the requirements provided for by this Code and other laws, but there is no corresponding list.

Secondly, these acts of the legislation of Ukraine uses the notion of legal form, associations of enterprises, a legal status of which is not defined either by the Civil Code of Ukraine or by other acts of civil legislation of Ukraine. Even in the Commercial Code of Ukraine, there are only declarative provisions, which informatively reveal the defini-

tion of this legal phenomenon, without indicating peculiarities of the functioning of its mechanism.

Finally, the Commerciale Code of Ukraine consolidates the main forms of operation of economic entities (collective-ownership enterprises, economic partnerships, private enterprises, farmers, foreign companies, etc.). The systematic analysis of the above (the provisions of Section 2 of the Commercial Code of Ukraine) allows us to conclude that there is no logic for constructing such a system of legal forms. Their multiplicity and controversy within the same species exclude the possibility of forming certain standards for their legal verification and the creation of structural construction of legal forms.

Consequently, the legal certainty of legal forms of legal entities is required to be streamlined and classified according to the established criteria in the codified act of the civil legislation of Ukraine.

2.2 Pecularaties of factors necessary to systemise the legal forms

The important factor of the process of systematisation of legal forms of legal entities is features that in total influence their classification.

Firstly, such feature through which the choice of a legal form and the respective classification of legal entities takes place, is a form of capital attraction, which corresponds to the sign of a legal entity as the separation of its property.

Secondly, the responsibility of a legal entity as a reflection of a corresponding feature of a legal entity, because it permits establishment of separate forms of organisation and activities of legal entities with taking into account this criterion.

Thirdly, the purpose of activity of a legal entity is specified through a form of its activity within which the purpose of its creation is implemented.

Fourthly, the corporate nature of an organisation of relations "participant (founder) / legal entity" that provides the opportunity to separate forms of activity of legal entities by a type.

Finally, the procedure of managing a legal entity is a feature that allows the classification of legal entities within the appropriate legal form.

In addition, the necessity of certainty of legal forms puts on the agenda the issues of the exhaustion of types of legal forms in the acts of civil legislation of Ukraine or in the open list. The most widespread is the view of scientists about the closed (exhaustive) list of legal forms of legal entities. O. I. Zozulyak paid considerable attention to this issue. Studying the theoretical aspects of non-entrepreneurial legal entities, the author analyses the scientific developments of both domestic scientists and scientists of Russia and Belarus, who share the opinion regarding the expediency of an exhaustive list of legal forms. O. I. Zozulyak writes that, in particular, in Russian civil law, according to E.O. Sukhanov, there is no content in the emergence of new legal forms. According to S. Ananyach and T. Soifer, the principle of unity and differentiation in the civil law of Belarus, requires clearly formulating the legal forms of legal entities, reflecting all the

necessary signs in the relevant norms [10]. These considerations concerning the closed list of legal forms are supported by O. I. Zozulyak, considering that such characteristic is an essential component of successful modernisation of legislation in this sphere.

The author has a different point of view on this issue. It is based on the need for an extended interpretation of Article 83 of the Civil Code of Ukraine.

Formally, such a position corresponds to the normative composition of the construction of this article of the Civil Code of Ukraine, part one of which provides that legal entities may be formed in the form of associations, institutions and other forms established by law. Attention should be paid to a certain discrepancy between the actual content of the norm and its wording, which is in that the verbal expression is more narrow than the thought that was laid upon it by the lawmaker in the process of norm designing. The reason is the presence of close in the meaning rules, which allow to expand the boundaries of the rules of the regulations that is being interpreted. In addition, the verbal formulation due to lexical defects does not sufficiently express the idea of the legislator.

Methodological paradigm of private-legal regulation of social relations is devoid of normatively defined limits of its existence. Freedom of contract as a principle gives parties autonomy of will in the regulation of civil relations. Parties of a contract may depart from the provisions of acts of civil law and settle their relations at their discretion. Such discretion penetrates all spheres of relations, which are regulated by civil law that gives impetus to its development. The institute of the legal entity is not an exception. Its nature as a social phenomenon, created to implement the interest of individuals, implies the existence of a common will in its autonomous expression. The effectiveness of this social organism is revealed through the active behaviour of a person without which a legal entity is not functional. Therefore, as noted earlier, a legal entity as a common will of a certain circle of persons involves the establishment of an individually voluntary individual coordination through a collective for the formation of its will unity, through which the legal entity individualises itself in space. Forms of organisation of such "common will" are various. Self-regulation of civil legal relations is a factor of improving the forms of organisation of legal entities, the emergence of its new models. Thus, as a result of adaptation of existing forms to emerging needs, a form of a limited liability company appears.

The researcher of this issue V.O. Gorlov notes, "…By the end of the 19th century, there was a practical need for a new form of commercial activity (in a new combination of company elements), which was caused by the inflexibility and strict regulation of joint-stock companies and the inability of the widespread use of full and limited companies. Sometimes a narrow circle of people, who want to do business, are ready to combine part of their property, but do not want to risk the responsibility that goes beyond this property, forming a full company. At the same time, it is not suitable for them designed to attract capital of a large number of individuals joint stock company, the insti-

tution of which, moreover, is associated with compliance with the set of formalities. Obviously, the way out of this provision is to create a new form of a friendly association…" [11].

As researches noted, tight links between organisational forms of trade associations that exist in civil law have made it easy for a legislator to create, recognise and develop transitional forms of social associations that successfully combine the characteristics of full companies and joint-stock companies.

The mentioned above is happening now. In the context of Article 83 of the Civil Code of Ukraine, the Law of Ukraine "On Cooperation" establishes such form of legal entity as a cooperative [12]. Non-commercial companies, as Article 85 of the Civil Code of Ukraine mentions, carry out their activities in the form of a public association and a public union, other legal forms specified by special acts of the legislation of Ukraine, which, in accordance with Article 2 of the Law of Ukraine "On Civil Associations" are not covered by this law [13]. These are political parties, religious organisations, non-profit associations formed by acts of state authorities, other state bodies, authorities of the Autonomous Republic of Crimea, local self-government bodies, associations of local self-government bodies and their voluntary associations, self-regulatory organisations, organisations that carry out professional self-government, non-profit associations (which are not public associations) formed on the basis of other laws.

Determining the legal framework for the implementation of constitutional rights in one or another sphere of public life, the adoption of a separate legislative act of a relevant subject focus allows to regulate these social relations, including foreseeing the organisational forms of activities of other participants in the legal relationship than individuals.

Under such conditions, an open list of organisational forms of activity of legal entities is justified, because within the Civil Code of Ukraine it will be erroneous to define forms of such legal entities, a significant number of which has a public and law scope for its application. In addition, in the context of European integration processes, which are held in our society, it is an open list of legal forms that allows the positive borrowing of stable legal constructions from neighbouring law and order, self-organisation of models of legal entities in open systems.

2.3 Features of systematisation of legal forms

At the same time, it is urgent to streamline existing legal forms of legal entities, to systematise them on the basis of the classification of legal entities, which will contribute to the modernisation of the design of the latter and elimination of the phenomenon of fluctuations in the normative dimension.

Any classification of a certain totality of objects begins with the choice of criteria, in which at the first stage most often explicit, external or internal signs are selected and applied. Typically, their choice is rather free and is formed on concretely developed pragmatic circumstances or is delegated along with a task (the first level of detailing).

The legal form is the basic criterion of the process of systematisation that provides their functional quality reflected in corresponding models of legal entities.

A limited liability company may serve as an example of such a model of the legal entity. Other models of legal entities, which functionally correspond to the content of this legal form, synthesise another model of generalization – a class. A limited liability company, company, limited partnership, superadded liability company are very weakly correlated with each other, but have a criterion of system unity which is a way of acquiring the right of share participation in them. Thus, legal entities within this legal form are systematised into a class of non-equity companies. The nature of the way of acquiring the right of share participation consists in the formation of the authorised capital, size of which consists of the nominal value of the shares, each of which is formed by the contribution of participants in the property and non-monetary (non-property) form.

Other models of the legal entity of mentioned level of detailing in dependence on the chosen way of acquiring the right of share participation are represented by models of legal form of public and private joined-stock company.

In law of Germany and France this is limited partnership with hares and joined-stock limited partnership. In the US and UK law, a simplified joint-stock company, a corporation, a limited liability company, etc. They form a class of joint stock companies.

Finally, the third group of legal entities has legal form of the form of a production cooperative, a service cooperative, a consumer cooperative (consumer partnership), a law office and a lawyer association. In the law of the USA and the United Kingdom, there are general partnership (GP), limited partnership (LP), limited liability partnership (LLP). As well as the European Cooperative Society (SCE), the formation and activities of which are established by Council Regulation (EC) No. 1435/2003 of 22 July 2003 [14], is classified as a cooperative society. It is characterised of not only the way of acquiring the right of share participation, which is characterised by the association of contributions of members of the cooperative society. Its functional property, which creates the corresponding class, is in the participation of members of the cooperative in their activities.

Thus, it is possible to identify the fundamental properties that are used in the form of qualitative criteria for classification. In general, they characterise internal condition of the system, reflect the nature of its origin, select the most important characteristics. These criteria are used most consistently, reasonably and convincingly in the selection, formulation and formation of groups according by the class criterion. They unite, identify and position totalities of objects by criteria, directly or indirectly point to the unity of origin, the common nature or the homogeneity of the processes of their occurrence, formation, development (the second level of detailing).

This approach allows classifying other legal forms of legal entities, which are grouped into a corresponding class by criteria, the sign of which is the lack of commercial outcome of the legal entity. Such legal forms are public organisation, public

association, political party, associations of local self-government bodies and their voluntary associations, self-organising body of the population, association of co-owners of a multi-apartment building, charitable organisation, charitable institution, charitable foundation, arbitral tribunal.

Within the second level of detailing these legal forms are classified in relation to direction of implementation of a purpose of their activity. Thus, public organisation, public association, association of co-owners of a multi-apartment building, arbitral tribunal, associations of local self-government bodies and their voluntary associations are created in order to implement and defend rights and freedoms, satisfaction of interests of a society, in particular economic, social, cultural, ecological, and other interests, including their members'. The criterion of classification of these legal forms is a private interest of such association. At the same time, such privacy of interest is ensured by corporativity of only those individuals who are members of public associations. In other words, for the given legal forms, a model is characteristic in which the private behaviour of members of a public association is ensured by their private interest.

In its turn, a political party is voluntary association of citizens – supporters of a certain national program of social development, which aims to promote the formation and expression of political will of citizens, participates in elections and other political events.

The rights of citizens to freedom of associations in political parties to implement and defend own rights and freedoms and satisfy political, economic, social, cultural and other interest is determined and guaranteed by article 36 of the Constitution of Ukraine [15].

Political parties contribute to formation and expression of political will of citizens, participate in election. Consequently, the creation of a non-commercial legal entity in legal form of political party is the form of corporative concentration that aimed at public interest.

In its turn, for this legal form, the models of its functioning are built in such way that private behaviour of members of political part implements public interest.

Concerning charitable organisations (charitable company, charitable institution, charitable foundation), model of organisation of their activities has fundamental differences from the above analysed.

Firstly, it is necessary to emphasise that the purpose of charitable organisations cannot be the making and distribution of profits among founders, members of management bodies, other related persons, as well as among employees of such organisations [16].

Secondly, purposes of charitable activity is to provide assistance to promote the legitimate interests of beneficiaries in the field of charitable activities, and supporting these areas in favour of the public interest.

The Law of Ukraine "On Charity Work and Charity Organisations" determined spheres of charitable activities. These are: 1) education; 2) health care; 3) ecology,

environmental protection and protection of animals; 4) prevention of natural and technogenic catastrophic crashes and liquidation of their consequences, the help injured with catastrophic crashes, armed conflicts and accidents, and also to refugees and persons who are in difficult vital circumstances; 5) guardianship and care, legal representation and legal assistance; 6) social protection, social security, social services and overcoming of poverty; 7) culture and art, protection of cultural heritage; 8) Science and scientific research; 9) sport and physical culture; 10) human and civil rights and fundamental freedoms; 11) the development of local communities; 12) the development of international cooperation of Ukraine; 13) stimulation of economic growth and economic development of Ukraine and its individual regions and competitiveness of Ukraine; 14) promotion of national, regional, local and international programs aimed at improving the socio-economic situation in Ukraine; 15) promotion of defence capability and mobilization readiness of the country, protection of the population in emergency situations of peaceful and martial law [16].

The above shows that the model construction of the functioning of such legal form ensures the public behaviour of the third parties (philanthropist) in implementation of the private interest of the beneficiary of public importance.

Unlike the above listed legal forms of business (commercial) legal entities mentioned are characterised by another organisation of their activities [17-20]. In addition to a non-entrepreneurial component, which eliminates the need for capital unification, the legal forms of legal entities are individualised by the form of participation of their founders (participants) in the activities of such legal entities. If for entrepreneurial companies such form of participation of founders (participants) in their activity is based on indirect management through the creation of a corresponding executive body of a legal entity, participation in the regulation and control over the activities of such an executive body, in particular through participation in the work of the supervisory board, general meeting of participants, etc. for legal forms of legal entities that are deprived of the business component, the participation (founders) of the participants (founders) in their activities is of a direct nature.

Thus, public association, which is created to implement and defend rights and freedoms, to satisfy interests of society, in particular, economic, social, cultural, ecological and other interests, objectively requires participation of its members in activity of an association, management of its affairs, including by voting at meetings of members, expressing own opinion, making suggestions on the directions of activity and development of a legal entity, etc.

In addition, the criterion for the delineation and classification of the given range of legal forms of legal entities is the legal regime of a property of a legal entity established in one or another legal form.

The legal regime of a property of entrepreneurial companies gives the opportunity to divide them among the founders (participants). Article 111 of the Civil Code of

Ukraine established that "A legal entity's property remained after meeting creditors' demands (including taxes, fees, a single contribution to compulsory state social insurance and other funds to be paid to the state or local budget, the Pension Fund of Ukraine, social insurance funds), shall be transferred to its members unless otherwise established by the constituent documents or the law." Analogical by the logic of construction of normative material provisions are in all special legislative acts that regulate activity of entrepreneurial companies in Ukraine. Thus, according to article 29 of the Law of Ukraine "On Cooperation", property remained after meeting creditors' demands, paying shares to members of cooperative and payments on shares, cooperative payments, wages, settlements with a cooperative association, of which it is a member, is divided among the members of the cooperative in accordance with the procedure established by the charter [12].

In its turn, the legal regime of property of legal entities created in legal forms that are inherent in non-entrepreneurial companies limits their ability to implement the right guaranteed by Article 41 of the Constitution of Ukraine, Article 317 of the Civil Code of Ukraine.

For such legal forms of legal entities, a rule is established that, in the event of their self-dissolution (liquidation), property and funds, remained after meeting creditors' demands, are transferred to statutory or charitable purposes to another (several other) public associations or are credited to the state and local budgets.

CONCLUSIONS

Therefore, joint-stock, non-joint stock companies and cooperatives are grouped into entrepreneurial or commercial associations. In turn, public associations and charitable organisations are united by the notion of non-entrepreneurial society. The only criterion for their unification is the purpose of activity.

The aforementioned set of legal forms of legal entities is objectively systematised through the parameter, which evaluates their objective components, clearly outlines the constructive characteristics and investigated elements that are present in the corresponding sets of legal entities within this group.

The character of relations of researched legal entities (their legal forms) with their participants (founders), purpose of their participation has a synergistic effect. Through the disclosure of the legal nature of a corporation and the establishment of its features, the corporate unity of business and non-entrepreneurial societies and their meaningful difference from institutions have been proven.

The above demonstrates that the whole set of legal forms of corporate legal entities is classified according to the relevant criterion that ensures their group identity (joint-stock and cooperative societies, public associations of private or public interest), kind of unity (belonging to entrepreneurial or non-entrepreneurial companies), and generic affiliation (affiliation with corporations).

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ПРОБЛЕМА ОБ'ЄКТНОСТІ АУТСОРСИНГОВИХ ВІДНОСИН В СИСТЕМІ ЕКОНОМІЧНОЇ ТА ГОСПОДАРСЬКО-ПРАВОВОЇ ПОЛІТИКИ ДЕРЖАВИ

Анотація. *Розвиток ринкових відносин посприяв забезпеченню економічно ефективних управлінських та організаційних схем, які застосовуються іноземними суб'єктами, у вітчизняній економіці. Аутсорсинг впливає на різні процеси, в тому числі і на економічні та політичні чинники та представляє собою сукупність механізмів, які направлені на передачу підприємством окремих процесів і функцій іншій організації, яка має високу кваліфікацію у сфері поставлених завдань. Аутсорсинг сприяє підвищенню конкурентоспроможності ринкових відносин, оскільки спрямований на зменшення витрат, формування гнучкості динамічного середовища, забезпечення високої якості продуктів, уникнення або зниження рівня ризиків. Тому основна мета роботи полягає в аналізі проблеми об'єктивності аутсорсингових відносин в системі економічної та господарсько-правової політики держави. Для досягнення поставленої мети було використано методи аналізу, порівняння, узагальнення для конкретизації результатів дослідження. В роботі проаналізовано визначення зовнішньоекономічної, інвестиційної, інноваційної політики держави. Автором встановлено, що в контексті проблеми державної господарсько-правової політики аутсорсинг має дуалістичних характер. Виявлено, що використання аутсорсингу дозволяє виконувати одночасно кілька функцій і розмежувати їх інколи дуже важко або взагалі неможливо. Також аутсорсингові відносини можуть активізувати процес експорту, що забезпечить зростання податкових надходжень до бюджетів. Наведено аргументи щодо доцільності розгляду аутсорсингових відносин як інструменту вирішення проблем та завдань публічного характеру, а також й становлення їх об'єктом зовнішньоекономічної, інвестиційної та інноваційної політики держави.*

Ключові слова: зовнішньоекономічна політика, інноваційна політика, державний суверенітет, іноземний інвестор, диверсифікація експорту.

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THE PROBLEM OF THE OBJECTIVITY OF OUTSOURCING RELATIONSHIP IN THE SYSTEM OF THE ECONOMIC AND BUSINESS-LEGAL POLICY OF THE STATE

Abstract. *The development of market relations has contributed to the provision of cost-effective management and organisational schemes that are used by foreign entities in the domestic*

economy. Outsourcing affects various processes, including economic and political factors, and represents a set of mechanisms that are aimed at transferring the company's individual processes and functions to another organisation with high qualifications in the field of set tasks. Outsourcing contributes to improving the competitiveness of market relations, since it is aimed at reducing costs, creating a flexible dynamic environment, ensuring high quality of products, avoiding or reducing risks. Therefore, the main purpose of the work is to analyse the problem of the objectivity of outsourcing relations in the system of economic and economic and legal policy of the state. To achieve the purpose, methods of analysis, comparison, generalisation were used in order to specify the results of the study. The work analyses the definition of foreign economic, investment, innovation policy of the state. The author has established that in the context of the problem of state economic-legal policy outsourcing is dualistic in nature. It has been revealed that using outsourcing allows performing several functions simultaneously and sometimes it is very difficult or impossible to delineate them. Also, outsourcing relations can intensify the export process, which will increase the tax revenues to the budgets. The arguments about the expediency of considering outsourcing relations as an instrument for solving problems and tasks of a public nature, as well as their development as an object of foreign economic, investment and innovation policy of the state are presented.

Keywords: foreign economic policy, innovation policy, state sovereignty, foreign investor, diversification of exports.

INTRODUCTION

As of today, in Ukraine, there is much tension around the issue of finding ways to solve public problems, such as unemployment, low technological level of enterprises, low production capacity, lack of stable economic relations with international partners of the private sector, which provide enterprises with the opportunity to develop; as a consequence, and provide higher budget revenues and so on.

O. Sheverdina distinguishes among the main areas of investment activity such as increasing the state support of unsustainable for a private investor, but strategically important infrastructure facilities for the country, on which depends the sustainable functioning of the entire national economy, the innovation and technical development of industries, as well as projects that ensure environmental safety; the focus of the investment activity of the public sector on the solution of the priority tasks of the social and economic policy; increase investment attractiveness [1].

In addition, it is advisable to bring the opinion of O. Chuvardynskyi, who points out that it is important to adapt the domestic economy to the tendencies and patterns of the world economy because of the imperfect structure of export-import flows, since the commodity group is mainly in export, and in the import is the final product, there is no clearly defined and effective legislation, and also a high level of tax burden on export products [2].

That is, today in legal science there is also a fact of insufficient innovation in the production sphere, as well as the need to make changes in the import-export sphere through the diversification of exports, as well as the export orientation of the final product, at the same time, the import of commodity groups.

Today, in the private sector, enterprises are increasingly turning to outsourcing as an effective means of optimizing costs, as well as receiving orders from foreign companies. However, neither in the legal nor in the economic literature, scientists usually do not consider outsourcing as a powerful tool for developing the national economy, solv-ing problems of a public nature and meeting public interest, as well as entering the world market, focusing only on the fact that outsourcing is used to optimize costs and creating opportunities to focus on more important management tasks.

However, taking into account the fact that the construction and development of outsourcing relationship arising between powerful foreign business entities (transnational companies, hereinafter TNCs) and Ukrainian enterprises create real opportunities for attracting investment and innovation to the state, developing of domestic production by receiving orders, and in the future the inclusion in the production chains of foreign TNCs.

Therefore, if the use of outsourcing will allow finding a way out to the world mar-ket, as well as solving problems of a public nature, then outsourcing should be the subject of state policy, the rationale for which will be implemented in this article.

So, the purpose of the article is to substantiate the need for the formation of outsourcing relationship as an object of economic, business and legal policy of the state.

1. MATERIALS AND METHODS

The analysis of such concepts as state policy, business and legal policy of the state, economic policy of the state, innovative, investment and foreign economic policy of the state was carried out for comprehensive substantiation and research of outsourcing relationship in the context of considering them as an object of state policy. For this, literature, scientific articles and current regulatory acts were analyzed, in particular, the Constitution of Ukraine, the Commercial Code of Ukraine, the Law of Ukraine "On Investment Activities", the Law of Ukraine “On Protection of Foreign Investments in Ukraine”, Resolution of the Verkhovna Rada of Ukraine “On the Concept of Scientific-Technological and Innovative Development of Ukraine”, the Law of Ukraine “On the Cabinet of Ministers of Ukraine”, the Law of Ukraine “On Public-Private Partnership”, the order of CMU “On Approval of the Export Strategy of Ukraine (“roadmap” for Strategic Trade Development) for 2017-2021”.

In the course of the study, the ambiguity of approaches to the definition of the above-mentioned concepts was established, as well as gaps in the legislation on the implementation of state policy in various areas. In addition, according to the results of previous studies, the fact of the ambiguity of the definition of outsourcing relationship in both legal and economic literature, as well as the absence of relevant provisions in the legislation of Ukraine was established. In most cases, in legal science, outsourcing is identified with work and labour contracts,

performance or service provision contracts [3-6]. At the same time, in economic literature, most of the attention is paid to the essence of outsourcing, namely the transfer of functions to one company for another. Unfortunately, other advantages of outsourcing, primarily of a public nature, are ignored by scientists, and, as a result, by the legislator, losing the possibility of developing the national economy and attracting investments to the state.

When writing this article, methods such as the method of system-functional analysis in the analysis of varieties of state policy, its types and components are used. Secondly, the formal-logical method was used in the analysis of normative legal acts regulating the implementation of state policy, principles, and spheres. In addition, methods of analysis and synthesis, formally legal, as well as dialectical were used.

3. RESULTS AND DISCUSSION

3.1 Analysis of the definition of state policy

First of all, it is necessary to analyze what is a state policy. Therefore, for example, some scholars believe that state policy is a relatively stable, organized and purposeful activity/inactivity of state institutions, carried out directly or indirectly on a particular problem or set of problems that affect the life of society".

Other scientists analyze this concept from its implementation. For example, O. Rudik and T. Brus argue that state policy is a relatively stable, organized and purposeful activity of the government regarding a particular subject or problem that is carried out directly or through authorized agents affects the life of society [7].

There is also another approach, which boils down to the fact that state policy should be considered as a complex phenomenon, which includes three main components. Such components are the formation of state policy, the adoption of strategic and operational-tactical decisions and the implementation of such a policy. I. Kresina understands state policy as a system of targeted measures that are aimed at solving certain public problems, meeting public interests, ensuring the stability of a constitutional, economic, legal system of a country the specificity of which is that it is implemented through power structures having the powers of a state's monopoly right on legal compulsion [8]. D. Zadykhaylo highlights two aspects in the content of state policy, namely information product containing a certain conception of public administration in a specific area of public relations. In addition, it is said that such a product should receive the necessary form and meet certain quality criteria and rules of content organization, which allows using such a product as a relatively standardized management tool. The second aspect of state policy is a rather autonomous and specific type of managerial relations, which is formed in the process of creating such an information product and especially its practical implementation, as well as monitoring the effectiveness of the corresponding managerial influence, it should be recognized that the formation and coordination of the content of state policy [9].

From the above, it can be concluded that state policy is a rather complex phenomenon, which is not clearly defined among scholars. However, taking into account the different approaches to understanding state policy, it can be defined as a complicated structure of the activity of public authorities, aimed at solving various problems that arise in society, ensuring a stable economic, constitutional and legal system of the state, which based on common methods, goals and principles.

3.2 Analysis of the concept of the foreign economic policy of the state as a component of the economic policy of the state

In turn, state policy can be divided into legal and economic. In the economic component, the following main directions can be singled out as foreign economic, innovation and investment policies.

According to chapter 1 of the article 10 of the Civil Code of Ukraine established that the main directions of economic policy, determined by the state, are structural and sectoral policies aimed at implementing progressive changes in the structure of the economy by the state, improving inter-sectoral and intra-sectoral proportions, stimulating the development of industries that determine scientific and technological progress, ensure the competitiveness of domestic products and increase living standards. One of the main components of such a policy, which should be emphasized in the context of considering the use of outsourcing for the development of the national economy, is industrial and agricultural policy, the development of which essentially affects the level of development of the national economy as a whole.

Therefore, considering each aspect of economic policy, it is necessary to analyze the approaches to the definition of the foreign economic policy of the state.

Among scientists, for example, L. Pismachenko analyzes foreign economic policy from the point of view of activities of state legislative and executive bodies, aimed at the formation of effective economic relations of the state in the international stage [10]. O. Grebelnyk defines foreign economic policy as a set of targeted government measures to realize the economic potential of the country on the foreign market and meet its own needs with the goods and services of a foreign manufacturer [11]. O. Borysenko notes that the foreign economic policy of the state is purposeful activity on the implementation of internal and external policy of the state through the use of public administration mechanisms aimed at effective cooperation in the world economic system with respect for national economic interests and security of citizens, provides for consistent, economic independence and state sovereignty of Ukraine and guarantees the dynamic development of the economy and growth of the welfare of the people [12].

The lack of a relevant provision in the legislation complicates the clarity of definition. Today, the current legal act regulating relations in the foreign economic sphere is the Law of Ukraine "On foreign economic activity", which regulates the activities of individual entities, completely disregarding the directions, ways, methods of implement-

ing the foreign economic activity of the state. The Constitution of Ukraine also establishes general provisions relating to the directions of foreign economic activity. And specifically art. 18 of the Fundamental Law states that Ukraine's foreign policy activity is aimed at ensuring its national interests and security by maintaining peaceful and mutually beneficial cooperation with members of the international community on the basis of generally accepted principles and norms of international law.

3.3 Analysis of the concept of the state investment policy as a component of the state economic policy

Considering the investment policy of the state, it is necessary to clarify its essence and provide theoretical definitions. For example, U. Vodyanov says that the state investment policy is an integral part of financial policy and the direction of economic policy implemented by the state in the form of formation of structure and scale of investments, sources of investment resources, directions of their use [1]. At the same time, M. Kondrashova considers investment policy through the component of economic policy implemented by the state in the form of formation of structure and scale of investments and directions of their use [13]. V. Pshenychna characterizes the state investment policy as a mechanism that is an integral part of the state economic policy, provides for the operation of economic instruments that provide influence on the investment process, within the framework of the current regulatory and legal acts of the country, with the aim of achieving social and economic effects, taking into account resource and institutional constraints [14]. V. Kukhar provided the following definition of investment policy as systematic and purposeful activities of the competent state authorities for the creation and implementation of a special algorithm of measures in order to intensify or inhibit the parameters of the functioning of the investment market or its individual segments, by formation of the corresponding legal regulation of investment relations, application of necessary means of state regulation and direct participation of the state as the subject of these relations, based on the agreed model of such a market enshrined in the state program of investment development [15].

If we turn to Ukraine's legislation, then the definition of the investment policy of the state, in general, is not defined. In particular, the main normative and legal acts regulating the investment sphere are the Commercial Code of Ukraine, the Law of Ukraine "On investment activity", the Law of Ukraine "On the protection of foreign investments in Ukraine". However, all these laws regulate relations directly between the parties, without touching upon the state policy, which is the main factor in creating appropriate conditions for attracting foreign investment.

However, based on theoretical approaches to the definition, it can be concluded that the essence of the state's investment policy is purposeful and the state's system of activities in the person of authorized bodies aimed at correcting, stimulating or inhibiting the state's investment market, carried out using methods, ways, and means provided for in the relevant regulatory acts.

3.4 Analysis of the concept of innovation policy as a component of state economic policy

Turning to innovation policy, it should be noted that under this concept understood a separate direction of the economic policy of the state, within the framework of which developed and implemented a comprehensive system of state regulation measures to stimulate, planning, management, maintenance and control of innovation processes taking place in the scientific, technical, industrial and other spheres of social and economic life of the country [16].

The importance of a properly developed innovation policy is confirmed by the relevant provisions of the current regulatory acts. For example, according to the Resolution of the Verkhovna Rada of Ukraine "On the Concept of Scientific-Technological and Innovative Development of Ukraine" dated July 13, 1999, scientific-technological and innovative development is an integral part of meeting of wide range of national interests of the state, only countries with real independence and security are able to ensure the mastery of new knowledge and effective use of it. Therefore, one of the foundations of the Concept is the preservation and improvement of the quality of the scientific-technological potential in the priority national interests of Ukraine.

In addition, this Concept also defines the main objectives of the scientific, technological and innovative development, which are the technological re-equipment and restructuring of production in order to increase the production of goods competitive in the global and domestic markets; an increase of export potential at the expense of knowledge-intensive industries, a decrease of dependence of Ukraine's economy on imports.

Among other things, one of the priority directions in the production sphere is determined by the introduction of highly profitable innovation and investment projects, the implementation of which can provide the fastest return and carry out progressive changes in the structure of production and trends in its development.

It is also interesting that even in the Concept it was established the possibility of using the means to assist the relevant enterprise to develop innovations, as well as implement them in their activities. Namely, the Concept specifies the necessity of applying privileges for the whole cycle of the innovation process from fundamental research to introduction into production under the conditions of using innovations to increase the volume and improve the quality of manufactured products.

Thus, it can be concluded that one of the priority tasks of the state is still the perception of innovative development, the introduction of new technologies into production, the re-equipment of production, and the like.

3.5 Analysis of the concept of legal policy as a component of state policy

However, the important point is that economic policy cannot be implemented in the absence of appropriate business and legal means of its implementation. According to Article 1 of the Constitution of Ukraine, "Ukraine is a sovereign and independent,

democratic, social, legal state". According to Article 19 of the Fundamental Law, the legal order in Ukraine is based on the principles under which nobody can be compelled to do what is not provided for by law. State authorities and local self-government bodies and their officials are obliged to act only on the basis, within the limits of authority and in the manner provided by the Constitution and laws of Ukraine.

D. Zadykhaylo adheres to the same position, noting that the mechanism of formation and implementation of economic policy (as well as state policy in general) has to obtain the legal **form** of a functioning socio-political mechanism, which is based on specific state activity, which should take place in accordance with the requirements of article 19 of the Constitution of Ukraine regarding legal grounds, powers and methods [9].

According to the Great Ukrainian Legal Encyclopedia, the business-legal policy of the state is an integral part of its legal policy, it is aimed at the effective realization of the goals and objectives of the state economic policy through direct influence on the rule-making and law-enforcement processes in the field of management by incorporating into the content of economic production, necessary and sufficient for of this economic-legal means, forms and mechanisms of regulation of economic relations [17]. The business-legal policy is structured, as is economic policy since it actually covers the objects of economic policy, however, it is distinguished by its tools of implementation and influence on the relevant objects.

If we turn to the Law of Ukraine No. 794- VII "On the Cabinet of Ministers of Ukraine" dated February 27, 2014, we can conclude that this Law, in the context of the powers of the Cabinet of Ministers, connects legal policy mainly with provision the rights, freedoms, and interests of a person and citizen, ensuring protection against illegal encroachments. However, this approach is not entirely correct, since legal policy mediates all types of state policy, giving them a legal nature. This is due to the fact that before the implementation of any kind of policy by the state, the relevant provisions should be fixed at the legislative level. That is why the business-legal and economic policies are inextricably linked.

Based on the above provisions, it can be concluded that the state policy includes two main components – legal and economic policy, which are inseparable from each other, since the economic sphere determines the content of the legal policy, while legal policy ensures the consolidation of legal means implementation of the state economic policy. Therefore, the objects of the state's economic policy are at the same time the objects of business-legal policy.

3.6 Outsourcing relationship as an object of the business-legal policy of the state

Analyzing directly the outsourcing relationship in the context of the problem of state business and legal policy, it should be noted that outsourcing has a dualistic nature since, on the one hand, we understand it as an object of the state's economic policy. In this context, outsourcing acts as a form of industrial cooperation, a type of private

partnership, the forms of which are joint investment activities, including through the creation of mutual investment funds, and franchising relations [18]. On the other hand, it is an instrument of investment, innovation, the foreign economic policy of the state, with the help of which various goals for the development of the national economy can be achieved.

In addition, from the point of view of the object of business-legal policy, it should be noted that we can consider outsourcing as a legal and economic phenomenon, and as a type of economic, business relations, and as a legal fact, and as a means of strengthening the national economy and the task in investment and innovation. That is why outsourcing relationship should become a separate special object of regulation, including from the point of view of the use of state aid and even special legal regimes of economy management. Therefore, it is important to have the correct and comprehensive formulation of state policy in order to attract foreign investors, and then to stimulate outsourcing relationship.

Among other things, we propose to consider outsourcing with foreign TNCs (or other powerful producers) in terms of international cooperation and private partnership. Therefore, it is advisable to provide the definition of international cooperation, as indi-cated in Article 1 of the Law of Ukraine "On Foreign Economic Activity" dated April 16, 1991. Thus, international cooperation is the interaction of two or more business entities, among which at least one is foreign, at which the following is carried out: joint development or co-production, the joint sale of final products and other goods based on specialization in the production of intermediate products (parts, assemblies, materi-als, as well as equipment used in complex supplies) or specialization at individual technological stages (functions) of research and development works, production and implementation with the coordination of the corresponding programs of economic activity.

Analyzing the above definition, we can conclude that the main features of international cooperation are, firstly, the presence of two or more business entities, one of which is foreign; secondly, the essence of such cooperation is joint development or production, sales of final products; thirdly, the basis of such interaction is the presence of specialization in the production of intermediate, rather than the final product.

In turn, if we analyze the relations of industrial outsourcing with foreign TNCs, we can conclude that both forms of interaction have similar features. For example, as in international cooperation, in outsourcing relationship that arises at the mega level, a foreign business entity (foreign TNC) is obligatory. Secondly, production outsourcing relationship also involves the development and production of products, which is actually carried out jointly with the customer company. This is explained by the fact that for the production of proper and high-quality products, the customer company can transfer equipment, development results, technology, industrial designs and the like. Thus, the customer company helps the outsourcer to produce products, and therefore both entities are united by the common goal – to produce quality products, which then

outsourcer provides to the customer company and the customer company will use it in the future production of the final product. That is, both parties are interested in creating a proper product: for the outsourcer, in order to establish long-term outsourcing relationship with the customer company and for the customer company not to lose its business reputation and to increase the profit from the sale of such products. Thirdly, one of the factors that motivate the customer company to enter into outsourcing relationship is precisely the specialty of the outsourcer in the production of a particular product. In order to obtain higher-quality products with a simultaneous decrease in its cost due to cheaper labour, to lower the tax burden, enterprises pass on various production units for execution. The main difference between international cooperation and outsourcing relationship of a production nature is that the latter does not provide for a joint sale of final products. However, taking into account the above, it can be said that outsourcing relationship is a specific form of international cooperation and should be subject of state foreign policy, which in turn entails the question of applying various methods and forms of their stimulation.

Therefore, from the content of the aforementioned article and the Law of Ukraine "On public-private partnership" can be concluded that there is a need to highlight the concepts of "private partnership" and "cooperation" in the system of business relations as close interaction between business entities. These concepts are appropriate in the analysis of the outsourcing relationship.

But it should be noted that not all outsourcing relationship should be provided with state assistance or otherwise stimulated, as such an approach would violate the constitutional principle of equality of business entities. Therefore, there is a need to identify the appropriate criteria for distinguishing of outsourcing relationship that is important from the point of view of public interest and subsequently provides them with state assistance or establishment of special legal regimes with the aim to stimulate them. In this case, all business entities will be equal, but within the framework of these criteria.

As noted in the previous section, the definition of such relations should be carried out according to criteria which are specially developed by the state in terms of their importance to the state. In our opinion, such criteria can be: the existence of a contract between a Ukrainian enterprise and a foreign TNC (or other powerful entity), the long-term cooperation, the presence of an innovation and/or investment aspect, the order of the customer company is at least 1/3 of the sales of the Ukrainian executive company. In other words, the outsourcer becomes sufficiently dependent on the customer, and therefore the state should support such a business entity with the purpose of qualitative performance of the transferred functions on request. It is also important that outsourcing relationship can have a multiplier effect, which can stimulate the development of several enterprises with which the outsourcer cooperates.

It is necessary to take into account the intensity of the development of the outsourcing relationship. Since such relationship can be based only on a contract, or there may be an existing investment and/or innovative component, as well as a corporate basis,

that provides the close correlation between the client and the outsourcing partner that was analyzed in previous studies.

The development of such relations can occur gradually from a contractual basis to a corporate one. It is important that in the event of a corporate aspect, the state must prevent the customer company from receiving 100% of the shares of a Ukrainian company with a determination of the size of the foreign investor's share in order to preserve access to the innovations, technologies, commercial secrets of the customer company.

Thus, we can conclude that each stage of development of outsourcing relationship, especially with foreign powerful manufacturers of the global level, has its own characteristics. In this connection, state policy should be aimed at developing those incentives and support that are appropriate for each stage.

The importance of state support of outsourcing relationship is also explained by the fact that, in accordance with the Order of the Cabinet of Ministers of Ukraine, No. 1017- p, "On Approval of the Export Strategy of Ukraine" ("roadmap" for Strategic Trade Development) for 2017-2021, dated December 27, 2017, the purpose of the Strategy is Ukraine`s transition to export of high technology innovative products for sustainable development and successful entry to world markets. In order to implement the Strategy, it is necessary to determine the following strategic goals for the development of trade in Ukraine over the next five years: creating favourable conditions conducive to trade and innovation for diversifying exports; development of business and trade support services that can increase the competitiveness of enterprises, in particular small and medium-sized ones; improvement the skills and competencies of enterprises, in particular small and medium enterprises (entrepreneurship), necessary for participation in international trade.

So, summarize, for the state it is extremely necessary for Ukrainian enterprises to enter the world market, attract innovations, develop enterprises, and also increase their competitiveness, as well as increase exports of Ukrainian products.

Stable economic ties are crucial for a market economy, which results in the production of world-class joint products on an ongoing basis. In this regard, outsourcing relationship claims to get their place in the system of economic relations and to receive from the legislator to ensure stability and growth, while maintaining the competitive nature of market relations in general. This is due to the fact that the stability and development of outsourcing relationship acquire the value of the public interest in the economic sphere. Therefore, outsourcing relationship with the presence of appropriate criteria is a kind of international industrial cooperation and private partnership as special types of economic partnership.

In this case, outsourcing relationship with foreign TNCs is one of the effective means and ways to solve the following tasks. In addition, outsourcing relationship that has an investment and innovation component includes the import of equipment, parts, technology, etc. for the production of products. So, by receiving an order, a Ukrainian

enterprise that produces a product increases the value added of the product, which then exports to the customer company. Even this allows for diversification of exports since it can be the production of such products, which were not produced at all in the territory of Ukraine.

In order to achieve the goals of attracting investment and innovation, outsourcing relationship can also solve such problems, since outsourcing relationship can include the transfer of investments to an outsourcer, such as equipment, the creation of an enterprise, the provision of financial assistance, as well as the transfer of know-how, technologies, and other aspects of commercial secret. Thus, Ukrainian enterprises are able to produce completely new products for them with the use of innovations and export it.

CONCLUSIONS

The state policy has a complex structure, the main components of which are economic and business-legal policies. In turn, the following policy directions such as foreign economic, investment and innovation policies can be distinguished within the framework of economic policy.

Outsourcing relationship has system-oriented nature for the economic complex. Since the development of such relations will depend on the situation of the national economy, the competitiveness of Ukrainian enterprises, the ability of access to innovations, the world market, and the like. Their development is a public interest in the economic sphere. In addition, such relations can be considered as the kind of international cooperation, the type of partnership, the forms of which are joint investment activities, including through the creation of mutual investment funds, and franchising relations.

As they are a stable long-term relationship between two or more business entities, in their development process there may be the transfer of investments of innovative nature, equipment, training, etc. in order to produce quality products. And also may be an acquisition of the corporate package of an outsourcer to strengthen such relationship.

Among other things, outsourcing relationship can enhance the export process, have a multiplier effect, because they can attract other enterprises whose products will be needed by the outsourcer to perform the function or business process transferred by the execute company and ensure the growth of tax revenues to budgets.

Taking the above mentioned into consideration, it may be concluded that outsourcing relationship makes it possible to solve the tasks faced by the state in foreign economic, innovation and investment spheres. That is why we are talking about the fact that such relations should be the object of state policy, which will be aimed at their stimulation and development. Outsourcing relationship should receive substantive and detailed business-legal legislative support. All this allows us to raise the question of the feasibility of creating special regimes for such relations in order to stimulate and develop them and at the same time to satisfy public interests.

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NEW GENERATION OF TEXTBOOKS ON CRIMINOLOGY IN TWO VOLUMES[1]

Changes taking place in the world affect the transformation of modern crime that which operates through improved ways, methods and techniques, develops and integrates into social processes, overcoming the borders of states. The mentioned above conditions the necessity to attract scientific achievements into practice and, accordingly, increases the level of requirements for mastering the discipline "Criminology". It is necessary to find new, innovative approaches to solve objectives of crime fighting in modern realities. Taking into account the above circumstances, it is important to update qualitatively the content of the discipline "Criminology", which has been done by the authors of the two-volume textbook of the same name [1, 2] prepared by the authors of the department of criminalistics of the Yaroslav Mudryi National Law University, edited by the head of the department – Doctor of Law, professor, academician of the National Academy of Legal Sciences of Ukraine V. Yu. Shepit'ko.

The high scientific level of the peer-reviewed work was provided by the author's team that worked on its preparation. It consists of doctors of legal sciences, professors, academicians of the National Academy of Sciences of Ukraine V. Yu. Shepit'ko, V. A. Zhuravel, V. O. Konovalova; Doctors of Law, Professors V. M. Shevchuk, B. V. Schur; Doctor of Law, associate professor M. V. Shepit'ko; Candidates of legal sciences, associate professors G. K. Avdeyev, V. I. Alekseychuk, V. V. Bilous, I. V. Bo-

[1] Shepit'ko, V. Yu., Zhuravel, V. A., & Konovalova, V. O. (2019). *Criminology. Vol. 1*. Kharkiv: Pravo; Shepit'ko, V. Yu., Zhuravel, V. A., & Konovalova, V. O. (2019). *Criminology. Vol. 2*. Kharkiv: Pravo.

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Kharkiv Forensic School is a leader in the preparation of fundamental works on topical issues of science of criminalistics. Scientific developments are transformed quite naturally into the educational process of the Yaroslav Mudryi National Law University, as well as other institutions of higher education, which train specialists in the field of jurisprudence.

The content of the textbook is set out according to the criminal procedure legislation of Ukraine, taking into account the processes of reforming law-enforcement bodies respectively to the chosen European integration direction of the state's development.

The structure of the textbook comprehensively covers and clarifies the program of educational discipline "Criminology". At the same time, the content of peer-reviewed work demonstrates that authors aimed at not only covering theory of criminology, but also took into account relevant needs of the practice, formed informative criminalistics recommendations seek to increasing the effectiveness of crime investigation activities.

The first volume of the peer-reviewed work is devoted to elucidation of such structural elements of the criminology system as theoretical foundations, forensic technology and forensic tactics. The study of the content of theoretical foundations of criminology gives an idea of the notion and meaning of criminology; methods of criminology; forensic identification; the history of criminology.

Issues of forensic technology are disclosed in accordance to branches, in particular: judicial photo and video recordings; traceology; forensic weapons research; technical and forensic study of documents; forensic study of a letter; forensic research of materials and substances; identification of a person by appearance; criminal registration.

The view on the structure of the forensic tactic is new and worth supporting. It is about separation of such components a criminalistics strategy and forecasting, organisation and planning of crime investigation; the nature and types of investigative (search) and judicial actions (inspection, interrogation, search, presentation for identification, investigator's experiment, involvement of experts and specialists and conducting forensic examinations).

The second volume of the textbook "Criminology" discloses in details a wide range of issues of methodology for investigating crimes. The general provisions of the methodology of investigation of crimes are defined, methods of investigation of certain types (groups) of crimes are given: murders; rape; conversion, embezzlement or seizure of property by misfeasance in office; theft, robbery and larceny; extortions; fraud; crimes of corruption; crimes against justice; smuggling; criminal violations of traffic safety rules; arson and other offences related to the occurrence of fires; terrorist acts; hooliganism; illicit traffic in firearms; crimes against the environment; crimes committed by organised criminal groups.

From the perspective of topical issues of practical activity in crime fighting, particular attention and interest are attracted by the methods proposed by the authors for investigating crimes of corruption and crimes against justice. During the preparation of these sections of the textbook, a number of methods of scientific knowledge were used, including the system-structural method and the method of system analysis, which allowed a complex approach to solving theoretical discussions in the legal literature and acute problems of practical activity.

The important characteristics of the textbook on criminology are logic, simplicity and clarity of the presentation of the material. The authors give clear definitions of the scientific terms used in his text, in particular, such as: criminology, forensic technology, forensic tactics, planning of the investigation, the method of investigation of crimes, etc.

Taking into account the aforementioned, there are grounds to state that the peer-reviewed textbook "Criminology" prepared by the authors of the department of criminology of the Yaroslav Mudryi National Law University under the editorship of the Doctor of Law, professor, academician of the National Academy of Sciences of Ukraine V. Yu. Shepit'ko, is an original publication which is of significant scientific interest, is relevant and timely, has practical value. The textbook meets the requirements for teaching and methodological works, and, according to the reviewers, is recommended for use in order to provide an educational process in higher education institutions of the Ministry of Internal Affairs of Ukraine with specific educational conditions and other institutions of higher education of Ukraine in preparing applicants for the speciality "Law".

The reviewed educational publication will be useful for practitioners such as investigators, detectives, operational staff, prosecutors, judges, lawyers and other professionals in the sphere of jurisprudence, as well as in the system for improving their qualifications.

The review of the two-volume textbook "Criminology" should be summed up with the undisputed conclusion about timeliness and usefulness of its preparation, which will certainly contribute to the further development of the science of criminology.

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