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До другого тому видання увійшли статті у сфері правознавства, журналістики та іноземних мов, написані студентами юридичного факультету та факультету журналістики Львівського національного університету імені Івана Франка та студенткою Відкритого університету (Велика Британія), котрі взяли участь у Всеукраїнській англійській студентській науковій конференції „Трансфер знань у глобальному академічному просторі” (Львів : Національний університет імені Івана Франка, 18-22 травня 2020 р.). Видання здійснено в межах спільного проекту кафедри іноземних мов Львівського національного університету імені Івана Франка та ГО Асоціація викладачів англійської мови в Україні, ТІСОЛ-Україна – *TESOL-Ukraine Research Academy*.

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ОБШУК, ЯК ГЛАСНА СЛІДЧА (РОЗШУКОВА) ДІЯ

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Консультант з академічної/юридичної англійської мови:

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У статті проаналізовано пошук як гласну слідчу (розшукову) дію та процесуальні особливості її проведення. Особливий аналіз присвячений поняттям та джерелам їх виникнення. Далі в цій роботі розглядаються види обшуку та суб'єкти його проведення. Стаття базується на законодавстві, судовій практиці, науковій літературі та власних дослідженнях.

Ключові слова: *гласна слідча (розшукова) дія, обшук, слідчий, прокурор, слідчий суддя, кримінальне провадження.*

A SEARCH AS A PUBLIC (DETECTIVE) INVESTIGATIVE ACTION

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In this article the search as a public (detective) investigative action and procedural features of its conducting are analyzed. Particular analysis is devoted to concepts and their sources of origin. Further on the types of search and subjects of its conducting are considered. The article is based on legislation, judicial practice, scientific literature and our own research.

Key words: *public (detective) investigative action, search, investigator, prosecutor, investigative judge, criminal proceeding.*

Problem statement. First of all, in order to expose the topic of search as the public investigative action, it is necessary to analyze several concepts, namely "search" and "investigative action". In order to investigate criminal investigations quickly and fully, the prosecutor conducts a wide variety of actions. All of them are based on the requirements of criminal procedural law, so they are called procedural. But among procedural actions particular importance for investigative actions, which are characterized by certain features by which they can be distinguished from other procedural actions.

Recent research and publications. Works of scientists and practising lawyers in the field of criminal proceedings are devoted to this topic, in particular in the case of public (detective) investigative actions. Among the main authors are V.G. Goncharenko, V.T. Nor, M.E. Shumil, V.Y. Tatsiy, Y.M. Groshov and others. In their writings, they reveal the meanings and concepts of investigative actions, as well as making a doctrinal interpretation of the rules of criminal procedural law.

The purpose of the article. Nowadays there are a lot of problems in conducting criminal proceedings, in particular when conducting a search, human rights violations by investigators and other subjects involved in its commission are recorded. In order to avoid this, it is necessary to clearly interpret the rules of criminal procedure law and to create the same jurisprudence on similar legal issues.

Presentation of the main material. It is worth starting by determining the investigative action. Under Part 1 of Article 222 of the CPC of Ukraine: "Investigative actions are actions aimed at obtaining (gathering) evidence or verifying evidence already received in a specific criminal proceeding" [6]. However, alternative definitions of this concept can be found in the scientific literature. For example, Prof. Tacyi defines investigative actions as

“actions aimed at obtaining (searching, gathering) or verifying evidence already obtained in a specific criminal proceeding” [5, p. 389].

In forensic science and criminal proceedings, the terms investigative actions are interpreted broadly and narrowly. Investigative actions in a broad sense are all actions conducted by an investigator in compliance with the requirements of criminal procedure law. In this approach, a sign of equality between investigative and procedural actions is put. Investigative actions in narrow sense are criminal proceedings that are performed to establish record and verify evidence. Investigative actions are a way of implementing the rules of criminal procedural law. Investigative (search) actions are carried out only after the relevant information has been entered into the single register of pre-trial decisions.

As for "search", the criminal procedure law does not define its concept, but only specifies that the search is conducted in order to identify and record information about the circumstances of a criminal offence, search for instruments of crime or property acquired as a result of its commission, as well as locating the wanted people. That is, it sends us to the purpose of such investigative action. If one interprets the purpose in more detail, it is defined as: detection and recording of information relevant to criminal proceedings (information about circumstances; tools of crime; property obtained by crime; wanted persons; other objects which can act as physical evidence, corpse of persons). Therefore, to define the concept it is necessary to refer to the works of scientists stating that the search is an investigative action, which is a procedural compulsory inspection of housing or other possession of a person, as well as individuals in order to identify and record information about the circumstances of a criminal offence, an instrument of crime, a minor offence or property obtained as a

result of its commission, as well as the location of the wanted persons.

An investigator requires at least two reasons to conduct a search: legal and factual. A factual basis for the search is the availability of sufficient information to indicate that it can achieve its purpose. The legal basis for the search is the investigative judge's decision to do so or a written statement from the owner of a particular possession or legal user that shows consent to the investigative action. However, there are requirements when a search can be conducted without such a legal basis. Thus, under Part 3 of Article 233 of the Criminal Procedural Code: “Investigator, the prosecutor has the right without an order of the investigative judge to enter the dwelling or other possession of the person only in urgent cases connected with saving the life of people and property or with the direct pursuit of suspected persons committing a crime” [7].

In such a case, the prosecutor, the investigator in agreement with the prosecutor, is obliged to immediately request the search of the investigating judge after such actions are taken. The investigating judge shall consider such a request in accordance with the requirements of Article 234 of this Code, verifying, among other things, whether there were actually grounds for entering into the dwelling or other possession of the person without the order of the investigating judge. If the prosecutor refuses to agree to the request of the investigator for the search or the investigating judge refuses to satisfy the request for search, the evidence established as a result of such search is inadmissible and the information obtained is subject to destruction in accordance with the procedure provided by Article 255 of this Code.

In our work, we want to consider search as an investigative action in general, but it is impossible not to mention the types of

search. Analyzing the text of the CPC, we can conclude that the object of the search is divided into the following types:

- 1) a housing search (that is, premises which are in permanent or temporary possession of a person, regardless of his / her purpose and legal status, and adapted for permanent or temporary residence of individuals, as well as all components of such premises);
- 2) a search of another person's possession: vehicles, land (garden, yard, forest, fields, etc.); garages, other buildings or premises of household, service, economic, industrial and other purpose, etc., owned by a person;
- 3) a person search [5, p. 389].

An important aspect of the search is the procedural features of this action. Due to the adoption of the new CPC in 2012, there are different interpretations of its rules regarding search and different jurisprudence. This causes a large number of errors to be made by the subjects of the pre-trial investigation. As a need arose, the investigator shall, in agreement with the prosecutor or personally, make a search request to the investigating judge at the place of pre-trial investigation. The petition consists of three parts: introductory, descriptive and resolute.

The request shall also be accompanied by the originals or copies of the documents and other materials used by the prosecutor or investigator to substantiate the reasons for the request, as well as an excerpt from the ERDR on the criminal proceedings under which the request is filed. If the investigator or the prosecutor files a motion with the court to conduct a repeated search, the grounds for conducting it may not be similar to those during the primary search. They should complement those already considered by the investigating judge, or be new if they were not known to the investigator or prosecutor during the primary search. In addition, an investigating judge's order may not be used for more than one

search, even for repeated searches. The validity period of the decision may not exceed one month from the date of the decision.

The main task of the investigator, the prosecutor in directing the petition to the investigating judge is to prove that there are sufficient reasons to believe that the things and documents searched are relevant for the pre-trial investigation, the information contained in such things and documents can be presented during the trial, the things sought and documents are in the petition of the dwelling or other possession of the person. The investigator in his decision should determine what items or documents relevant to criminal proceedings can be seized during the search, but he cannot know about all things that are in the dwelling or other possession of the person. For this reason, the procedural status of things and documents that are not on the list that have been explicitly granted a search permit is clarified. Under Part 7 of Art. 236 removed items and documents that are not on the list, for which a search permit was explicitly granted in the search permit, and do not relate to items that have been seized by the law, are considered temporarily seized property. Following the temporary seizure of property, an authorized official shall be obliged to ensure the safekeeping of such property in accordance with the procedure established by the Cabinet of Ministers of Ukraine (Part 168, Article 168 of the CPC). If the confiscated property belongs to the suspect, the investigator or the prosecutor shall, no later than the next business day after the expulsion, be obliged to apply to the investigating judge for the seizure of the property in the manner provided for in Articles 170-175 of the CPC.

Another mandatory condition for a search is to ensure respect for the rights of the individual and his or her legitimate interests. The CPC defines several conditions: first, the investigator, the prosecutor takes appropriate measures to ensure that persons whose rights and legitimate interests may be restricted

or violated are being searched. Regardless of the stage of this investigative action, the investigator, the prosecutor, another officer involved in the search are obliged to admit to the place of his or her defence counsel or lawyer, the powers of which are confirmed in under the provisions of Article 50 of this Code [7].

Secondly, the search of a dwelling or other possession of a person on the basis of the order of the investigating judge should take place at the time when the least harm of the ordinary occupation of the person who owns them is caused, unless the investigator, the prosecutor does not consider that the fulfillment of such a condition could significantly damage the purpose of the search. Before executing the order of the investigating judge, the person who owns the dwelling or other possession, and in his absence the other person present must be given the decision and a copy thereof. Investigator, the prosecutor has the right to forbid any person to leave the place of the search until its final and to take any actions that interfere with the search. Failure to comply with these requirements entails legal liability. Investigator, the prosecutor has no right to prohibit the search participants to use the legal assistance of a lawyer or a representative. The investigating officer is obliged to allow such a lawyer or representative to search at any stage of his conduct.

The search of a person is carried out by persons of the same gender in the presence of a lawyer, representative at the request of such person. The absence of a lawyer, representative to participate in the search of a person within three hours does not prevent the search. The progress and results of a personal search are subject to mandatory record in the appropriate protocol.

An interesting aspect in the consideration of this issue is the search in the territory of the diplomatic missions. In premises occupied by diplomatic missions, as well as in premises inhabited by members of diplomatic missions and their families enjoying the

right of diplomatic integrity, searches and seizures may be carried out only with the consent of the diplomatic representative. The consent of the diplomatic representatives to the search or seizure is requested through the Ministry of Foreign Affairs of Ukraine. Searches and seizures in these premises must be carried out in the presence of a prosecutor and a representative of the Ministry of Foreign Affairs [10].

Conclusion. Therefore, summarizing all of the abovementioned, considering a large number of mistakes which are made in criminal proceeding during conducting a search, this topic has not only scientific meaning but can be useful in practice. Moreover, it should be remembered that a search is an investigation that interferes in one way or another with the field of human rights and it is important that the investigator and other persons conducting the pre-trial investigation do not violate the procedure established by law and engage in unjustified violations of rights a person and his / her legitimate interests.

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ПРОБЛЕМИ ГАРМОНІЗАЦІЇ ТРУДОВОГО ЗАКОНОДАВСТВА УКРАЇНИ ІЗ ЗАКОНОДАВСТВОМ ЄВРОПЕЙСЬКОГО СОЮЗУ

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Стаття присвячена дослідженню національного законодавства у сфері оплати праці, охорони праці, робочого часу і часу відпочинку та його відповідності європейським правовим стандартам. Розглянуто поняття гармонізації, адаптації, уніфікації, імплементації законодавства. За допомогою порівняльного аналізу національного

законодавства та директив ЄС зроблено висновок, що чинне законодавство України в частині робочого часу і часу відпочинку потрібно допрацьовувати, посилаючись на Директиви Європейського Союзу, Конвенції МОП та інші міжнародно-правові акти та детально вивчити положення цих актів. Водночас потребує удосконалення сфера оплати праці та охорони праці і здоров'я працівників. Потрібно слідкувати за змінами в законодавстві Європейського Союзу, та відповідно оновлювати національне трудове законодавство з урахуванням європейських принципів та стандартів, ознайомлювати роботодавців і працівників з цими змінами, і вимагати неухильного дотримання цих норм. Цей крок передбачає суттєву гармонізацію внутрішнього законодавства та більшу тісну взаємодію з Європейським Союзом. Також у статті визначаються напрями вдосконалення національного законодавства під впливом європейських трудових стандартів.

Ключові слова: гармонізація законодавства, адаптація законодавства, оплата праці, охорона праці і здоров'я працівників, робочий час, час відпочинку, європейські стандарти.

THE ISSUES OF THE HARMONIZATION OF LABOR LEGISLATION OF UKRAINE WITH THE LEGISLATION OF THE EUROPEAN UNION

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The article deals with the study of national legislation in the sphere of payment, occupational safety and health, working time and leisure time and its compliance with the European legal

standards. The main research problems concern the notions of harmonization, adaptation, unification, and implementation of legislation. By using the comparative analysis of the national legislation and EU Directives, we have concluded that the current legislation of Ukraine in matters of working time and leisure time should be finalized, within the EU Directives, ILO Conventions and other international legal acts, and further study of the principles of these acts should be implemented. At the same time, the spheres of payment, occupational safety and health need to be improved. It is necessary to follow the changes in the legislation of the European Union, and accordingly update the national labor legislation in the context of the European principles and standards, to acquaint employers and employees with these changes, and to demand strict compliance with these norms. This step involves significant harmonization of the national legislation and closer cooperation with the European Union. The article also identifies areas of national legislation for improvement under the European labor standards.

Key words: *harmonization of legislation, adaptation of legislation, pay, occupational safety and health, working time, leisure time, European standards.*

Problem statement. Cooperation with the European Union is an important area of integrating Ukraine into European structures, which has the strategic goal of Ukraine's accession to the European Union (the EU). European integration of Ukraine is impossible without the process of the implementation of the European norms in national legislation, the state's realization of international legal obligations on human rights in various spheres of relations, in general, and in the labor sphere, in particular.

Of particular significance is the development of theoretical aspects of the harmonization of labor legislation of Ukraine with

the European standards, as well as clarifying the directions of the further improvement and further development of the national legislation under the European labor standards. Besides, the practical aspect of the study allows us to determine which labor standards of the European Union are embodied in the practical activity of the legislator.

Using the experience of European countries will bring national legislation (first of all, the new Labor Code) closer to the level of international labor standards. However, the implementation of such experience should take into account the characteristics of the legal systems of different countries, including those of Ukraine.

The significance of the research. At the present stage of development of Ukraine, the formation of civil society, where a person is the highest social value, the issues of reforming the current labor legislation in accordance with standards of the European Union are becoming more relevant. The reform of labor law in Ukraine should help to create a society that recognizes and protects human rights in labor sphere. The current legislation, despite the large number of regulations governing labor relations in Ukraine, does not solve the problem of labor regulation in the context of the European standards.

Recent research and publications. The concept of harmonization of labor legislation of Ukraine with the legislation of the European Union attracts great interest of scientists and practitioners. In particular, Andriyiv V., Hryshchak S., Hulak O., Malysheva N., Trykhlub K. and others have contributed to the study of the concept of harmonization. Yevglevska O., Smolyarova M., Shemshuchenko Yu. have paid considerable attention to the differentiation of the concept of "harmonization" from other related legal concepts. Lawmakers are increasingly using Directives of the European Parliament and the Council of the EU as sources of law.

The object of the research is European and national legal regulation of labor relations. **The subject** of the research comprises theoretical and practical problems of harmonization of labor legislation of Ukraine with the legislation of the European Union in the areas of working time and rest periods, occupational safety, health, and pay.

The purpose of the study is to analyze the compliance of labor legislation of Ukraine with the requirements of the European Union in the areas of occupational safety and health, working and leisure time, pay. To achieve this goal it is necessary to perform **the following tasks**: to clarify the essence of the concept of ‘harmonization’; to establish the relationship of this concept with related legal concepts; to investigate the compliance of national legislation with the legislation of the European Union in certain institutions of labor law; analyze the Directives of the European Parliament and the Council of the EU on certain issues; to substantiate the directions of improvement of the current labor legislation under the European standards.

When performing the main part of the study it is necessary to use both general scientific and special legal research **methods**: dialectical, formal-logical, comparative-legal, statistical, method of analysis and synthesis.

Presentation of the main material. One of the most important tools of the integration process, the subject of which is our state, is the harmonization of Ukrainian legislation and the law of the European Union. The harmonization of the national legislation with European law is of particular importance for Ukraine at the present stage of development, because it is the most important process, which involves the creation of a legal basis for future accession to the EU.

The term "harmonization" (from the Greek "harmonia" – *communication, coherence, coherence of parts of a single whole*)

appeared in the Ukrainian law after the ratification of the Partnership and Cooperation Agreement between Ukraine and the EU and their Member States on June 14, 1994 (ratified on November 10, 1994) [3].

According to the "International Police Encyclopedia" in the legal literature, the meaning of this term is defined differently by experts: 1) 'as an alignment, coordination; 2) as a process of bringing the domestic legislation of Ukraine in line with the norms of international agreements, the binding nature of which was approved by the Verkhovna Rada of Ukraine; 3) as a borrowing of the experience of foreign countries in developing national legislation; 4) as obligatory harmonization of national legislation with the decisions of associations of states to which these states are members; 5) as a legally obligatory obligation of Ukraine to take into account the norms of the European Union when developing its legislation, etc.' [7, p. 31].

The harmonization method means that the European Union publishes the basics of legislation in accordance with which member states bring their national laws and regulations into line. Through harmonization, the EU "brings together" the legal systems of the member states, but does not introduce complete uniformity. The instrument of harmonization is a directive, and in the field of criminal and criminal procedure law it is a framework decision [12].

The new term has attracted the attention of many scientists. Gulak O. approached harmonization as a process of purposeful convergence and harmonization of legal regulations in order to achieve consistency of legislation, eliminate legal conflicts, comply with international, European and national legal standards [6, p. 37]. Analyzing the compliance of the legislation of Ukraine with international law, Rabinovych P. clarifies that harmonization is the process of bringing the legislation of Ukraine in line with the legal

systems of leading international organizations in Europe [5, p. 85]. Thus, the Ukrainian scientists define "harmonization" as a process of bringing national legislations in line with the European Union law to establish a single result of the rule of law.

Based on the statements analyzed above, we can give the following definition of harmonization: ***harmonization** is a process of bringing national legislations in accordance with the modern European legal system by complying with the European legal standards to eliminate inconsistencies and fill in the gaps in national legislations.*

It is necessary to distinguish between the concepts of harmonization, adaptation, unification, because they are independent ways of integration. They have common features, ways of their implementation, and a common goal to form a similar, approximate or identical law and legislation.

While *adaptation* is only the approximation of national law, legislation, individual legal acts to a certain model, unification is to transform the rules of law by bringing them into uniformity, and harmonization, on the contrary, does not seek identity, it focuses on the application of similar laws by different states. Mostly scientists consider the concepts of "implementation" and "approximation" as two forms of adaptation.

One of the interests of the state in the labor sphere is the need to create legal conditions to reach a compromise between the interests of the employee and the employer in order to fulfill its purpose in society. And, accordingly, the harmonization of domestic labor legislation should be aimed at satisfying the interests of the participants in labor relations, rather than simply transferring the EU regulations to the system of sources of labor law in Ukraine.

In general, the legislation of Ukraine on issues related to rest and working hours meets European and international standards.

However, there are some drawbacks that need to be eliminated. The main disadvantage of the current legislation is the lack of legal definitions of "working time", "leisure time" and some other notions related to this institution of labor law.

It is known that the draft "Labor Law" [4] contains the notion of "working time" and some new notions of labor law, which are not provided for in the current Labor Code [1], but in connection with socio-economic development and European integration process should be regulated. It can be argued that national legislation on working time and leisure time needs to be refined with reference to European Union Directives, ILO Conventions and other international legal acts and to study the principles of these acts in detail.

As for today, the state of labor protection in various spheres of economic activity and the level of occupational injuries and occupational diseases, despite some positive dynamics, remain high. However, this problem still shows that the production does not reduce the impact of harmful factors, does not improve mechanisms and tools, does not improve the technological process, workers do not use personal protective equipment and, accordingly, it violates occupational safety and health legislation.

On the way to integration into the European space, issues related to pay are of particular importance. The legislator should refer to the EU Directives and ILO Conventions concerning remuneration. And in the future to create such rules that will provide employees with adequate wages, with no delay in the payment of wages, which in 2020 is a very big problem, it will require the employer to make a final calculation of wages within a reasonable time, taking into account the terms of the contract or the decision of a competent authority.

Emphasis should be made on the European legal mechanism of labor legislation, where development is ongoing,

which cannot be said about our state. Currently, the main document in the field of labor is the Soviet Labor Code [1]. At the same time, it contains norms that have lost their relevance in modern society, which progresses every day, or do not correspond to the realities of today, and, therefore, they are unable to ensure the proper level of regulation of labor relations. There are more and more new requirements in the field of labor, which are not regulated in any legal act of Ukraine.

The measures that should be introduced for the effective bringing of the legislation of Ukraine in accordance with the standards of European Union are as follows:

- 1) to improve domestic legislation, especially the institutions of payment, occupational safety and health, employment contract, leisure time;
- 2) to remove a significant number of laws that do not conform to today's realities;
- 3) to adopt a single legal act – the Labor Code (or the current – the Law "On Labor" [4], which is still to be finalized);
- 4) to take into account the principles of the European Directives, especially in the areas of payment, working and leisure time, labor protection, etc.;
- 5) to create the Ukrainian-European Glossary of Legal Terminology;
- 6) to increase the minimum duration of an annual paid vacation by 4 days, which will comply with the norms of the European Social Charter (ECHR) [2], which provides for the establishment of an annual vacation for the period of at least 4 weeks (28 days).

The science of labor law should be clearly delineated the boundary between the implementation of the European labor standards and legal practice of Ukraine, taking into account national characteristics and existing socio-economic conditions and

develop an optimal process of harmonization of the national labor legislation with the European labor standards.

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ЗАХОДИ ЗАБЕЗПЕЧЕННЯ КРИМІНАЛЬНОГО ПРОВАДЖЕННЯ

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У статті розглянуто систему заходів забезпечення кримінального провадження, визначено їхню мету та завдання. Досліджено поняття «кримінально-процесуальний

примус», а також співвідношення заходів забезпечення кримінального провадження із заходами кримінально-процесуального примусу. Здійснено аналіз норм чинного Кримінального процесуального кодексу України, які розкривають суть та порядок застосування заходів забезпечення кримінального провадження, а також досліджено їх класифікацію. В статті також вказано на недосконалість застосування норм Кримінального процесуального кодексу України на практиці.

Ключові слова: заходи забезпечення кримінального провадження, кримінальне провадження, кримінально-процесуальний примус, слідчий суддя, суд.

MEASURES TO ENSURE CRIMINAL PROCEEDINGS

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The article describes the system of measures to ensure criminal proceedings, defines the purpose and tasks of these measures. The notion «criminal procedural coercion» as well as the correlation between measures to ensure criminal proceedings with measures of criminal procedural coercion is investigated. Analysis of norms of the current Criminal procedural code of Ukraine, which reveal the essence and procedure of applying measures to ensure criminal proceedings, and research classification is given. The article also points to imperfections of application of norms of the Criminal procedural code of Ukraine in practice.

Key words: *measures to ensure criminal proceedings, criminal procedure coercion, criminal procedure, investigating judge, court.*

Problem statement. The importance of this issue is related to the fact that application of measures to ensure criminal proceedings implies interference with the rights and freedoms of the individual. At the same time, the Constitution of Ukraine establishes the main feature of the law-based state: «The human being, his or her life and health, honour and dignity, inviolability and security are recognised in Ukraine as the highest social value. Human rights and freedoms and their guarantees determine the essence and orientation of activity of the State». But for guaranteeing protection of human rights and freedoms, the state may also restrict it in order to prevent crime.

Recent research and publications. The question of measures to ensure criminal proceedings was partially reflected in the research of: Hroshevyi Y.M., Hlovyuk I.V., Mykolenko O.M. Farynnyk V.I. etc.

The purpose of the article. The analysis of legislation and theory of criminal proceedings in order to clearly define the concepts of "criminal procedural coercion", "measures to ensure criminal proceedings". Research features of measures to ensure criminal proceedings provided for in the Criminal Procedural Code of Ukraine. **The task** of the article is to analyze the essence and procedure of applying measures to ensure criminal proceedings, and research their classification and determine the value of these measures.

Presentation of the main material. In the state, persuasion has always been the main measure of ensuring proper behavior of citizens. Measures of coercion are used in cases when the method of persuasion is not sufficient to carry out human responsibilities [1]. Measures of criminal procedure coercion can be applied to various subjects of criminal proceedings – suspect, accused, victim, witness, and other persons depending on the circumstances of the

criminal case, as well as their behavior in pre-trial proceedings and in judicial stages of criminal proceedings [2].

Criminal procedure coercion — is a type of state coercion that involves psychological or material influence on a person involved in criminal proceedings through the application of measures of physical, material or moral influence, which has the right-restrictive nature by authorized state bodies or officials on the grounds and in order provided by the criminal procedural law, in order to ensure the effectiveness and efficiency of these criminal proceedings [3].

The terms "measures to ensure criminal proceedings" and "criminal procedure coercion" are not identical. They relate to each other as a whole and a part. Measures to ensure criminal proceedings include those that are not related to the temporary restriction of a person's rights and freedoms and application of which does not result in property, moral or organizational restriction on the person (such as court summons, summons by investigator or public prosecutor, and also provisional access to things and documents) [4].

Measures to ensure criminal proceedings — are measures provided by the procedural law, which may be compulsory and which are applied by authorized state bodies or officials on the grounds, in accordance with the procedure and in the conditions specified by the Criminal Procedure Code of Ukraine to individually determined participants in criminal proceedings or other persons in order to ensure the effectiveness of this criminal proceeding.

The institution of measures to ensure criminal proceedings is extremely important. Therefore, today the issue of effectiveness of precautionary measures, legality and validity of their application is very acute.

These measures are characterized by the following specific features: 1) have procedural character and are regulated by the criminal procedural law, and therefore it is an integral part of the criminal procedural form; 2) the basis, limits and procedure for their application are regulated in detail by law; 3) they are aimed at achieving a single goal - to ensure the proper procedure of criminal proceedings, its effectiveness; 4) have a pronounced coercive nature, which does not depend on the implementation of these measures, but on their legislative model. Even if a person does not object to the restriction of his rights and freedoms, which is connected with the application of measures for ensuring criminal proceedings, they are still compulsory, since the very possibility of coercion is provided for by law; 5) are of an exceptional nature - that is applicable only in those cases where other tasks of the public task of criminal proceedings cannot be achieved; 6) the subject of application is specific - usually it is an investigating judge, the court [5].

Farinnik V.I. proposes the classification of measures to ensure criminal proceedings according to the following criteria:

1) for the purpose of application: a) measures that ensure the proper conduct of the suspect, the accused in criminal proceedings and the fulfillment of their procedural obligations (preventive measures); b) measures that provide for the receipt and collection of evidence (summons by investigator, public prosecutor, court summons, provisional access to things and documents, etc.); c) measures aimed at ensuring the legal order during the proceedings (imposition of a fine); d) measures to secure a civil suit and possible confiscation of property (provisional seizure of property, etc.);

2) for the term of validity: a) measures that take place during a clearly defined period of time (preventive measures, arrest of property, etc.); b) measures whose validity period is not defined (*capias ad respondendum*);

3) on the grounds of application: a) measures applied in connection with non-fulfillment (or possible non-recognition) of procedural duties (imposition of pecuniary charge, preventive measures, etc.); b) measures applied irrespective of procedural offence (provisional access to things and documents, provisional seizure of property);

4) under the regime of restriction of human rights and freedoms: a) measures related to temporary isolation of a person (detention, house arrest, detention of a person); b) measures that are not related to the temporary isolation of a person (imposition of a fine, temporary restriction on the use of special law, personal commitment, mortgage, etc.) [1].

The purpose of applying measures to ensure criminal proceedings in general and precautionary measures in particular is to achieve the effectiveness of proceedings. Under the effectiveness of criminal proceedings, it is necessary to understand the fulfillment of tasks of criminal justice, which are defined in Art. 2 of the Criminal Procedure Code of Ukraine, in particular: protection of individuals, society and state from criminal offences, protection of rights, freedoms and legitimate interests of participants in criminal proceedings, as well as ensuring a prompt, complete and impartial investigation and trial, so that anyone who has committed criminal offence has been brought to justice by guilty, no innocent was accused or convicted, no person was subject to unreasonable procedural coercion and that to each participant in criminal proceedings the due process is applied.

In addition, article 132 of the Criminal Procedure Code of Ukraine provides for general rules for the application of measures to ensure criminal proceedings, which is important for law enforcement activities, since it promotes its unity, observance of rights of participants in criminal procedural relations and resolution of the tasks of criminal proceedings:

1. Measures to ensure criminal proceedings are applied as based on the ruling of investigating judge or court unless the present Code provides otherwise.

2. Application of measures to ensure criminal proceedings shall be based on the ruling of investigating judge and submitted to local court within territorial jurisdiction of which the pre-trial investigation agency is located.

3. Enforcement of measures to ensure criminal proceedings should be denied unless the investigator, public prosecutor proves that: 1) there is a reasonable suspicion of the commission of criminal offence of such severity which may serve as the grounds for application of measures to ensure criminal proceedings; 2) need for pre-trial investigation justifies such degree of interference in rights and freedoms of a person that is stipulated in the motion of the investigator, public prosecutor; 3) the task can be fulfilled and in order to accomplish this task the investigator, the public prosecutor makes a motion.

4. In order to evaluate the need for pre-trial investigation, the investigating judge or the court are required to take into account the possibility to obtain, without applying the measure to ensure criminal proceedings, objects and documents which can be used during the trial for establishing circumstances in criminal proceedings.

5. While considering enforcement measures to ensure criminal proceedings, parties to criminal proceedings should present to investigating judge or court evidence on circumstances to which they refer.

6. Attached to the motion of the investigator, the public prosecutor on application, altering or cancellation of measures to ensure criminal proceedings shall be an extract from the Integrated Register of pre-trial investigations concerning the criminal proceedings in the framework of which the motion is filed [6].

Conclusion. To sum up, it should be noted that there are a number of theoretical issues and practical problems concerning the definition of concepts, classifications, peculiarities of these measures, and purely practical questions of application of criminal proceedings norms in accordance with the fundamental principles of law, observance of the rights and freedoms of citizens, observance of international norms and rules concerning the aforementioned issues in the Criminal Procedure Code of Ukraine. Due to the novelty and the lack of sufficient legal basis and practice of some measures to ensure criminal proceedings in the theory of criminal proceedings, this issue needs to be refined, because the fulfillment of tasks of criminal proceedings depends on the proper application of measures to ensure criminal proceedings.

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КІНО ЯК ЗАСІБ ПОЛІТИЧНОЇ ПРОПАГАНДИ

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У статті розглянуто вплив кінематографу на суспільство та особливості політичної маніпуляції свідомістю населення. Проаналізовано опитування та дослідження в Україні та закордоном, а також наведені приклади яскравих політично-маніпулятивних фільмів. Окреслено характерні риси пропагандистського кіно.

Ключові слова: кінематограф, пропаганда, маніпуляція, нацистська Німеччина, Радянський Союз, Росія, Україна.

CINEMA AS A MEANS OF POLITICAL PROPAGANDA

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In the article the impact of the cinema on society is investigated, and attempts are made to analyze the way political manipulation of the public consciousness works. Surveys and related studies are examined, some examples of vivid political manipulation in films are provided. The study determines characteristic features of propaganda in cinema.

Key words: *cinema, propaganda, manipulation, Nazi Germany, Soviet Union, Russia, Ukraine.*

Problem statement. Being an incredible entertainment experience, cinema seemingly cannot be of any far-reaching or grievous weight. But a film can have a powerful psychological impact on a person, the viewer easily perceives and adopts all the emotions, thoughts and ideas set out in the film.

As a result, cinema has become an excellent way of manipulation and propaganda, which are actively used by the country's authorities. Thus, we are witnessing an ongoing transformation of film-art into film-propaganda.

The purpose of this article is to study cinema as a means of propaganda, not art. We also aim to study the features of the cinema that enable its powerful psychological impact on people. An attempt is made to characterize the main features and possible purposes of propaganda in films.

Recent research and publications. Political propaganda in the cinema has not been studied enough, taking into consideration the scale of influence it possesses. However, apart from some factual information, we have looked into studies carried out by several Ukrainian researchers.

In their scholarly article (2016 Prasyuk Oksana and Pastukh Julia explored the peculiarities of propaganda in a totalitarian society on the example of Germany in 1933-1945, analyzed films that were used as political propaganda in Nazi Germany. Avramenko Anna in her work "Art as a means of propaganda" in 2009 explored the concept of "propaganda" and the correlation between art and propaganda in the USSR, the beginnings of Soviet propaganda in art.

Presentation of the main material. Cinema is an incredible invention that is involved in creating a worldview of the

population, imposing patterns of behavior, the formation of moral values. Despite even the seemingly neutral comedy or romantic drama, we subconsciously adopt the main character's behaviour model: the behaviour of the man and woman, the norms of communication, the parent-child relationships [7, p. 1]. It is the films that create or disseminate such stereotypes that the population imitates: parents always have misunderstandings with children, unrequited love, understanding each other, and so on. Deviation from these models in real life seems painful, as if a person does not fit into the established pattern. But speaking more generally, we cannot but acknowledge that cinema can exert such a huge influence and effect on our habits and life, that it can shape the way we think and mould our views on certain things. Thus, cinema is a great means of manipulation and propaganda.

Cinema is the most advanced imperialist means of controlling the masses," said Walter Benjamin, a German intellectual, back in the 1930s (!) [7, p. 2]. Nazi Germany quickly understood this and implemented it in their politics.

"Since January 30, 1933, no other industry has felt as close to the attention of the party and the government as cinema. The Führer confessed his adherence to the cinema. With such love of the Führer and his minister of propaganda for cinema, it may not seem surprising that the party and the state proclaimed it a people's and cultural heritage," – wrote Oscar Kalbus in the book 'On the Formation of German Cinema'.

There was a nationalization of the cinema, and a law declaimed such concepts as "national-socialist", "moral" and "artistic" cinema. Censorship was introduced to prohibit the screening of a film if it was discovered that the film "is capable of endangering the vital interests of the state or public order and security, offending national-socialist, moral or artistic feelings, influencing wild and immoral ways, endangering the German

Germany's prestige or relations with other states." All in all, over the years of the Third Reich, 1097 feature films have been screened. Every tenth of them contained frank political propaganda.

Example: "Victory of Faith" and "Triumph of Will" are black-and-white documentary feature films by the director L. Riefenstahl. The tapes tell us about the fifth and sixth congresses of the National Socialist Labor Party in Nuremberg. Both films were produced under the personal orders of A. Hitler [5].

The beginning of "Victory of Faith" is dedicated to ordinary people in Germany. The viewer sees a classic German town with its inhabitants. But soon the faces of the townspeople are replaced by those of the military and party members. The same can be observed in the Triumph of the Will, which begins with the frames of the clouds and the plane in which the Fuhrer flies.

This is the impression of a constant "presence" in the event. There are no unnecessary, distracting scenes in the movie. The viewer easily understands when all the events are happening and the content of everything that is happening.

Sound plays an important role in any documentary. Music in these films is represented by military marches and anthems. The marches characterize the mood of Germany in those years; the Aryan preference reads everywhere, from correcting the soldiers to ending with a selection of music for parades and demonstrations. There are no dialogues in the films, only the Fuhrer and his associates talk, the people respond to slogans, the soldiers make a roll call.

Both films present, impose values and ideas on the citizens, ideology, create a basis for manipulation of the consciousness of the people: 1) model of "democracy" (the state builds the leader.); 2) only equality of all citizens will allow everyone to feel his/her importance for the development of the state; 3) struggle and self-sacrifice are necessary for building a strong state; 4) there can be

several political forces, ideas, views; 5) ideology should replace worldview.

Another great example of what power and influence a film has is the movie "The Fuhrer Gives Jews a City" (1944). The film depicts the lives of Jews in concentration camps in the best way. That is, Hitler thus "refutes" the gossip about mass terror in concentration camps. A prime example of political propaganda is the Soviet cinematography. Lenin said, "Of all the arts, cinema is the most important thing for us." Stalin also actively agreed with him [4, p. 3].

Therefore, cinematography at the time played a major role in the dissemination of communist ideas, in particular the films of Sergiy Eisenstein, especially "Armadi Potyomkin" and "Oktyabr." Movies gave the communist ideal of a person for the people. Some films aimed at fostering a sense of collectivism: in the films, the cohesiveness, the friendship of the people always won, and the person outside them was considered an enemy [1]. It appeared that personality is nothing, the majority should do as everyone. Also, the Soviet cinema has learned to reproduce an alternative historical reality on screen and replace it with true historical memory [6].

For example, 'The Battleship', shot for the 10th anniversary of the revolution. This film was shamelessly turned into an official chronicle of the events of the October Revolution [1]. Each image of the historical film was thought out in detail and interpreted in its way, giving the viewers a false idea of events and figures: hundreds of soldiers participated in the battle on Lake Lodz, the Germans captured Pskov, the Nevskaya battle, etc.

The Soviet Union imposes stereotypical thinking about the Ukrainians: for example, "Elusive Avengers" in 1967 shows four teenagers defeating a bloodthirsty Ukrainian-language gang, and Nestor Makhno is referred to as "hell" [1].

You can also find an example of political propaganda in the American cinema: the Pentagon at one time used the Hollywood films to promote all kinds of troops. For example, in 1986, the movie "Best Sagittarius" was filmed with Tom Cruise in the lead role. During the rental period, US movie theatres opened points where anyone could become a military volunteer. The result was stunning - the number of volunteers increased after the movie rental by 500%. (!)

If anyone believes movies only affect people in the period of time when the movie was made, he is mistaken. The Global Governance Science School has researched whether the films of the Third Reich have a propaganda influence on the consciousness of modern people. They researched questionnaires of students of the National University of Ostroh Academy. This survey questioned 60 respondents. They were divided into two groups - one control, the other experimental. The questionnaire asked students questions about democracy, outlook (can it be changed), what is the optimum number of political forces in the state that should unite citizens.

Initially, the respondents filled in the questionnaires. Then the experimental group watched the films, and the control group did not, and both groups again filled out the same questionnaires. Comparing the answers with the previous ones, the researchers discovered that those who did not watch the movies did not change their answers, but 80% of those who watched the films did change. They started believing that "democracy is a responsible leader that embodies the ideas and views of the whole nation," and that a strong state is a constant struggle.

The statement "The ever-changing worldview needs to be replaced by an immutable ideology" was not agreed upon by any student from both groups during the first questionnaire. Most have argued that the world is constantly changing, so the view of what is happening must be changed too. In the second poll, students

appeared who changed their answer and agreed with the statement, arguing that "only with a clear ideology and firm convictions can a strong and free country be created".

Therefore, the location and timing of the film do not affect when it affects the person. These days propaganda continues, especially in Russia. In fact, modern cinema has become a good way of "educating" young people, creating a manipulative picture of past events. For example, the movie "Son of the Father of Nations" 2013 rehabilitates Stalin's totalitarian regime. Also a huge number of Russian films about the Second World War form in the people the idea of this war, raising feelings of pride, gratitude, and patriotism. In this case, people do not even distinguish where there is artistic fiction, and where - the truth [2].

Russia uses propaganda about the current Ukrainian-Russian war: the movie «Donbas. Okraina" by Renata Davletyarov calls this war a civil conflict in Ukraine, in which thousands were killed. It claims that Ukraine "banned" Russian language in 2014. It is even noted that the film is "based on real events" [3].

Propaganda in other films that have been broadcast on Ukrainian television is not so obvious and cruel, but rather simply imposes stereotypes and ideas: Russian police are the best, Russian love is the best, Russian nature is the best, Russia is the fighter for truth and justice. The Ukrainians are being discredited: they are portrayed as thieves, cowards, slain redneck, drunks.

But sometimes political propaganda can have positive consequences. For example, recently cinema has become more active in Ukraine, which promotes national values, awakens national consciousness, shows reality, tries to take away citizens from misconceptions about certain historical events and figures, develop patriotism. The movie "Home" tells about the severe fate of Crimean Tatars during the war. The film tells of all the horrors

of the totalitarian regime. "The Price of Truth" tells us the story of the horror of the Holodomor.

Conclusion. The main features of political propaganda are: 1) creating the model of behaviour and norms, pushing a person to adopt the movie character's behaviour model; 2) half-truth – it is possible to make some impression on the viewer that is beneficial to someone from above and to create a favorable vision of a problem; 3) scenes of violence create a sense of “normality” about it, make people used to it as something trivial; 4) manipulating people's feelings and emotions; 5) rewriting the history. Quite often emotions control the brain. In this way, for example, a movie made about Adolf Hitler in a certain way can instill admiration in people and undermine his crimes.

Thus, the main purpose of political propaganda is to control people, their outlooks, thoughts, emotions, feelings.

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ПРАВОВЕ РЕГУЛЮВАННЯ БЮДЖЕТНОГО КОНТРОЛЮ В УКРАЇНІ

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У статті розглянуто питання правового регулювання бюджетного контролю в Україні. Традиційно з'ясовано, завдання, значення, основні засади, види, форми, методи, стадії, суб'єкти та місце бюджетного контролю в системі фінансового права. Досліджено також основні проблемні аспекти цієї теми.

Ключові слова: бюджет, бюджетне право, фінансовий контроль, бюджетний контроль.

LEGAL REGULATION OF BUDGETARY CONTROL IN UKRAINE

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The article deals with the issues of legal regulation of budgetary control in Ukraine. The purpose, tasks, values, basic principles, types, forms, methods, stages, subjects and place of budgetary control in the system of financial law have traditionally

been clarified. The main problematic aspects of this topic are also explored.

Key words: *budget, budget law, financial control, budgetary control.*

Problem statement. The value of budgetary control in the process the formation of market relations is constantly increasing as it facilitates successful implementation state budget policy, security the process of formation and efficient use of financial resources in all parts of the budget system. A lack of clear regulatory regulation of control activities of public authorities, which is to perform a number of interrelated functions and tasks for the efficient and rational use of budgetary funds, and therefore the improper implementation of budgetary legislation gives rise to its numerous violations.

Recent research and publications. Contribution to the development of research on budgetary control, including as a kind of financial control, in textbooks and publications were made by such scientists as: O. P. Hetmanets, O.A. Kuzmenko, O.V. Makukh, L.K. Voronova, O.M. Gorbunova, O.Y. Gracheva, Y.A. Krokhina, M.P. Kucheryavenko, I.B Lagutin, N.Y. Prishva, I.V Rukavishnikov, L.A. Savchenko, N.Y. Yakimchuk.

The purpose of the article is to characterize budgetary control as a type of control and budgetary activity, to identify problems of legal regulation and to offer scientifically sound proposals for improvement of the existing legislation in this field.

Presentation of the main material. The development and reform of relations in the sphere of budgetary activity of the state requires clear legislative formulation, since this sphere of public relations is potentially conflicting in the state. The state cannot implement its foreign and domestic policies, ensure the implementation of socio-economic programmes, lacking financial

resources, and without exercising appropriate control over their legitimate formation and spending. A significant drawback of the current state of legal regulation of budgetary control in Ukraine is the lack of stable and systematic budget legislation. The rules governing budgetary control procedures establish the legal status of subjects of budgetary control and define its system are contained in many legislative and subordinate legal acts, which causes some difficulties in their application.

It should be noted that there are different perspectives on the concept of budgetary control, but they are not contradictory and generally outline the main features of the term. A budgetary control is “the activity of the budgetary authorities, regulated by budgetary legislation, to check compliance with budgetary requirements by participants in the budgetary process, who carry out budgetary responsibilities or to ensure that they are implemented in order to comply with the rule of law at all stages of the budgetary process and efficiency” [3, p.149].

Analysis of the current financial and legal literature shows that there are a number of approaches to the classification of budgetary control by different criteria: by time, subjects, the nature of the relationships of subjects, forms of conduct, target control actions, scope, content or institutional characteristics, etc.

The scientific literature also defines the main terms related to budgetary control, namely: a type of budget control is a separate feature or the criterion is the relatively independent part, the whole of which is the budget control. The type of budgetary control is “a subdivision in the systematics that belongs to or is part of a higher division – budgetary control” [2, p. 89].

The form of budgetary control is the externally expressed and legally formulated actions of the controlling entity within its budgetary powers, which have legal consequences and constitute the content of budgetary control and express the internal

connection, method of organization and interaction of elements of budgetary control (entities, object and subject to control) between themselves and with external conditions and factors [2, p. 84].

The method of budgetary control is a way of research and practical knowledge of budgetary activity, process, stage, and procedure in order to establish the correspondence of the real state of the budgetary legal model [2, p.94].

Budgetary control performs a number of important tasks such as identifying budget offences, applying measures to influence budget offenders, preventing budget offences at all stages of the budget process. These and other tasks require that budgetary control be based on certain principles. Principles of budgetary control constitute the three-tier system: the first level – the principles of law, the second level – principles of financial control, the third – principles of budgetary control. The first and second levels are "external principles" that have particularities manifestation in budgetary control, and the third level – the principles of budgetary controls or "internal principles". The principles of financial control include the following principles: legality; the principle of objectivity of budgetary control; publicity; independence; systemic; interaction and coordination; responsibility; efficiency. Internal principles of budgetary control define the principle of continuity and the principle of implementation of the budgetary control reaction [5, p. 232].

In accordance with the principle of legality, the activities of budgetary control bodies are governed by the provisions of the Constitution of Ukraine, the Budget Code of Ukraine, decrees of the President of Ukraine, laws of Ukraine, resolutions of the Cabinet of Ministers of Ukraine and other acts of the legislation of Ukraine. Instead, the implementation of reform in the area of budgetary control is based on the provisions of the Cabinet of Ministers of Ukraine and other acts of the legislation of Ukraine. It

should be noted that the current regulatory framework in the field of public financial control is characterized by imperfection, unsystematic, frequent variability, application of different approaches and principles to formulation of basic provisions, the presence of contradictions in some acts of legislation, shortcomings and legal loopholes.

In order to overcome the shortcomings of the regulatory framework, it is first necessary to determine the stages of budgetary control. Separation and clarification of the content of the stages will solve two problems: scientific, which is an in-depth study of the legal nature of this complex budgetary legal category; identifying topical theoretical issues that need to be resolved, and practical, which is to further improve the legal regulation of control budgetary relations at the stage of budget execution. There are four stages of current budgetary control: planning, organization, implementation, decision making (evaluation), execution of the decision on the results of control measures and control of the implementation of the decision.

Planning of control measures is a set of actions of authorized entities aimed at preparation, review, alignment and approval of the plan of control measures, regulated by rules of law. The organization of control measures is regulated by law set of actions of the controlling entity aimed at the implementation of the identified legislation on measures to develop a control programme; and preparation for their implementation. Implementation of control measures, which involves their implementation directly at the controlled object or, in the case of an absentee control measure, at the premises of the controlling entity, provided all necessary documents and information are provided [6, p. 125].

An important point in the implementation of control measures is their documentation. Documentation of a control measure is a continuous process of fixing the information received

in the process of implementing a control measure of information on appropriate media, which reflects the intermediate or final result, or is necessary to achieve it. The next step is to make an authorized decision the results of the control measure – an individual act of applying the rule of law (official form and summary of the control measure) that establishes, modifies or abolishes individual subjective rights and/or responsibilities of the controlled entity the subject [3, p.148].

The implementation of the decision on the results of the control measure is a set of actions of the controlled entity in respect of enforcement prescriptions of the act of the controlling entity on the application of the rule of law adopted as a result of a control measure subject to legal restrictions: temporarily restricting subjective budgetary rights and imposing additional ones legal responsibilities also regulated by rules of law.

Selection and analysis of the content of the stages of the current budgetary control made it possible to find out the essence of this type of control, the sequence of actions during its implementation, the features of individual control operations, showing its dynamics (development). At the same time, a number of problems have been identified and, therefore, need to be resolved, above all, are terminological problems, problems of formation of the conceptual apparatus and problems of legal regulation, which, in turn, need further improvement which should take place in the following areas: unification, optimization and standardization of budgetary control.

The improvement of the budget legislation both in general and in budgetary control should be carried out in two stages. The first stage is amending the current legislation to eliminate existing defects and disadvantages. The second stage is development of modern budgetary policy, the concept of budgetary control, and only

then, on the basis of the development and adoption of modern budget legislation, budget control legislation is an integral part of it.

Conclusion. The current problems with the development of fiscal control are related to the imperfection of the legislative framework. So, there are many unanswered questions. The solution to the problems of improving budgetary control in modern conditions depends largely on identifying the causes of their occurrence and developing mechanisms for their elimination.

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УКЛАДЕННЯ ДОГОВОРУ ЗА ЦИВІЛЬНИМ ЗАКОНОДАВСТВОМ

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У статті розглянуто порядок укладення договору, обов'язкові умови, яким повинні відповідати оферта та акцепт, окремі особливості укладення договору за чинним законодавством. Автором проаналізовано необхідність введення нових термінів у чинне законодавство та удосконалення уже існуючих дефініцій.

Ключові слова: *договір, істотні умови договору, стадії укладення договору, момент укладення договору, місце укладення договору.*

CONCLUSION OF A CONTRACT UNDER THE CIVIL LEGISLATION

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In this article the procedure of conclusion of the contract, the obligatory conditions to which an offer and acceptance must respond, certain peculiarities of conclusion of the contract under the current legislation are considered. The author analyzes necessity of introduction of new terms in the current legislation and improvement of existing definitions.

Key words: *contract, essential provisions of the contract, stages of conclusion of the contract, moment of the contract concluding, place of the contract conclusion.*

Problem statement. In modern conditions, the role of the contract as a regulator of civil relations, their source has increased. Fundamentally, new types of contractual relations have emerged and those that were in the initial stages of development were further developed (leasing, factoring, consignment, concession, property trust management etc.).

With the entry into force of the new Civil Code of Ukraine, a new stage of development of contractual law in Ukraine has begun. It acquired signs of systematic and logical completeness. But at the same time contract law institute in the current Civil Code of Ukraine poses before the civil law doctrine new methodological problems, which must be solved. These problems are caused by the need to take into account positive foreign experience, which is dictated by the process of Ukraine's accession to European legal standards and the desire to adapt the Ukrainian legislation to the European Union law.

The Civil Code of Ukraine recognizes the contract as the regulator of social relations, which has a fundamental nature. First of all, it changes its role in the mechanism of legal regulation of contractual relations, because the contract provides the possibility of their self-regulation. For example, the parties of the contract may deviate from the provisions of civil legislation acts and regulate their relations at their own discretion [11]. Secondly, the contract can eliminate gaps in civil legislation, That's why the regulation of civil relations by analogy of law can take place if they are not regulated by the Civil Code of Ukraine, other acts of civil law and also by the contract.

Recent research and publications. It should also be noted that the level of scientific development in the field of conclusion of the contract in Ukraine, unfortunately, is quite low. Of course, the contribution of Ukrainian scientists, such as V.M. Kossak, V.V. Luts, O.V. Dzera, S.O. Borodovsky, Z.V. Romovska, I.V. Spasibo-Fateeva and others are invaluable. But some issues of conclusion of the contract aren't considered or poorly investigated, barely researched problems of offer and acceptance, etc. So I can state that the chosen research issues are very relevant, because the procedure for concluding civil law contract in Ukraine has a huge meaning in our everyday life.

The purpose of the article is to comprehensively analyze the procedure for concluding civil contracts in the current economic conditions, the features of the legal regulation of this question in Ukraine, as well as to develop proposals for improving the legislation of Ukraine.

Presentation of the main material. The Civil Code of Ukraine provides definition of the contract, but, in my opinion, it is unsuccessful, because not every agreement acquires the features of the contract. So, I recommend making changes in the current legislation of Ukraine and enter this definition: "civil law contract is a legal act of two or more persons, which is based on their particular actions, expressed in free will, fixed in the form prescribed by law and aimed at achieving a single legal result, which consists in installation, change and termination of civil rights and obligations" [2].

As we know, a procedure for concluding contract includes two stages. The first stage is called an offer and the second is an acceptance. According to this, a party, which makes the offer to conclude the contract, is named the offeror and other party, which accept this offer, is named the acceptor. The contract is concluded

when the offeror receives an acceptance from the acceptor, unless otherwise provided by civil law acts.

The offer is a proposal to conclude the contract, which is addressed to a clearly defined person. It must include all essential terms of the future contract and express a consent of an offer or to be associated with such terms. An offer generates obligation for an offeror, which consists in conclusion the contract with the person that accepts appropriate proposal from the moment it was received.

The second stage of a contract conclusion is the acceptance, as S.O. Borodovsky notes that is the expression of consent of that person, to whom the offer is directed, about acceptance proposed terms and conclusion the contract between the parties on these terms [2].

However, we should remember that offer and acceptance aren't unilateral agreements as many scientists consider. There are only constituent parts of a bilateral agreement – contract. The expression of will of one party (offeror) is aimed at receiving the expression of will of another party (acceptor) in response, as a result of which arises common willed act (contract), which leads to the achievement of counter results, desired for them.

Furthermore, when you are concluding the contact there are certain peculiarities, which are established by the current civil law, namely when: receiving the acceptance with a delay or answering to the proposal to conclude the contract on other terms, solving pre-contractual disputes and so on. For example, if the response on acceptance of the offer to conclude an agreement was sent in time but received with delay, a person that made the offer to conclude an agreement shall be released from his/her respective obligations, provided he / she immediately notifies a person, whom the offer was addressed, about the delay in receiving the offer. A response received with delay shall be a new offer. However, upon consent of a person that made the offer the agreement may be deemed

concluded regardless of the fact that the response to the offer to conclude the contract was received with delay [11].

A commercial contract is a type of civil law contracts by its nature and general provisions on contracts prescribed by the current Civil Code of Ukraine apply to it. Today it is necessary to enter the definition of commercial contract at the legislative level. I recommend the next definition like this: commercial contract is a legal act of two or more persons (at least one of them is the subject of entrepreneurship), which is based on their concerted actions, expressed in free will, fixed in the form prescribed by law and aimed at achieving a single legal result, which consists of installation, change and termination of commercial rights and obligations. This problem should be solved, because a clear legal definition of this concept in the legislation will promote to overcome legal gaps and collisions in civil legislation, allow us to avoid further difficulties, which arrive when we interpret some rules in the Ukrainian legislation. It also helps us to improve legal regulation of commercial relations at the present stage of development of market relations in society.

Moreover, the contract is concluded when its parties follow these conditions:

1. parties of the civil law contract reached consent about all essential terms of the contract. Essential provisions of the contract shall be the subject of the contract, provisions that are established essential by the law or necessary for the contracts of a specific type as well as all those provisions, in respect thereof a consensus is to be reached upon application of at least one of the parties [11]. Of course, the list of essential provisions depends on the specific type of contract, and their totality is the content of the contract;
2. parties reached that consent in the form prescribed by law (proper form);

3. parties of the commercial law contract must reach that consent in the procedure prescribed by law.

Futhermore, determination of the moment and place of the contract conclusion play an important role, too.

Talking about the moment of conclusion of the contract, it is important to determine whether the contract is consensual (contractor's contract, agency contract, etc.) or real (contract of the lifelong maintenance (attendance), rent contract, loan contract, property management contract, etc.). If it is a consensual contract, according to the Civil Code of Ukraine, it shall be concluded since the moment a person, who sent an offer to conclude the contract, receives a response about acceptance of this offer. If pursuant to the civil legislation act, the contract's conclusion requires also transfer of property or commitment of other action, the contract shall be concluded since the moment of the respective property transfer or a certain action commitment. A contract eligible for notarization shall be concluded since the moment of its notarization [11].

Under Article 647 of the Civil Code of Ukraine: "A contract shall be concluded at a residence place of a physical person or a place of location of a legal entity that made an offer to conclude a contract, unless otherwise is established by the contract" [11]. It is quite important to determine the place where the contract is concluded in view of the right that should be applied to the contract. In addition, it should be taken into account in other cases. In particular, if the price in the contract is not established and cannot be determined based on its provisions, it shall be determined based on regular prices at certain place for similar goods, jobs or services at the moment of the contract conclusion.

One of the ways to reconcile the content of the contract is the special procedure for the conclusion of the contract (auction, competition, exchange method). Procedure for concluding contract in these situations is more complicated than the two-stage general

procedure (offer and acceptance). It is a legal structure, which consists in holding tenders (tender, auction) and concluding the contract according to their results.

Conclusion. All in all, the contract plays very important role as a regulator of social relations and it has inalienable meaning in the vital functions of society and state. So, there is an urgent need in adapting the Ukrainian legislation to the European Union law, reforming legislative regulation of civil relations, preparing relevant conceptual approaches to its updating and codification of civil law in general.

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ЦИВІЛЬНО-ПРАВОВИЙ ЗАХИСТ ПЕРСОНАЛЬНИХ ДАНИХ У ДОГОВІРНИХ ВІДНОСИНАХ

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У статті розглядаються можливості удосконалення правового регулювання у сфері захисту персональних даних в договірних відносинах. Для цього здійснено системний аналіз правового регулювання, судової практики та наукових досліджень відносин в даній сфері. В науковій статті проаналізовано цивільно-правові наслідки порушення права на захист персональних даних в договірних відносинах.

Ключові слова: *персональні дані, договірні відносини, цивільно-правовий захист персональних даних, цивільно-правові наслідки.*

CIVIL PROTECTION OF PERSONAL DATA IN CONTRACTUAL RELATIONS

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This article deals with the possibilities of improvement of legal regulation in the sphere of protection of personal data in contractual relations. For this purpose, a systematic analysis of legal regulation, case law and scientific studies of relations in this field was carried out. The scientific article analyzes the civil legal consequences of the violation of the right to protection of personal data in contractual relations.

Key words: *personal data, contractual relations, civil protection of personal data, civil law consequences.*

Problem statement. The level of protection of personal data in the state is the "air" of democracy [5; p. 28] and at the same time an indicator of human rights protection. Ukraine is on the way to forming a proper legal framework. Today, the sources of legal regulation of personal data are the Constitution of Ukraine, the European Convention on Human Rights, the Council of Europe Conventions, the Laws of Ukraine «On Information», «On the Protection of Personal Data», «On Electronic Commerce», etc.

Particularly topical is the compliance with the rules of the European law on the protection of personal data. In particular, Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons concerning the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation – GDPR) [12]. Ukraine needs to study the provisions of the Regulation since Ukraine strives to join the

EU. It demonstrates the relevance of a multi-center study of the legal framework of Ukraine, GDPR, case law, research studies and scholarly works, which relate to the legal regulation and personal data protection in civil legal relations.

The above has led to the need for conduction of a theoretical study of the issues of civil protection of personal rights in contractual relations and development scientific positions for solving problematic issues, facilitating the improvement of existing legislation in this field.

Recent research and publications. Separate issues of the civil legal protection of personal data are covered in the works of Maidanik R.A., Kokhanovskaya O.V., and other scientists. However, there is no scientific research on the civil protection of personal data in contractual relations.

The purpose of the article. The purpose of the research is to formulate the theoretical concept of civil law protection of personal data in contractual relations, as well as to develop scientifically substantiated proposals aimed at improving the current legislation and law enforcement practice. To achieve this goal, the following main tasks are set: to understand the concept of personal data; to analyze the legal regulation of personal data; to determine the civil legal consequences of the violation of the right to protection of personal data in contractual relations.

Presentation of the main material. Personal data is any information relating to an individual that is identified or identifiable. Similar definitions are provided in the Laws of Ukraine «On Information», «On the Protection of Personal Data», in GDPR. These legislative acts do not provide a clear list of data, identified as «personal data», which is justified because it allows the versatile application and absolute protection of the rights of personal data subjects.

In the legal literature, the opposite is justified: it is advisable to include in the special Law «On Protection of Personal Data» a non-exclusive list of information relating to personal data; there should also be a warning as to which personal data are not collectible at all [1, p. 38]. The view is also made that personal data and confidential information are identical concepts [2, p. 56].

Under Article 611 of the Civil Code of Ukraine in case of breach of obligation there are legal consequences established by the contract or the law, in particular: termination of the obligation due to unilateral refusal of obligation, if it is established by the contract or law, or termination of the contract; changing the terms of the obligation; payment of a fine; compensation of losses and moral damage. It is expedient to analyze the peculiarities of the legal consequences of a breach of contractual obligations regarding the protection of personal data.

The law does not provide for the possibility of unilateral termination of the contract in case of breach of the obligation to protect personal data, so this rightful consequence of a breach of the obligation can be applied only when the parties themselves agree in the contract. As for the change, termination of the contract by a court decision, it should be noted that it is carried out at the request of one of the parties in the event of a significant breach of the contract by the other party (Article 651 of the Civil Code of Ukraine). In the determination of a breach of the obligation to protect personal data as a material breach of contract, a negative position has emerged in the case law. It is appropriate to analyze the following Legal Position, set out in the resolution of the Chambers of Civil and Commercial Courts of the Supreme Court of Ukraine of September 18, 2013, in Case No. 6-75c13 [8] in which the court says that one of the grounds for termination of the contract is a significant breach by the party. Significant is such a breach when, as a result of the damage caused, the other party is

largely deprived of what it relied upon when signing the contract (Paragraph 2, Part II of Article 651 of the Civil Code of Ukraine).

The court shall evaluate the breach of the contract as significant under the criteria established by the specified norm. In addressing the issue of assessing the substantiality of a breach by a party to the contract, courts should establish not only the existence of a significant breach of contract, but also the existence of damage caused by the breach by the other party, which can be expressed as both actual loss and (or) loss of profit; its size, which does not allow the injured party to obtain what is expected after the contract, and to determine whether there is a significant difference between what the party is entitled to expect when concluding the contract and what it was able to obtain.

The Cominternivsky District Court of Kharkiv considered the civil case № 641/7163/16-c on the claim about damages in connection with violation of personal non-property rights. The subject of this dispute was "the disclosure of information of a personal and family nature. By the decision of the Court in this case, the claim was upheld based on groundlessness. Claims on termination of contracts for the provision of legal services – left without satisfaction [13]. I believe that the fact of a breach of the obligation to protect personal data is a significant breach of the contract, a sufficient basis for termination of the contract.

A penalty is a sum of money or other property which the debtor must transfer to the creditor in case of a breach of the debtor's obligations (Article 549 of the Civil Code of Ukraine). The right to a penalty arises regardless of whether the creditor has suffered any damage caused by default or improper performance of the obligation (Article 550 of the Civil Code of Ukraine). If the subject of the penalty is a sum of money, its amount is established by contract or act of civil law (Article 551 of the Civil Code of Ukraine).

Article 83 of the GDPR provides only administrative fines for breaches of personal data. In particular, up to EUR 20 000 000 or, in the case of an enterprise, up to 4% of the total global annual turnover for the previous financial year, whichever is the higher. It should be noted that they do not belong to civil liability. I consider that to protect the interests of a party to a contract whose rights have been violated due to the misuse of its personal data by the other party to the contract, a legal penalty of 4 percent of the total annual turnover for the previous financial year should be provided. The grounds for damages and non-pecuniary damage are an improper performance of obligations; damages, non-pecuniary damage; causation; fault.

The improper performance of the obligation is a breach of the contract by the party regarding the protection of personal data. Examples of violations could be: the transfer of information about an individual without the consent of the subject of personal data; failure to notify the party of the agreement on the transfer of his personal data to a third party within ten working days, unless required by the terms of his consent or otherwise not provided by law; the use of personal data in the absence of conditions for the protection of personal data, etc.; denying a person access to his or her personal data; refusal to destroy the personal data of the person, etc. Paragraph 75 of the Rules also states: the risk to the rights and freedoms of natural persons, of varying likelihood and severity, may result from personal data processing which could lead to physical, material or non-material damage, in particular: where the processing may give rise to discrimination, identity theft or fraud, financial loss, damage to the reputation, loss of confidentiality of personal data protected by professional secrecy, unauthorized reversal of pseudonymisation, or any other significant economic or social disadvantage; where data subjects might be deprived of their rights and freedoms or prevented from exercising control over their

personal data; where personal data are processed which reveal racial or ethnic origin, political opinions, religion or philosophical beliefs, trade union membership, and the processing of genetic data, data concerning health or data concerning sex life or criminal convictions and offenses or related security measures; where personal aspects are evaluated, in particular analyzing or predicting aspects concerning performance at work, economic situation, health, personal preferences or interests, reliability or behaviour, location or movements, in order to create or use personal profiles; where personal data of vulnerable natural persons, in particular of children, are processed; or where processing involves a large amount of personal data and affects a large number of data subjects.

Damages are expenses that a person has made or has to make to restore his or her violated right (real damages) and income that a person would receive in ordinary circumstances if his/her right had not been violated (lost profit) (Art. 22 of the Civil Code of Ukraine). Moral damage, in this case, may consist in the mental suffering of the individual due to the unlawful behavior in relation of himself, his family members or close relatives, as well as the humiliation of the individual's honour and dignity (Art. 23 of the Civil Code of Ukraine).

A chain of causation allows us to establish that the unlawful conduct of a particular person to whom such responsibility is attributed is the direct cause of the damages to another person [15]. Analyzing Art. 614 of the Civil Code of Ukraine, the guilt should be understood as non-taking by a person of objectively existing measures, which depend on it and aimed at preventing a breach of obligations. The person who breached the obligation proves the lack of guilt.

The peculiarities of proving these mandatory conditions are well followed in the analysis of case law in the process of dealing

with personal data protection disputes and moral damage. It is worth referring to the exemplary in this category of disputes Resolution of the Supreme Court of Ukraine from 27.09.2017 [7].

In the judgment, the Supreme Court of Ukraine, reviewing the decisions of first and appellate courts, through the prism of proving the moral damage to the applicant because of disclosure of personal data, reached the following conclusion: «Noting that the fact of dissemination of personal data cannot be a statement of moral damage the courts did not pay attention to the fact that the plaintiff attributed the moral damage to the mental suffering caused by the defendant. The courts also ignored the prescriptions of Art. 276 of the Civil Code of Ukraine regarding the obligation of a person whose actions violated the personal non-property right of an individual, to take the necessary actions for its renewal, evidence of what is absent in the case file. According to P. 2 of Art. 276 of the Civil Code of Ukraine, if the actions necessary for immediate restoration of the violated personal non-property right of the natural person are not performed, the court may decide on the renewal of the violated rights, as well as compensation for moral damages caused by its violation» [14].

Under the Supreme Court's legal opinion in this case, by refusing to satisfy the stated claims on grounds of unproven harm, the courts had in fact imposed on the claimant the obligation to prove the mental suffering as a result of a violation of his right to secrecy by telephone, which was inadmissible because of the legal nature of such a right, the guarantees of which are violated by the Constitution of Ukraine. The Supreme Court stated that the courts should proceed from the presumption that the defendant caused moral harm to the plaintiff and that it was the defendant's duty to refute such presumption. Therefore, claimants for moral damage caused by a personal data breach cannot be required to provide any confirmation of moral damage they have sustained. This means that

in the presence of a fact of violation of the applicant's rights, the moral damage is presumed.

Conclusion. In the event of a breach of contract, legal effects arise from the contract or the law, particularly: termination of the obligation as a result of an unilateral repudiation of obligations under the Contract, if established by contract or law, or termination of the contract; changing the terms of the commitment; payment of a penalty; damages and non-pecuniary damage (Art. 610 of the Civil Code of Ukraine).

The law does not provide for the possibility of unilateral termination of the contract in case of breach of the obligation to protect personal data, so this legal consequence of the breach of the obligation can be applied only if the parties themselves agreed on this in the contract.

As for the change or termination of the contract by a court decision, it should be noted that it is carried out at the request of one of the parties in the event of a significant breach of the contract by the other party (Art. 651 of the Civil Code of Ukraine). I believe that the fact of breach of the obligation to protect personal data is a significant breach of the contract, a sufficient basis for termination of the contract.

According to the current legislation, a penalty as a way of civil liability for violation of the right to protection of personal data is possible only when it is stipulated in the contract. To protect the interests of a party to a contract whose rights have been violated due to the misuse of its personal data by the other party to the contract, a legal penalty of 4 percent of the total annual turnover for the previous financial year should be provided.

The grounds for damages and moral damage are: an improper performance of obligations; damages, moral damage; causation; fault. The article justifies that plaintiffs in cases on moral damage refund as a result of a personal data breach cannot be

required to provide any confirmation of moral damage they have sustained. This means that in the presence of a fact of violation of the applicant's rights, the moral damage is presumed.

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ЗАТРИМАННЯ ЯК ТИМЧАСОВИЙ ЗАПОБІЖНИЙ ЗАХІД

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У статті проаналізовано поняття «запобіжного заходу» у кримінальному процесуальному праві та місце «затримання» серед інших запобіжних заходів. Доведено, що затримання є тимчасовим запобіжним заходом і охарактеризовано його особливості. Виділено основні типи затримання і детальніше описано затримання без ухвали слідчого судді, суду та деякі специфічні види затримання. Значна увага приділена визначенню правових підстав затримання особи, гарантіям додержання її прав та свобод, процесуальним особливостям затримання. Визначено проблеми кримінальної процесуальної регламентації

затримання та обґрунтовано необхідність внесення змін до КПК України.

Ключові слова: тимчасовий запобіжний захід, затримання, уповноважена службова особа, слідчий суддя, суд.

DETENTION AS A TEMPORARY PREVENTIVE MEASURE

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The article analyzes ‘preventive measure’ in Criminal Procedural Law and the place of ‘detention’ among other preventive measures, proves that detention is a temporary preventive measure and singles out its main features, highlights the main types of detention and describes detention without approval of the investigating judge or the court and some specific types of detention. Attention was paid to the reasons for detention, guarantees of rights and freedoms of a person, procedural peculiarities.

Key words: *temporary preventive measure, detention, authorized officer, investigating judge, court.*

Problem statement. The Constitution of Ukraine fixes the basic principles of creation, development and consolidation of a democratic, legal and social state, according to which a human, his/her life and health, honor and dignity, inviolability and security are recognized as the highest social value in Ukraine. However, at the same time representatives of the judiciary are empowered to apply measures of criminal-procedural coercion, which are

intended to create an effective mechanism for review and resolution of the case.

Detention is one of such measures and has a temporary character. This measure limits the right to freedom and personal integrity, doubts honor, human dignity and causes moral suffering and may lead to deterioration of health and mental disorder. Therefore, there is active discussion whether it is still effective to apply this measure. However, there is no modern country that has abandoned application of detention as at the same time it provides due course of pre-trial investigation and court proceedings, and as a result – protection of a person, society and a country from crimes.

We believe that investigation of detention application is actual now more than ever. First of all, because the main requirement for Ukraine's entering the world and European community is unification of national legislation. Therefore it is necessary to study the nature of this procedural institute especially for young lawyers. In addition, the right understanding of detention provides reasonable and effective application of this measure of criminal-procedural coercion.

Recent research and publications. This topic was analyzed by such scholars as Bandurka O. M., Volobuev A. F., Klymchuk M. P., Larin O. M., Pohoretskyi M. A., Mychailova O. I., Muhaenko M. M., Stahivskyi S. M., Stashys V. V., Hablo O.Y., Yuhno O.O., Shybiko V. P., Shumylo M. E. and others. But it doesn't mean that this question has been comprehensively investigated as legislators regularly amend our legislation, because of what lots of works must be overlooked.

The purpose of the article. The aim of the article is to study detention as a temporary preventive measure, define the concept, the order of application due to the Criminal Procedural Code of Ukraine, and analyze its advantages and disadvantages. The main **task** is to analyze this procedural institute, determine the

essence and features of this temporary preventive measure, identify positive and negative sides of application of detention in practice.

Presentation of the main material. There is no unique legal or scientific definition of the term ‘preventive measure’. Despite a large number of definitions, all of them describe its essence. So ‘preventive measures’ mean a system of measures of criminal-procedural coercion, which limit constitutional rights and freedoms of a person, may be applied for the reasons and in the order clearly defined in Criminal Procedural Code by an investigating judge or court (in some cases by a prosecutor). The purpose of this institute is to prevent the suspect or defendant from carrying out certain activities that may have negative impact on criminal proceedings [1, p. 123].

According to Article 176 of the Criminal Procedure Code of Ukraine (CPC) detention is a temporary preventive measure, which may be applied for the reasons and in the order clearly defined in the CPC. Detention may be carried out on a suspected or accused person upon the decision of the investigating judge or court by an authorized official, as well as in precisely established cases by anyone who is not an authorized officer.

Detention must be timely and the character of actions has to be legal and commensurate with the danger of encroachment and the situation of detention. The reason for application of this preventive measure is the existence of a reasonable suspicion that a criminal offence was committed by this person, as well as the presence of risks which give sufficient grounds to investigating judge, court to consider that the suspect, the accused, the convict may carry out actions provided by Article 177. An investigator or prosecutor cannot initiate application of detention without reasons for it provided by Criminal Procedural Code [2].

The aim of this measure is to find out whether the detainee was involved in committing a crime or not. Detention of a suspect

excludes the possibility for him/her to escape from inquiry, pre-trial investigation or trial, to continue criminal activity, to threaten participants in the process, to interfere otherwise in criminal proceedings [3, p. 11].

According to our criminal procedural law five types of detention as temporary preventive measures are set:

- lawful detention in precisely specified circumstances without approval of the investigating judge or the court;
- detention without approval of investigating judge or court in precisely specified circumstances by an authorized official;
- detention of deputies, judges and other persons specified by Art. 482 of the Criminal Procedural Code of Ukraine;
- detention of a person who committed a criminal offence beyond borders of Ukraine;
- detention of a minor.

All these types of detention differ in subjects of their implementation, grounds and procedural order [4, p. 86].

Criminal Procedural Code provides two types of detention without approval of investigating judge or court. According to Article 207 everyone can detain a person without approval, except for people provided by Article 482 of Criminal Procedural Code:

- 1) in the process of committing or attempt to commit a criminal offence;
- 2) directly after committing a criminal offence or during continuous prosecution of a suspect.

This type is also called physical capture. The aim of this detention is to deliver a person to an authorized person. The analysis of valid legislation lets us make a conclusion that a person must be delivered in three hours. It is important to notice that such person will not have any procedural status until an authorized official sets circumstances [2].

An authorized official is empowered to detain a person who is suspected of committing not every criminal offence but only a crime in case the Criminal Code provides imprisonment for: 1) if such person was caught in the act of committing an offence or during the attempt of committing a crime; 2) if directly after committing any witness, including the victim, or a complex of obvious signs on a body, clothes or a place of the event indicates that this person has just committed a crime; 3) if there are reasonable grounds to consider that a person suspected of committing felony or a particularly grave corruption crime, that is assigned to the jurisdiction of National Anticorruption Bureau of Ukraine may escape from inquiry.

If punishment is a fine above 3000 non-taxable minimum income, a person can be detained in this way only in case a suspect hasn't performed the duties due to the chosen preventive measure or hasn't bailed [2].

Specific type is detention of a person who has committed a crime beyond borders of Ukraine. Due to Article 582 a person, who is searched for by a foreign country because of committing a criminal offence, may be detained by an authorized officer of Ukraine [5, p.193]. If a person is searched internationally, the investigating judge or court must decide whether to apply such preventive measure as detention or change it for a milder precaution in 48 hours.

A minor may be detained only if he is suspected of committing felony or particularly grave crime and there is no other way to prevent risks. His/her parents must be informed about detention immediately [2].

Equally important from the legal point of view is the question of the lawful, timely and reasonable release of a person from custody. But there are only a few articles in CPC devoted to this question, such as Article 202, 206, 211. 212.

The term of detention without investigating judge's or court's decision may not be longer than 72 hours. Such person has to be released from custody or delivered to the court for the consideration of the petition for choosing for him/her a preventive measure for 60 hours [2]. But unfortunately there is no legal act in Ukrainian legislation that regulates the procedure of release of a person and it causes a lot of problems.

Despite the short duration of detention, it also remains one of the most severe preventive measures. Thus every case detention must be legal and motivated, and necessary according to the circumstances which were the reason for applying this measure. At the same time statistics shows that violation of human rights during the detention is a systematic problem in Ukraine. The most common are: detention without legal reason, violation of the terms of detention, violation of the right to protection, detention without drafting the protocol of detention etc. It means that the institute of detention is not perfect and needs to be changed and improved in the nearest future [6, p. 324].

Conclusion. Preventive measures are very important in criminal procedural science because they serve as an instrument that prevents committing a crime or escaping from inquiry, pre-trial investigation or trial. In addition, they help to set objective truth in the given case and provide fair punishment for the guilty.

Detention is a temporary preventive measure, which may be applied for the reasons and in the order clearly defined in the CPC. It excludes the possibility for him/her to escape from inquiry, pre-trial investigation or trial, to continue criminal activity, to threaten the participants in the process, to interfere otherwise in criminal proceedings, helps set circumstances of a criminal offence and determine the fate of a person.

Detention has a special place in the system of preventive measures because of its temporary character. The main task is to

find out whether a person was involved in committing a crime or not. Due to the result of investigation a person must be either released from custody or delivered to court for choosing more severe preventive measures.

All types of detention differ in the subjects of their implementation, the grounds and procedural order. Some of them were analyzed in the main part of the work, but legislation still needs to be improved because there are lots of procedural actions which are not regulated legally and as a result it causes violations of human rights and freedoms.

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ПРАВОВИЙ ЗАХИСТ ПЕРСОНАЛЬНИХ ДАНИХ

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У цій статті розкрито значення терміну "персональні дані". Обґрунтовано проблеми, пов'язані з персональними даними та необхідність впровадження надійної системи їх захисту. Проаналізовано міжнародні нормативно-правові акти, спрямовані на врегулювання питання про захист персональних даних та обговорено питання доцільності вдосконалення українського законодавства у галузі захисту персональних даних.

Ключові слова: персональні дані, захист, регулювання, законодавство.

LEGAL PROTECTION OF PERSONAL DATA

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In this article the author reveals the general concept of "personal data". The problems related to personal data and the need to introduce a reliable system of personal data protection are discussed. International normative acts aimed at regulating the issue of personal data protection are reviewed and the issue of the expediency of improving the Ukrainian legislation in the sphere of personal data protection is stated.

Key words: *personal data, protection, regulation, legislation.*

Problem statement. The 21st century is characterized by the rapid development of information technology, which has become an integral part of every person's daily life. Technological advances have created a growing range of needs and opportunities for the collection and processing of personal data that are used in a wide variety of public life spheres from business to politics. As the Internet has made access and sharing of information, including personal data, easier and faster, their use is becoming more multidimensional, because, in addition to assistance in work and everyday life, they can serve as a tool for human rights abuses. This is due to the fact that people submit their personal data online, consciously and sometimes unconsciously, for various purposes, such as purchasing goods and services, playing, e-learning or paying taxes. Social communication is also increasingly taking place over the network (various social media platforms), which creates both new opportunities and a significant risk to privacy.

In this regard, the development of a personal data protection system is one of the most pressing issues facing society at present. The protection and improvement of personal data is not just a duty of the state and a subject to state regulation, but they must also be closely considered in the context of protecting human rights and freedoms, including the protection of the right to respect for privacy. Besides, establishing an effective system of personal data protection is also an important step for this country, as it is one of Ukraine's international obligations, including those related to the European integration of Ukraine. In particular, European integration aspirations of the Ukrainian state depend to a great extent on the fulfillment of this obligation.

The purpose of this article is to identify the problems of personal data protection in the modern Ukrainian society and to find ways to improve the mechanism of personal data protection.

Presentation of the main material. According to the Law of Ukraine "On Information" personal data are information or a set of information about an individual who is identified or can be specifically identified. The key property of personal data is identification. Based on both this and European understanding, the concept of "personal data" should be interpreted as follows:

- the data are of a personal nature when they constitute information about an already known person or at least an identifiable person;
- it is possible to identify the person on the basis of already available data, and with the help of some additional information which does not require considerable effort;
- Identification of a person is a process that can be carried out by any entity that has become aware or will be aware of personal data during their processing, that is, if the information processing process involves the identification of a person, then any entity involved in it is required to comply with the legal requirements for the protection of personal data;
- the process of identifying a person should consist of elements that describe the person in such a way that makes it possible to distinguish him or her safely among all other people (such as an individual's name, status, etc.)
- personal data are not considered to be personal without identifiers (anonymous, impersonal data).

In the modern world, finding personal information about a person is not difficult, since scientific-and-technological progress constantly provides new opportunities and technologies that are used to identify individuals.

In fact, everyone has the ability to create his/her own messages and disseminate information that can be used by a great number of users. As a result of mass and uncontrolled access of all members of society to information and communication technologies, private information of people is already not private at all, because it is freely available to everyone.

Consequently, there have been a number of scandals that have attracted public attention to the problem of protection of personal information and have caused widespread discussion of this problem. The first large-scale scandal took place in 2010, linked to an international organization called Wikileaks, which made secret information on US diplomatic correspondence available on the World Wide Web. As a result of the scandal, in 2013, related with former US National Security Agency staffer Edward Snowden, the world learned about listening to Internet users through wiretapping telephone conversations and correspondence control by US and British intelligence services. In 2016 there was another leak of information called "Panama Papers", he revealed the whole truth about the concealment of income and tax evasion by the known world leaders and businessmen.

Free access to information and opportunities producing new information contributes to capacity building and personal development, but the rapid development of information and communication technologies requires the development and implementation of effective security mechanisms, capable of really protecting the personal rights and freedoms of the owners of personal data.

Council of Europe Convention 108 states that personal content may in fact contain any information relating to an individual and his or her personal life. In a democratic society, the collection, storage, use and dissemination of personal data is possible either with the consent of the individual or in cases where

there is an objective need to ensure the security of society and the protection of human rights. All cases should be clearly regulated by law, as they are about restricting the human right to privacy.

In the context of personal data, confidential information is also mentioned, that is, restricted information. The peculiarity of this mode is that the assignment of personal data to confidential information can be carried out both by law and by the subject of personal data.

The legislation mentions that the dissemination of confidential information is permitted with the consent of the person concerned, in the manner prescribed by him or her, in accordance with the conditions stipulated by him or her, as well as in cases stipulated by law. Since there is a wide variety of personal information, establishing a certain list of personal data to be protected is either not possible or not appropriate. However, there are certain distinct categories of personal data that can create a significant negative impact on a person, requiring them to be clearly defined by law and set specific requirements for their processing.

These categories of personal data are generally referred to as "sensitive" or those which processing threatens the rights and freedoms of the data subjects. It is information about: racial or ethnic origin; political, religious or ideological beliefs; membership in political parties and trade unions; sentencing to criminal punishment; health; sexual life; biometric data; genetic data. Processing of these categories of personal data is carried out in a special order, which is regulated separately.

In order to harmonize the free flow of personal data between the EU Member States and to provide a general protection level all around the European Union, the Directive 95/46/EC of Oct. 24, 1995 on data protection (the EU General Directive) was introduced and a three-year period was given to the Member States

for its implementation. All EU Member States have complied with the General Directive and have adopted data protection laws at national level. By its highly developed mechanism of cross-border data transfers the EU General Directive has a growing effect in the field of data protection throughout the world.

In 2016, General Data Protection Regulation (GDPR) came into force in the EU, introducing new principles for processing personal data and establishing new safeguards for their protection. In accordance with the Association Agreement with the EU, Ukraine has undertaken to align its national legislation with the GDPR requirements. Some of them are already covered by the Ukrainian laws to some extent, but they are not clearly defined and need clarification. Thus, GDPR sets stricter rules for consenting to the processing of personal data: it is the responsibility of the person who collects the data to prove that it is available.

The criteria for the awareness of personal data subjects have also been strengthened and it has been established that information on how data is collected and used should be provided in a concise, transparent, comprehensible and easily accessible form, using clear and simple wording. The GDPR also provides for the establishment of independent public bodies responsible for monitoring the application of the Regulation. Such bodies should have investigative powers and the right to impose sanctions. In most countries of the European Union, such bodies have already been set up, dealing exclusively with information and personal data.

Unfortunately, Ukraine has not created a perfect system for protecting personal data in the Internet. The Ukrainian legislation on the protection of personal data consists of more than 20 legal acts which do not have a clear and correlated definition of personal data with European legislation. In particular, it lacks a person's right to informational self-determination.

Hence, the following question arises: are there any solutions to the problem of personal data protection? In response to the new technological environment, the European Commission has drafted a new Regulation to replace the existing Directive, as there are differences in the way Member States implement the Directive. The main changes proposed by the Commission are the following ones:

- extension of the definition of the subject of personal data; new definition implies that the subject can be identified by determining his/her location (paths), mental, physiological, genetic, economic, and other characteristics;
- limitation on the use of consent as a legitimate basis for processing, as well as detailing its definition; thus, the Regulations should be clear, specific and informed;
- the need for mandatory documentary confirmation consent of the owner;
- the inclusion of some special provisions concerning children (e.g.: special processing requirements have been introduced for personal data of children, including those under the age of 13);
- the inclusion of genetic data in the category "sensitive personal data" and the definition of genetic, biometric, and health data;
- a significant increase in the amount of information provided to individuals, whose personal data are collected.

The draft Regulation takes into account all recent trends in the system of personal data protection in Europe and in the world and should serve as a guide to ways of reforming national legislation in the field of personal data protection.

Conclusions and prospects for further research. As it was mentioned above, there are many problems related to the protection of personal data, but having analyzed the international experience in the field of personal data protection, basic principles of personal data protection and international legal acts regulating

relations in the field of personal data protection, it becomes possible to determine the main guidelines in the field of national regulation of personal data protection.

One of the most effective ways to overcome the personal data protection problems that Ukraine should use is to comply with the requirements of international acts. Thus, Ukraine, having studied international experience in legal mechanisms for regulating the protection of personal data and having regard to the basic principles for the organization of control measures implementation of legislation in this area would be possible to align with the EU standards of national laws and regulations in order to implement them in the interests of the Ukrainian citizens.

It is considered appropriate to study the impact of international standards (UN acts, The Council of Europe, the European Union) and the experience of democratic countries with developed market economy, experience of the leading countries in the field of protection of personal data for the purpose of bringing national legislation into force compliance with international standards for the protection of personal data in order to ensure its effective protection.

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СПЕЦІАЛЬНИЙ СУБ'ЄКТ ЗЛОЧИНУ

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Ця стаття досліджує питання спеціального суб'єкта злочину у відповідності з Кримінальним Кодексом України. Було з'ясовано поняття, ознаки, а також функції спеціального суб'єкта злочину на основі аналізу кримінально-правової наукової літератури.

Key words: *criminal offender; special criminal offender; criminal responsibility; offence.*

SPECIAL CRIMINAL OFFENDER

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This article deals with the analysis of the special criminal offender according to the Ukrainian criminal doctrine. In this work the notion of the special criminal offender, its features and functions are determined based on the analysis of the theoretical sources.

Key words: *criminal offender; special criminal offender; criminal responsibility; offence.*

Problem statement. An effective fight against crime is the legal basis of the functioning of the rule of law and a democratic state. The criminal legislation is the major instrument for the protection of the main rights and freedoms of man and citizen and interests of the whole society from criminal violations. The criminal offender is one of the main terms in the criminal law. There are no crimes and criminal liability without the criminal offender. Research of the special criminal offender are of great significance in the context of the modern Ukrainian criminal law because the national criminal code has more than 75% of offences with the special criminal offender.

Recent research and publications. This problem has been considered by many Ukrainian scientists in the sphere of criminal law in the period of the USSR and that of Ukrainian independence. The special criminal offender is analyzed generally in the works by P.P. Andrushko, M.I. Bazhanov, A.M. Boyko, O. O. Dudorov, O.M. Kostenko, V.V. Stashys, V.Y. Tatsiy, Y.V. Baulin, V.I. Borisov, V.A. Vladimirov and others. The problem of the prosecution of the special criminal offender to the criminal liability

was considered by D.V. Baranenko, V.O. Navrotsky, A.S. Osadchaya, V.I. Terentyev. The latest research on this problem was “Special Subject of Crime: Genesis, Functions, Qualification Issues” by A.S. Osadcha in 2017. Despite a large number of researches on this problem, they analyze mostly in general the term and features of the special criminal offender. However, its functional appointment and influence on the differentiation and criminalization of the criminal liability are analyzed in a few pieces of research.

The main purpose of this research is to analyze the institute of the special criminal offender. For this purpose the following tasks are to be fulfilled: to reveal available in the theory of criminal law points of view on the definition of the special criminal offender, its main features and functions.

Presentation of the main material. According to part 2 of article 18 of the Criminal Code of Ukraine (the CCU) a special criminal offender shall mean a sane person who has committed a criminal offence at the age of criminal liability, if that offence may only be committed by a certain person [1]. The vast majority of scientists in the area of criminal law consider that the special criminal offender is a person who has the three main obligatory features of the criminal offender (an individual, a sanity, an age) and also characterized by additional features affecting availability to prosecute another person [3; 9-10].

The theory of criminal law states that the special criminal offender is a guilty person who has committed a criminal act, which has some special features that characterize the offender of the crime [4]. For example, V.V. Ustymenko believes that the right definition of the special criminal offender should have the restrictive feature defining the range of persons that can be offenders in some crimes. Of course these features must be obligatory provided for in the CCU or directly derive from it [1]. Consequently, it is an offender with his/her own specific, additional

characteristics that determine his/her personal criminal liability. Scientists emphasize that the criminal offender may be identified as the special criminal offender only if he/she has along with the general features some special ones that are established by the special part of the CCU and are obligatory to prosecute for the specific offence [4; 7].

To sum up, the definition of the term “special criminal offender” is as follows: the special criminal offender is a physical person (individual), sane, who has reached the age when criminal liability may rise for some crimes that have one or more additional legal characteristics provided for by the special part of the Criminal Code of Ukraine or directly derive from it and limit the range of persons that can be responsible for these crimes. In part 2 of art. 18 of the Criminal Code of Ukraine it is marked that the definition of the term “the special criminal offender” needs to be clarified because this definition does not fully reveal the essence of the term. The current version is of no practical significance, because it does not contain a full list of all possible special features that can determine the offender as the special criminal offender.

The special criminal offender is a kind of the criminal offender if there are four main elements of the offence: the criminal offender, the object of crime, the area of crime and the objective aspect of crime [6]. There cannot be any crime or criminal liability without the criminal offender [5]. According to article 18 of the CCU a criminal offender shall mean a sane person who has committed a criminal offence at the age when criminal liability may arise under this Code [1]. An individual can be recognized the criminal offender or special criminal offender only if he/she has three main general features:

1) an individual is a human – it means that according to the CCU, a legal person cannot be the criminal offender according to the main principle of the criminal law – personal liability and fault-

based liability [9]. Deceased individuals who have committed a crime before death, and animals, objects and forces of nature cannot be the criminal offender [5];

2) an individual is sane – according to article 19 of the CCU a person who was aware of and could control his/her actions at the time of an offense shall be recognized sane, but a person who at the time of a socially dangerous act, as prescribed by this Code, was in the state of insanity was not aware of or could not control his/her actions because of a chronic mental disease, or a temporary mental disorder, or feeble-mindedness, or any other morbid mental condition, shall not be criminally liable. Such a person may be subjected to compulsory medical treatment upon the decision of the court. A person who committed a criminal offence in the state of sanity, but lapsed, prior to making a judgment, into a mental disease which renders that person unaware of or unable to control his/her actions, shall not be criminally liable. Such a person may be subjected to compulsory medical treatment and may be criminally liable upon recovery [1];

3) an individual must reach the age of criminal liability – according to article 19 of the CCU persons who have reached the age of 16 before the commission of a criminal offence shall be criminally liable. Persons who have committed criminal offences at the age of 14-16 shall be criminally liable only for serious or exceptionally serious crimes [1].

Features of the special offender complement the general definition of the term “the criminal offender”. These features can be absolutely different: rank, profession, some activity, a family relation. Mostly features of the special offender are directly specified in the law [7]. For example in crimes established by the special part of the Criminal Code of Ukraine articles 364-370 determine these crimes as committed only by officials. Moreover, note 1 for article 364 has a legal definition for the official, also this

term we can see in parts 3-4 of article 18 of the general part of the CCU. For example, article 371 does not state directly, who is the offender in intentional unlawful detention but it says that obviously only law enforcement officers who are entitled to use detention can be the offenders. The Criminal Code of Ukraine define offences when the special offender is obligatory for this kind of crime. For example, article 114 states that the offender of the espionage can be only the foreign national or stateless person or article 117 notices that responsibility for the murder of a newly born child in or after childbirth is claimed only on the mother of the child. Frequently, special features of the special criminal offender are used for the description of the qualified crimes, for example in article 368 receipt of a bribe by an official in relevant positions is a qualified feature for this crime. So, features of the special offender are restrictive because they define that some crimes can be committed only by persons who have relevant special features. Persons without these features cannot be liable for specific criminal offences as special criminal offenders. For example, if into the murder of a child except the mother were engaged other persons, they will be answerable under paragraph 2 of part 2 of article 115 (simple murder) but not under article 117 like the mother [6].

The CCU has a lot of offences with the special criminal offender that can be classified into groups according to the features of the offender. Special offenders were first classified by N.S. Leukin and N.P. Grabowska in 1968. The classification was based on the following features: the legal status of the person, professional status, official status, demographic characteristics [7].

In 1970 another classification was proposed: the legal status of the person, profession or activity of person, relationships of offender and victim, physical characteristics of the offender [4].

It should be mentioned that any classification of the special offender must be comprehensive. In this regard the most successful

is the classification based on a division of all special features from the CCU into three main groups.

Scientists provide in modern textbooks in criminal law mostly the following classification [3-4]:

1) features that characterize a social and legal status of persons: citizenship (art. 114 – an espionage, art 111 – a treason), an official position (an official, a director, a prosecutor, a judge – art 175, 271,364-370, 371, 375), a profession, the kind of activity or work (railway official/ doctor/ trader/ worker in the tertiary sector – art. 276, 134, 140, 202, 225), a military status (a soldier, a person bound to military service, a recruit – art. 335, 337), a litigation (a witness, an expert, a translator – art. 385), a person convicted or taken into custody (art.393), availability of conviction (art. 296) [1];

2) physical characteristics of the person: age – art.304 (involvement of minors in criminal activities), health conditions – art. 133 (to infect with a venereal disease) [1];

3) relationships between the offender and victim: family relations (parents, children, other relatives – art. 164, 166), service relationships (art. 154), other relations (a guardian – art. 167) [1].

The theorists of the criminal law consider that offence is a system of legal elements that determine an act as criminal, so, on the one hand, each element of offence is used to implement functions of an offence in, general, but, on the other hand, each element has its own functions that provide opportunities to influence criminal-and-legal relations [5]. The special offender as an element of the special offence performing functions in criminal law. A.S. Osadcha highlights the following functions of the special offender: criminally forming, differential, qualifying, dividing, and penalizing functions [10].

Criminally forming function is represented through the features of the special offender that are enshrined in the special part of the CCU, the criminal liability is specialized for simple and qualified offences. Features of the special offender can affect the degree of the socially dangerous crime, therefore, they are used in cases of qualified and especially qualified offences. Features of the special offender can form privileged offences in some cases, where the level of social danger is reduced and the criminal liability can be lenienced.

Differential function includes a lot of factors that affect the differentiation of the liability and punishment, one of them is the specialization of criminal liability through the formation of rules with the special criminal offender. *Qualification function* states that for the qualification of crimes with special offender must be established along with the general features of the offender and additional features that characterize the offender as special.

The dividing function is inherent for the special criminal offender only together with relevant features of another special offender. Features of the special offender formulated in the CCU are clearly stated being a reliable legal tool for practical application and provision of a proper differentiation of related offences. *Penalizing function* means that for committing crimes the special offender types and amounts of penalty are established in law and implemented in practice.

Conclusion. Thus, the problem of the special criminal offender is of great significance according to the obvious tendency for specialization of our Criminal Code. So, the special criminal offender is a physical person (individual), sane, who has reached the age when criminal liability may rise for crimes that have one or more additional legal characteristics provided by the articles or parts of the articles of the Special part of the Criminal Code of Ukraine. Features of the special criminal offender are very diverse,

so they can be classified in the main three groups: features that characterize a social and legal status of persons, physical characteristics of the person, relationships between the offender and victim. The main functions of the special criminal offender are as follows: criminally forming, differential, qualifying, dividing, and penalizing. So, the special criminal offender needs to be studied more in the context of the Ukrainian criminal doctrine because the well-structured theoretical basis can help to prevent possible legal gaps and to improve the practical implementation of the law.

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ІСТОТНІ УМОВИ ТРУДОВОГО ДОГОВОРУ

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У статті проаналізовано поняття «істотні умови трудового договору», його правове регулювання в теорії трудового права. Вказується важливість таких умов у трудовому договорі. Здійснюється аналіз думок вчених і фахівців: Валецька О. В, Горбачова К. М., Ленко Б. М.

Ключові слова: трудовий договір, істотні умови, трудове право.

ESSENTIAL CONDITIONS OF EMPLOYMENT CONTRACT

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The article contains analysis of the concept of “Essential terms of Employment Contract”, it`s normative regulation in the theory of labor law. It indicates the importance of such conditions in the contract. The paper provides analysis of the views of scholars and specialists: Valetskaya O.V, Gorbacheva K.M, Lenko B.M.

Key words: employment contract, essential terms, labor law.

Problem statement. One of the most important and most studied categories in labor law is the employment contract. It is difficult to find any other questions that would be more relevant in the scientific literature than are questions about the employment contract and its content. This can be explained by the fundamental importance of this institution in labor law.

Unfortunately, the labor legislation of Ukraine does not contain any rules that specify what the terms and conditions of the employment contract are. Such a gap results in ambiguity in the application of the rules of law and the emergence of labor disputes between the parties to the employment contract. That is, determining the content of an employment contract is important not only in the context of the present, but also in historical terms.

Recent research and publications. During our research we try to analyze different approaches in studies of this problem. The need to improve labor law today requires a study of the nature of the employment contract for the emergence and legal regulation of labor relations.

Many scientists have been engaged in the research of this issue, in particular among them it is worth mentioning such as: Valetskaia O.V, Volynets V.V, Gayeva O.V, Getmantseva N.D, Gorbachev K.M, Lenko B.M, Poplavskaya O.M, Potopakhina O.M, Rimar B.A, Simutina Y.V, Tykha A.P, Tsesarsky F.A, Yaroshenko O.M, Yatskevich I.I and others .

The purpose of our research is to study the essential conditions of the employment contract. Achieving this goal involves the following tasks: to characterize the meaning and content of the employment contract; to determine the basic terms of the employment contract under the legislation of Ukraine: essential

and optional; to analyze the nature and features of determining the essential terms of the employment contract;

Presentation of the main material. Expanding the scope of contractual regulation of social and labor relations requires a comprehensive study of the labor rights of the parties to the employment contract. In the theory of civil law, the contractual regulation of social relations is associated with certain conditions that make up the content of the contract and without which such a contract cannot be considered concluded. Such conditions are called essential. The materiality of these or other conditions, as a rule, is resolved by law. Unlike the same civil or land law, there are no such conditions in the employment law. Although the term "essential conditions" is also inherent in labor law, it is used in a somewhat different context, in particular when referring to "essential conditions of work" (Article 36, paragraph 6 of the Labor Code of Ukraine).

Unlike labor law, in the science of labor law the concept of "essential terms of employment contract" is still used by some authors, although not all of them specify which of the terms of the employment contract should be considered as such. Gorbachev KM identifies the essential terms of the employment contract with its necessary conditions, and the authors of the textbook "Soviet labor law" note that the essential terms of the employment contract are also mandatory and optional [6, p. 70-73].

Let's try to find out exactly what the terms of the employment contract can be distinguished as essential. For this purpose it is first necessary to determine the meaning of the concept of "essential terms of the contract". Therefore, you should refer to the history of contractual regulation. In particular, the concept of "essential terms of the contract" was used in Roman law. They were considered one of the components of the content of the contract. "Without them, the contract could not exist at all (for

example, in the contract of sale - the goods, the price)." In addition to the essential terms, the contract contained customary (the existence of customary conditions was assumed by itself, although they were not specified in the contract) and occasional conditions.

Modern civil law maintains a similar classification of contract terms, but the meaning of the concept of "essential contract terms" is broader, namely: "... the essential contract terms are those conditions that are recognized by law or they are necessary for contracts of this type, as well as all conditions regarding which on the request of one of the parties must be agreed. "

To define the concept of "essential terms of an employment contract" it is important to refer to the lexical meaning of the term essential. In dictionary sources, it is interpreted as "constituting or referring to the essence of something; very important, significant, weighty" [14, p. 145-151]. Therefore, the essential conditions of an employment contract must be important to him and constitute its essence.

In the labor law, the terms of the employment contract are divided into: defined by law and adopted by agreement of the parties - contractual. The contracting parties in turn are divided into basic (necessary) and additional (optional). If we analyze the existing options for classifying the terms of the contract by civil and labor law, it can be noted that the set of conditions defined by law in labor law corresponds to the group of conditions that are called ordinary in civil law (conditions provided for in a law or other normative act and become binding on the parties as a result of the actual conclusion of the contract). Potopakhina O.M, believes that the essential issues of an employment contract are determined not so much by the will of the parties, but by law, regulations, rules of internal labor regulations and collective agreement [10, p. 13-16]. The main (essential) conditions of an employment contract are

those terms, the agreement of which means that the employment contract is concluded and is valid. Otherwise, if any of the basic terms are not agreed, then such a contract will be considered not concluded.

The basic (essential) terms of the employment contract to be agreed upon by the parties include the following: 1) the condition of the employment function; 2) wage conditions (remuneration); 3) condition of place of work (performance of work function); 4) a condition about the moment of beginning of work (performance of labor function).

The condition of an employment contract for a job function is a condition of a system of duties that an employee will perform in accordance with a profession (specialty, qualification) or position. Quite often, in practice, the condition of a job function is reduced to an indication in the employment contract for a profession or position. The employment function is fixed in the employment contract and / or in the order (order) for hiring on the basis of staffing.

The condition of an employment contract for remuneration (remuneration for work) is a condition for the remuneration of an employee in accordance with an employment contract. The wage condition is determined on the basis of an employment contract, taking into account the staff list (salary scheme) by determining the specific amount of wages (salary), taking into account acts of labor legislation and social partnership [8, p. 178-183].

It will be appropriate to draw attention to the fact that the draft TC proposes to include in the mandatory terms of the employment contract: 1) place of work (with indication for the employer - legal entity of the structural unit); 2) the time of the commencement of the employment contract, and in the case of the conclusion of the employment contract for a fixed term, also the duration of this term and the grounds for the conclusion of a fixed-

term employment contract in accordance with this Code; 3) the job function to be performed by the employee: name of profession, specialization, qualification, position in accordance with the established classification of professions and qualification characteristics; 4) pay conditions; 5) the regime of work and rest, if it differs from the general rules established by the employer; 6) labor protection. This approach seems somewhat vulnerable, since the issues of the regime of work, time of rest, protection of labor are mainly determined on the basis of acts of labor legislation, social partnership and local regulations.

The essential terms of an employment contract are the conditions recognized by such legislation, as well as entering into an employment contract at the initiative of either party and to which the parties to the employment contract must agree.

One of the essential conditions of an employment contract is the condition of the employee's job function. An employee's job function is considered to be work in a particular specialty, profession, qualification or position. The establishment of a work function by contract "determines a set of rights and obligations arising from the legislation; the nature of work may depend on the order of pay and its size, length of working day and vacation, various benefits. " Therefore, this condition is important and is the essence of the contract, that is, it is essential for the employment contract.

An essential condition of the employment contract is the condition of the place of work. The place of work is understood to mean the specific enterprise (institution, organization) on which the employee will perform a work function, as well as the locality where the enterprise (institution, organization) is located.

The employee's pay condition should also be included in the essential terms of the employment contract. Although the employee's remuneration is paid at the company's fixed rates or

salaries, the employee's consent to such remuneration must be given. In addition, the so-called “forks” in wages are established at the enterprises, which need to specify the amount of the employee's wages [11, p. 206-208].

The essential terms of an employment contract include the term of the contract. Unless the parties conclude a fixed-term employment contract, the contract will be considered to be concluded for an indefinite period.

In the end, any condition (except the conditions provided for in Article 9 of the Labor Code of Ukraine) agreed by the parties and specified in the employment contract, and will be considered essential. That is, the importance of entering into an employment contract one or another condition depends on the initiative of its parties. Such essential conditions of the employment contract include: the condition of the time when the employee must start work, the condition of the workplace of the employee, the mode of work, duration of leave, benefits, tests, etc.

Conclusion. Based on the results of the complex research, we can draw the following conclusions: 1) the essential terms of the employment contract are those defined by the legislation (essential-binding) and included in its contents at the initiative of either of the parties to which agreement (substantive-initiative) is reached; 2) essential requirements are general and special. The first include the conditions that are necessary for the conclusion of an employment contract (about the job function, about the place of work, about the pay, about the time of starting work). Special essentials are important for contracts of a certain type (contract, employment contract related to access to state secrets).

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ПОЛІТИЧНА СТРУКТУРА СТАРОДАВНЬОГО РИМУ: НАРОДНІ ЗБОРИ, СЕНАТ, ІНСТИТУТ МАГІСТРАТУРИ

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У цій статті проводиться дослідження політичної структури Стародавнього Риму на основі аналізу його інститутів, а саме: народних зборів, сенату, магістратури. Наскрізна характеристика принципів, на яких ґрунтуються ці інститути, їх утворення, владних повноважень, особливих функцій складу дає змогу поглянути на Рим як унікальне державне утворення з якісно нової точки зору. Звертається необхідна увага на перебіг державницьких процесів, причини усунення старих та введення нових інститутів, баланс повноважень, роль авторитету інститутів у загальній ієрархії державних органів. Здійснена характеристика видів народних зборів та їх специфічних аспектів, особливостей, розподілу повноважень; введення у дію сенату, його особливостей, видів його рішень, значення авторитету сенату у його розміщенні в ієрархічному щаблі; комплексна характеристика ординарних та екстраординарних магістратур, особливостей цього інституту, ролі діяльності претора як фундатора римського права, політичної ролі трибуна в житті римських громадян, специфічної ролі

екстраординарної магістратури диктатора. Звертається увага на актуальність проблеми вивчення та аналізу державної структури Стародавнього Риму.

Ключові слова: Стародавній Рим, народні збори, сенат, інститут магістратури.

**THE POLITICAL STRUCTURE OF ANCIENT ROME:
POPULAR ASSEMBLIES, SENATE,
ROMAN MAGISTRATES**

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This article examines the political structure of Ancient Rome based on the analysis of its institutions, namely the Popular Assembly, the Roman Senate, and the Roman Magistrates. The cross-sectional description of the principles on which these institutions are based, their creation, power, composition makes it possible to look at Rome as a unique state institution from a qualitatively new perspective. Attention is drawn to the conduct of State processes, the reasons for the elimination of old and new institutions, the balance of powers, and the role of such institutions in the overall hierarchy of State bodies. Consideration was given to the types of popular assembly and their specific aspects, characteristics and distribution of powers; the introduction of the Senate, its characteristics, types of its decisions, and the significance of the senate's authority in its hierarchical location; a comprehensive description of ordinary and extraordinary magistracy, the characteristics of this institution, the role of the praetor as the founder of Roman law, the political role of the tribunes in life of Roman citizens, the specific role of extraordinary

magistracy of the dictator. Attention is drawn to the relevance of the study and analysis of the state structure of Ancient Rome.

Key words: *Ancient Rome, popular assemblies, senate, roman magistrates.*

Problem statement. Ancient Rome, as a state entity, appeared on the borderline of 8th century B.C. on the Apennine Peninsula. Alliance, which was formed among the local population, which consisted of Latin, Sabine and Etruscan tribes, formed the basis of the State. Ancient Rome later played the major role, left a mark in the world history, taking over for itself almost all of the Western part of the world, establishing domination over a great number of peoples. The borders of Rome reached wide areas, from Portugal to the Rhine, from Britain to Egypt. In the cradle of Rome was born its great heritage, Roman law, which became the basis of modern legal culture.

In certain periods of history, people have more than once returned to Rome, to its experience, institutions, structure, views. For the whole scientific community, the history of the state and the law of Rome is invaluable treasure, which gave rise of various state processes.

Recent research and publications. Scholars from Ukraine and the whole scientific community have published a lot of works about Rome in which peculiarities of the emergence and creation of this state entity are studied. The researches of such authors as B. Tishchik, M. Strahov, O. Shevchenko, V. Lastovskiy and many others, who analyzed various aspects of the problem were used in our work. The questions that are part of the common problem are, in particular, the functioning and characteristics of state institutions of Ancient Rome, the effectiveness of their activities, the advanced ideas and principles on which they were based.

The purpose of the article is to examine and identify the peculiarities of the state structure of Ancient Rome, which subsequently became the causes of its change, transition in the form from republican to imperial, as well as research into the distribution of power among various institutions. Today, the analysis of Rome's experience and its political structure is extremely important and relevant in that it allows us to draw certain parallels with modernity in order to avoid mistakes in State processes, to illuminate the foundations of the structure of the strongest state of the past, learn to apply the principles on which it was built.

Presentation of the main material. *Popular assemblies.* In Rome, particularly before the birth of the state, the Popular Assembly was considered the holder of the supreme power. There also were regular public meetings where various current issues had been discussed beforehand, but, unlike the committees, whose decisions had the highest legal authority, the decisions of such assemblies were generally null and void. During the Republic there were three types of assemblies. These are The Curiate Assembly, The Centuriate Assembly and The Tribal Assembly [2, p. 59].

The Curiate Assembly. This is the oldest form of Popular Assembly that existed before the State came into being. Previously, they had little weight in political-state legal processes, but under the new circumstances they survived as a relic of the old system and no longer played any political role. Only patricians participated in the work of the The Curiate Assembly.

The Centuriate Assembly. This type of Assembly was born out of Servius Tullius reforms and was a gathering of Centuries, where they could represent their view on different issues. The Centuriate assembly soon became the main, most important kind of People's Assembly in Rome, as it was the warriors who decided the fate of the people and the country, protecting it from enemies,

protecting its territory, its population from enslavement, seizing new lands, slaves, etc. The Centuriate Assembly was competent to a wide variety of issues, in particular the election of supreme magistrates – consuls, praetors, censors, dealing with the issues of war and peace, granting citizenship, adoption of laws, discussion of and decisions on the legislative proposals of magistrates, dealing with various cases concerning political and social aspects of Roman life.

The Tribal Assembly. At first, The Tribal Assembly was considered to be secondary to The Centuriate Assembly. They made less important decisions, elected mid- and low-level magistrates, discussed and adopted draft laws, looked into citizen complaints about unfair fines. Documentation of The Tribal Assembly, including the archive, was stored in the Temple of Athena and protected by the Plebeian Aediles [4, p. 189].

The Roman Senate. In Ancient Rome, the Senate was very important. It existed since the period of state formation and became the most influential state political body. At the beginning, the number of senators was 300 [3. p. 163]. Although with the formation of the State, the ancestral organization had lost its primacy, but the number of senators was maintained.

At first, senators were appointed by consuls and from the 4th century B.C. – by Roman censors. The Senate was made up of former magistrates - consuls, praetors and other eminent persons of Rome. The Senate was acting for a period of five years, after which the list of senators was revised [6, p. 151]. For a long time, only senators could be patricians, and from about 444 B.C. – rich plebeians. The sessions of the Senate were called and presided over by the highest magistrates – consuls, praetors, plebeian tribunes. The following classification of the types of Senate decisions can be made. If the meeting was held by the consul, they were called *senatus consultum*. In the period since the Intercession (in the

absence of the Consul) the acts of the Senate were named *senatus auctoritas* (thoughts of the Senate). Other decisions of the Senate were called *sententias* and were not obligatory for magistrates, but in practice they were considered [4, p. 190].

The powers of the Senate in the administrative sphere were characterized by the issue of directives on public amenities and security. The Senate also took part in financial management of Rome. It established a five-year budget for internal public expenditure and annual budget for military expenditure [5, p. 46]. The Senate was to grant permission for budgetary expenditures.

In the sphere of foreign policy, the Senate negotiated with other States and peoples, dealt with issues related to nationality, citizenship and concluded peace agreements. The Senate, in case of special military threat to Rome or internal mass conflicts, could order the consuls to appoint the dictator or grant magistrates extraordinary and unrestricted power (this started from the end of 2nd century B.C., the period of sharp growth of controversies in various fields of the society).

The Roman magistrates. Executive power in the republic was in the hands of officials - the magistrates. Roman magistrates were not, by their nature, Oriental officials or elected administrators of the Greek type. The Institute of Magistracy also emerged from the introduction of reforms of Servius Tullius. The Institute of Magistrates was gradually introduced into the public administration. Essentially, magistrates were state officials, who were authorized to represent the Roman Power and to carry out, on its behalf, state acts in the field of the executive or judiciary.

The Institute of Roman Magistracy has certain common features, such as: election, collegiality, responsibility. Magistrates were consuls, praetors, tribunes. They were elected by the Popular Assembly every year and were accountable to them after the end of their term of office.

Magistrates were divided into ordinary and extraordinary. Also they were not vested with legislative power, as the power to legislate was vested only on the Popular Assembly. Nor did they have the right to amend laws. The power of magistrates was characterized by *potestas* and *imperium*. *Potestas* is a general notion of power. It was given to all magistrates. And *imperium* denotes supreme power, which was granted only to the supreme magistrates [4, p. 193].

Praetors became assistants of consuls, they exercised judicial power. At first there was one praetor, then two, one of which dealt with cases of Roman citizens (city praetor) and other with foreigners (praetor peregrine). Gradually, the number of precursors increased to eight [1, p. 95]. The primary responsibility of the Praetors was the-called *custodia urbis* – the protection of the city. Starting from 242 B.C. one of them dealt with court actions and disputes of Roman citizens, the other, called *praetor peregrini*, dealt with claims and cases of foreigners and other persons who were not Roman citizens. Thanks to praetors and in accordance with the terms and conditions of that time, the Roman trial became a formular, that is, it expressed the praetor's will and attitude to the case under consideration.

Sententias of praetors and Roman jurists clearly reveal the desire to adapt the ancient, archaic law with its qualitatively new relations and circumstances. It is from here that the Roman law, which has become an indispensable element of European civilization, originates.

Censors. From 443 B.C. on the initiative of the patritians, the Centuriate Assembly began to elect two censors. From 351 B.C. the post was opened to plebeians. The duties of censors included determining the property status of citizens and assigning them to categories, centuries and tribes and drawing up the list of senators. Censors had the right to challenge in the list all those who

they felt were unworthy of the post and to list others. Censors also participated in the financial management of the State, public property, taxes and rents from public land, and construction of public buildings.

Tribunes. Because this magistracy was of particular importance, the post of tribune was considered untouchable. Their main task was always and everywhere to protect economic, political and personal rights of the plebs. Tribunes were given the right to control the actions of all magistrates (except dictators and censors) and senate (*jus intercessionis*). Their veto could revoke the orders of magistrates, the decisions of the Senate and even the proposals that were submitted to the Popular Assembly.

Aediles belonged to middle-ranking magistrates. The plebeian Tribal Assembly elected two Aediles every year. Their duties included supervision of the town, fire and sanitation, police and fire fighters.

At first **questors** were only general assistants to the consuls without any special competence. Later, their position became independent: they were elected to the Tribal Assembly and gradually became specialized in two areas – criminal jurisdiction and management of the State Treasury and State Archives. But while criminal jurisdiction was in the hands of the consuls, the questors, as their aides, conducted a preliminary investigation.

Dictator. This magistrature was resorted to in extreme circumstances: during a significant military threat or major internal riots. The dictator had all the military and administrative (but not legislative) power. It was called *imperium summum*. No veto, including plebeian tribunes veto, applied to it. Magister equitum was an extraordinary magistrate, which held only potestas power. Magister equitum was the deputy of the dictator in military and administrative affairs [4, p. 197].

Conclusion. We can state that with the establishment of the republican regime, the totality of imperial authority was not destroyed, but only transferred to new bodies. At different stages of the development of the republic of Rome, the power and authority were balanced between different departments. Belonging in its entirety to the Popular Assembly, it subsequently moved to the authoritative Senate and, as time went on, was placed in the hands of various magistrates. In the early Republican period, the Popular Assembly played a prominent role in the public life of Rome. The Popular Assembly could decide on matters of war or peace, only they passed and repealed laws, elected officials, etc.

The Roman Senate had great powers and played an important role in the management of the society. Its role was particularly important in the second half of the Republic's existence, when the Senate regulated all State issues single-handedly. The importance of the Senate was strengthened, first and foremost, by reducing the role of the Popular Assembly.

The Magistracy became an important body of state power in Ancient Rome. Magistrates, as top officials in Rome were not only officials. They performed all functions, but were part of the Roman people, holders of its rights and greatness.

Thus, basing on the analysis of the powers and functions of popular assemblies, the Roman Senate, Roman magistrates, it can be said that in the early Republican period, these state institutions fully met the requirements, set by conditions and social development of that time. The loss of the central role by one body and its acquisition by another can be explained by constant changes, internal and external processes that took place in Rome and all mankind of that time. Each institution made a special contribution to the development of ways of organizing political structure of Rome. Popular assemblies became a vivid manifestation of democracy, The Roman Senate demonstrated the

role of experienced politicians in the creation of the state, Roman Magistrates became a prototype of the variety of advanced types of government. These institutions were innovative in the sphere of public administration and performed the functions assigned to them up to the transformation of Rome into a huge empire, which required different methods of government.

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НАБРАННЯ І ВТРАТА ЧИННОСТІ КРИМІНАЛЬНИМ ЗАКОНОМ

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Стаття присвячена вивченню питання набуття кримінальним законом чинності та втрати ним чинності.

Проведено всебічний аналіз наукових праць за темою дослідження. Об'єктом дослідження є кримінальне законодавство та інші нормативно-правові джерела, в яких конкретизується питання набрання і втрати чинності кримінальним законодавством.

Ключові слова: *кримінальна відповідальність, набрання законом чинності, втрата законом чинності, оприлюднення закону, час вчинення злочину, місце вчинення злочину.*

ENTRY INTO FORCE AND EXPIRATION OF CRIMINAL LAW

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The article deals with the analysis of the problem of a criminal law coming into force, as well as its expiration. The object of the research is the criminal law and other legal sources, which specify the issue. The analysis of the theoretical sources is presented.

Key words: *criminal liability, coming into force, expiration of law, promulgation of law, time of committing a crime, place of committing a crime.*

Problem statement. Crime, punishment, as well as other criminal consequences of the act are determined by the law on criminal liability, which was in force at the time, when the act was committed. Also an integral feature of a criminally illegal act is the territory (space) in which the concrete act was committed. From these two facts follows that the law on criminal responsibility exists in a certain time and space. This fact obliges the legislator to define a clear framework for its application, as long as criminal law exists not only in Ukraine, besides, in our country there were several

versions of such law. Without such a framework, controversial and sometimes even absurd situations could arise, when a crime committed in our time and on the territory of Ukraine would be qualified by the criminal law of another state or by the articles of *Russkaya Pravda* or another, no longer valid corpus of norms. This concrete situation is not as easy to solve as it might seem to be at the first glance. In practice, there are quite a few difficult questions that need to be answered directly not only in the law of criminal responsibility, but also in other legal sources.

The purpose this research paper is to deepen, systematize, and consolidate knowledge on the issue, which, in essence, is one of the most fundamental among those directly related to criminal law, namely: *when does criminal law come into force and when does it expire?* It is also aimed at defining and outlining the features of both coming into force and expiration of criminal law, both in time and space. The main task is to conduct a comprehensive analysis of theoretical sources, the topic of which correlates with the topic of this article; to define the most important concepts of the topic; to specify and concretize the problem under investigation.

Presentation of the main material. First of all it is extremely important to define some key words, that are obligatory to know while conducting this research:

Liability is the responsibility for a crime and for the penalty society exacts for the crime. Another word for liability is *accountability*. This explains the cliché that a person who has committed a crime must “pay her debt to society.” A crime is viewed as a harm to the society that has cost it something (not necessarily in monetary terms) and the criminal incurred the debt for that cost. Society accounts for the debt by imposing a penalty upon the criminal, such as imprisonment time.

Entry into force or *coming into force* (also called commencement) is the process by which legislation, regulations, treaties and other legal instruments come to have legal force and effect. *Expiration* is defined as "the coming to an end, termination".

Promulgation is the formal proclamation or the declaration that a new statutory or administrative law is enacted after its final approval. In some jurisdictions, this additional step is necessary before the law can take effect. After a new law is approved, it is announced to the public through the publication of government gazettes and/or on official government websites. National laws of extraordinary importance to the public may be announced by the head of state on national broadcast. Local laws are usually announced in local newspapers and published in bulletins or compendia of municipal regulations.

Time of commission of a crime is the time of commission an act or omission provided by the law on criminal liability. The time of committing an ongoing crime is considered to be the time of committing an act or omission from which the so-called "criminal state" of a person begins. The time of the perpetration of a continuing crime is considered to be the time of the last act of several identical acts, which are united by a single intention and only together constitute a single act. The time of committing a crime in complicity is considered to be the time of committing a socially dangerous act by the offender.

The place of commission of a crime is a certain territory on which a socially dangerous act provided for by the Criminal Code is committed. The place of occurrence of socially dangerous consequences in the material components of crimes is a part of the content of this feature of the objective side of a crime.

So, the validity of the law on criminal liability in time means the possibility or impossibility of applying a particular law

on criminal liability, in general, or its individual provisions, for the legal assessment of a specific and socially dangerous act.

There is a specific procedure of entry into force by criminal law. First of all it must be adopted by the Verkhovna Rada of Ukraine and signed by the Chairman of the Verkhovna Rada. After that, it has to be sent to the President of Ukraine for signature and promulgation. According to Art. 94 of the Constitution of Ukraine, the President of Ukraine, within fifteen days after receiving the law, signs it, accepting it for implementation, and officially promulgates it or returns the law with his reasoned and formulated proposals to the Verkhovna Rada of Ukraine for reconsideration. If the President of Ukraine does not return the law for reconsideration within the established period, the law is considered to be approved by the President of Ukraine and shall be signed and officially promulgated. If during the reconsideration the law is re-adopted by the Verkhovna Rada of Ukraine by at least two thirds of its membership, the President of Ukraine is obliged to sign it and officially promulgate it within ten days. If the President of Ukraine has not signed such a law, it has to be immediately promulgated by the Chairman of the Verkhovna Rada of Ukraine and published under his signature. The law enters into force ten days after its official promulgation, unless otherwise provided by law, but not earlier than the day of its publication.

Promulgation of the law is an independent stage in the process of the law coming into force. It is of legal significance to bring to the attention of citizens and government agencies on behalf of the President of Ukraine the full and accurate text of the law in the state language by publishing it in an official publication. According to the Decree of the President of Ukraine of June 10, 1997 "On the Procedure for Official Promulgation of Normative Legal Acts and Their Entry into Force" and the Law of Ukraine "On Amendments to Certain Laws of Ukraine to Ensure Official

Publication of Ukrainian Laws and Other Legal Acts", such publications are: the 'Official Newspaper of Ukraine', 'Vedomosti Verkhovnoi Rady Ukrainy', the Official Newspaper of the President of Ukraine, the Voice of Ukraine, and the Government Courier. According to this Presidential Decree, in some cases the law may be promulgated on television or radio. In addition to official publication, laws, resolutions and other acts of the Verkhovna Rada are also brought to the attention of the public by publishing them on the official website of the Verkhovna Rada. Laws of Ukraine may be published in other publications that are not classified by the Decree as official printed publications, but the publication of the law in such publications is purely informative and cannot be used for official use.

The essence of the territorial principle is reflected in Part 1 of Art. 6 of the Criminal Code of Ukraine, which states that persons who have committed crimes on the territory of Ukraine are subject to criminal liability under this Code. The essence of the territorial principle follows from the state sovereignty of Ukraine, whose power extends to its entire territory. According to the general rule enshrined in Part 2 of Art. 6 of the Criminal Code, the crime is committed on the territory of Ukraine if it has been initiated, continued, completed or discontinued on the territory of Ukraine. This rule covers all cases of a commission of a crime on the territory of Ukraine, including crimes that were only partly committed on the territory of Ukraine with another part, committed on the territory of another state.

Speaking of expiration of law, there are three circumstances mentioned in legal sources, under which the law on criminal liability can expire:

- 1) if it has been repealed or changed by another law on criminal liability, in this case, the text of the new law contains an instruction to repeal the existing law, or to repeal certain provisions

of the law, which continues to operate in the same part, or to completely replace the old law with a new law;

2) if it is replaced in whole or in part by another law without any indication to that effect in the new law; in this case, a change in the wording of an existing article of the Criminal Code is made, as a result it begins to cover actions provided for by other articles of the Criminal Code, and it does not always mean that such articles expire; even the ancient Roman principle "later law abolishes the previous law" has a limited effect on criminal law for it applies only to articles that are directly amended by the new law;

3) in connection with the expiration of the term for which the law was adopted, or change (elimination) of conditions or circumstances provided for by law; e.g., the Decree of the Presidium of the Verkhovna Rada of Ukraine "On liability for violation of consumer cards for the right to purchase goods and other official documents" of Dec. 26, 1990 established the time limits for the use of consumer cards and at the end of that period the Decree expired.

Conclusions and prospects for further research. The institution of entry into force and repeal of criminal law is an integral element of the modern criminal law of Ukraine. It is inextricably linked and directly correlated with many other criminal law institutions, such as the institution of the validity of legislation in space / time and others.

The problem of the entry into force and repeal of any law, despite its importance and fundamentality among other similar issues, is not as clear-cut as it would seem at first glance. There are many conflicts, inaccuracies and ambiguous aspects that need to be resolved. Among them are, for example, the following ones: 1) the problem connected with the application of the interim law, and there several different scientific interpretations of it; 2) the problem of the correlation of the Ukrainian criminal law with foreign

systems of criminal law and international criminal law, and some others. However, there is a solid legal basis and a sufficient amount of theoretical sources, which indicate the interest of scientists in the further research of the problem. Besides, the legislator clearly defines the most important concepts, both those that directly relate to the topic, and those that are only briefly connected with it.

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УТВОРЕННЯ ЦЕНТРАЛЬНОЇ РАДИ ТА ЇЇ ЗАКОНОДАВЧА ДІЯЛЬНІСТЬ

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У статті описується процес становлення Української Центральної Ради (УЦР), віхи її законодавчої діяльності. Особливу увагу приділено еволюції законодавчої діяльності УЦР, наприклад, Конституції 1918 р. Проаналізовано окремі напрями законодавчої діяльності Ради, зокрема: у сфері прав і свобод людини та громадянина, у земельному законодавстві, у робітничій, виборчій сферах, а також у сфері мовної політики.

Ключові слова: Українська Центральна Рада, генеральний секретаріат, установчі збори, універсал.

FORMATION OF THE CENTRAL COUNCIL OF UKRAINE AND ITS LEGISLATIVE FUNCTION

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The article describes the process of the formation of the Central Council of Ukraine (CCU) and areas of its legislative activities. Particular attention is paid to the evolution of the legislative activities of the CCU, for example, in adopting the Constitution of 1918. Separate areas of the legislative activity of the CCU, including those of human and civil rights protection,

land, labor, and electoral legislation, and the legal issues of the language policy are considered.

Key words: *Central Council of Ukraine, General Secretariat, Constituent Assembly, Universal.*

Problem statement. The struggle for one's own statehood, authenticity and independence has always been the main one in the history of Ukraine. It can be explained by a special desire of the Ukrainian people for freedom, their love of freedom and unwillingness to obey someone else's hostile leadership. That is the reason why during the whole period of Ukraine's formation we can observe the aspiration of the Ukrainians for their own statehood, the desire of the people to have a free and independent homeland.

The period of the middle of the 20th century is a vivid example of the first glimpses of the Ukrainian statehood. The Central Council of Ukraine (the Tsentralna Rada or the Central Rada) was the first Ukrainian political body to proclaim the first formed and organized Ukrainian People's Republic, which will be a great impetus for action in the future.

Unfortunately, now the question of the importance of Ukraine's independence, its territorial integrity and preservation of ethnicity under the influence of both external and internal factors is raised again. Time does not stand still. Today will become a new story tomorrow. Such a rapid change of events requires rapid reactions and correct decisions. That is why it is so important to know the history of Ukraine and be able to reconsider it in order not to repeat the mistakes already made and to take the right direction of the state formation.

The object of research is the period of restoration of the Ukrainian statehood in 1917-1920, formation and development of the Central Council of Ukraine. **The subject** of the study is the legislative activity of the Central Council of Ukraine in 1917-1920.

The purpose of the article is to review the events of the period of 1917-1920, highlight the most important aspects, analyse the legislative acts of the CCU, consideration of the achievements and miscalculations of that period.

Presentation of the main material. The chronological framework covers the period of 1917-1920. In 1905-1907, Russian influence on the territory of Ukraine weakened. It was due to the irreversible disintegration process in tsarist Russia.

Under the pressure from mass protests across the country, on October 17, 1905, Nicholas II issued a manifesto promising to introduce political freedoms, including freedom of speech. The forces of the Ukrainian national liberation movement took advantage of that revolution in general. Political parties emerged, among them the Revolutionary Ukrainian Party and the Ukrainian Socialist Party. All this contributed to the rise of the national consciousness of the Ukrainians.

On the initiative of the Society of the Ukrainian progressivists a meeting of the representatives of the Ukrainian organizations was held in Kiev club “Family”. It united all democratic groups and outlined the political line that the Ukrainians had to follow during the revolution. The next day, March 4, all the organizations united together and became the members of the Central Council Committee.

Thus, Ukraine reacted explosively to the revolution in Petrograd and used it for its own purposes. It became a mainstay for central institutions and provided more opportunities for Ukraine.

The Central Council of Ukraine was at the top of the UPR. The Fourth Universal stated: “We, the Ukrainian Central Rada, represent the working people – peasants, workers and soldiers”. In the context of considering the issue of human and civil rights and freedoms, separate documents of the Ukrainian Central Rada

deserve special attention, for example, Universal III of November 7, 1917. This universal abolished the death penalty. It also stated that “the court in Ukraine must be fair, accountable to the spirit of the people”. Universal IV affirmed all the democratic rights and freedoms that were stated in Universal III. It also established the right of nations to national-personal autonomy.

The Constitution of the Ukrainian People’s Republic of 2018, which became the basis of forming the national legal system, cannot be ignored. The Constitution guaranteed the inviolability of the person, his home, correspondence, etc. The death penalty, torture and other degrading treatments were abolished. The Constitution proclaimed freedom of speech, press, conscience, the right to organize strikes.

Legislation in the field of rights and freedoms testifies to the truly democratic and legal nature of the UPR.

On the basis of the Third Universal, the Provisional Land Law of January 18, 1918 was adopted. It stipulated that the right of ownership of all lands with their waters, aboveground and underground resources is abolished, and they become the property of the people of the UPR. All citizens had the right to use it without any restrictions because of their religion, gender or nationality, but they also had the obligation to follow the rules of that law.

According to the law, urban lands were transferred to local government and others to rural communities, townships, and provincial land committees within their jurisdiction.

In general, most of legislative initiatives caused a lot of contradictions and misunderstandings not only within the Central Council, but also in the society.

The process of forming state bodies was accompanied by many protests and demonstrations of workers. They demanded the introduction of an 8-hour working day, higher wages, and better working conditions. According to the Fourth Universal of January

1918, the Ukrainian Central Rada became responsible for trade, took control of banks, and foreign trade. On January 25, 1918, the Eight-Hour Working Day Act was passed. It limited working hours for teenagers and women. The law also mentioned the right of workers to a break, separate provisions on extending the working day, and the specific conditions of hiring the minors.

The result of the legislative activity of the Central Rada in the field of suffrage is the Law “On Elections to the Constituent Assembly of the Ukrainian People’s Republic” of January 22 (9), 1918. 183 articles provided detailed provisions on the organization and conduct of elections. The right to vote was granted not only to the citizens of the Ukrainian People’s Republic over the age of 20, but also to persons who had Russian citizenship or citizenship of other states, but not later than the time when the compilation of voter lists began.

Legislative acts on elections during the time of the Ukrainian People’s Republic are characterized by broad and deep regulation of all the stages of the electoral process.

On the one hand, due to haste and external interference, the Basic Law had a lot of shortcomings and shortcomings. On the other hand, despite all aspects, the existence of the Constitution is already a big step towards positioning the UPR as a free, independent state. Based on this, we can trace the evolution of legislative activity and the desire of UCR leaders to create a truly democratic, legal Republic.

Conclusion. Despite the fact that the Ukrainian People’s Republic did not last very long, the Central Rada actually became the basis of parliamentarism in the middle of the twentieth century. During the period of its activity, the Rada was able to show that the UPR was not just an anarchist entity, but a full-fledged and sovereign state. And its legislative activities are the best illustration to this statement.

The legislation of the Ukrainian People's Republic in various spheres was aimed at building a state. Despite the fact that some provisions and laws did not meet the interests of the citizens, their existence indicated a desire to resolve misunderstandings and build state institutions. We can observe the development of statehood: from the positioning of the UPR as an autonomous unit within the Russian Empire, and later the federation, to the recognition of its own independence and sovereignty. It is confirmed by a completely different level of legislation, including the Fourth Universal and the 1918 Constitution.

The Basic Law of 1918 is the result of the evolution process of the UPR legislator. We see that the leaders of the state were on a truly democratic and legal path. After all, the existence of that constitution put the UPR on a par with other European states of the time. Besides, it significantly strengthened its position in the international arena.

Unfortunately, because of the difficult geopolitical and military realities of the time, the Ukrainian Central Rada failed to achieve the desired result. However, this period in the history of Ukraine is undoubtedly important. It was the first serious experience in the field of state formation in the 20th century and showed the world the love of freedom of the Ukrainian nation and its eternal aspiration for independence and autonomy.

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ШАЦЬКИЙ АРМАГЕДДОН: ЯК ВРЯТУВАТИ ОЗЕРО СВІТЯЗЬ?

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У статті висвітлено проблему пересихання озера Світязь і інших озер Шацького району, яка стає все актуальнішою останнім часом. У роботі детально розглянуто вірогідні причини цього явища і можливі шляхи вирішення цієї проблеми. Дослідження опирались на думки експертів, які працюють над її вирішенням.

Ключові слова: зміння, підземні води, меліоративна інфраструктура, кар'єр, лохинові поля.

SHATSK ARMAGEDDON: HOW TO SAVE LAKE SVITYAZ?

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The article considers the issues connected with the drying up of Lake Svityaz and other lakes in the Shatsk region, which are becoming more and more urgent recently. Therefore, this article discusses in detail the probable causes of this phenomenon and the possible solutions to this problem. The research is based on the opinion of experts, who are working on solving the problem.

Key words: shallowing, groundwater, reclamation infrastructure, quarry, bog blueberry fields.

Problem statement. Lake Svityaz is the largest tourist center of the Volyn region, as well as an important source of water and a habitat of rich flora and fauna. And its shallowing can lead to a number of serious problems in the whole of Western Ukraine.

Unfortunately, though the problem has been developing for some time now, no action has been taken to address it so far. Therefore, it is critically important to determine the causes of drying of Svityaz and consider possible ways to solve them based on the experts' opinion.

Recent research and publications. Very little is known about the drying up of Svityaz. During the time the problem existed, only the media reports about it were to be found. Regrettably, even experts only gave comments to journalists, but did not write their own studies. Therefore, in an attempt to bring the scattered information together, we have based this article on the comments of experts in the media (Loseva O., Sydoruk S., Soroka M.) and on the literature on ecology, lakes and their drying and shallowing in general (Iliin L., Molchak Ya.).

The aim of the study is to make the readers aware of the problem of shallowing of Lake Svityaz and to outline the ways to solve it. Tasks of the study: to investigate the current situation with Svityaz; to consider the reasons for the shallowing of Lake Svityaz; to find ways to solve the problem.

Presentation of the main material. Svityaz is not only the deepest, but also the largest lake in Ukraine. It is part of the Shatsk National Nature Park and, together with other lakes, forms a group of Shatsk lakes. The area of Lake Svityaz is 26.22 km². The length of the lake is 9.3 km, the width is 4.8 km. The maximum depth is 58.4 m [7]. It is also one of the seven natural wonders of Ukraine and a favorite resting place of Volyn residents, as well as one of the most popular tourist centers of Western Ukraine [1]. There are many health resorts and tourist bases working there, which attract

tens of thousands of vacationers. In particular, in the summer of 2019, according to Sphere-TV, Shatsk Lakes have been visited by more than 150,000 tourists. But over the last few months, social media and regional media have been actively discussing the rapid shallowing of Svityaz. Of course, the problem has not arisen at one point, the fact that the lake is gradually shallowing has been noticeable for the last few years, but this summer Svityaz broke the record: in some places the water receded from the shores at 30, 50, and even all 100 meters . And because the phenomenon became widespread, many theories emerged as to why this is happening and how soon Svityaz would disappear completely with the rest of the lakes of the Shatsk region. Pseudo-experts scare the Ukrainians, without pointing out any sources of their conclusions and without referring to the opinions of real scientists. The scientist of Shatsk National Nature Park Petro Yurchuk, an expert in environmental management Maxym Soroka and director of the Shatsk National Nature Park Mary Khristetska helped to understand whether the situation is really so grave and whether there are any ways to save Shatsk Lakes.

Global warming and absence of rain. The Institute of Water Problems and Land Reclamation of the National Academy of Agrarian Sciences of Ukraine reports that the average annual temperature increase in Ukraine is highest in Eastern Europe – the air temperature has risen by about two degrees last summer and by 3.5 months in some months, compared to the long-term indicators. Petro Yurchuk says that since 2015 the dry years began, the rains fall not in suitable seasons, not in the times when they are needed and in which we are used to them. In June, for example, only 18% of the necessary precipitation fell. In addition, the heat that year was anomalous – up to 40 degrees, so the evaporation increased. Although it is the deepest lake in Ukraine, the shoreline, which in some places is 200 meters wide, has shallow water, so it is not

surprising that sand spits appear. In other lakes the water recedes only a few meters. However, the water level in Svityaz is already 35 centimeters lower than it should be, and which is plotted on all maps of the hydrological regime (163.37 m above sea level). Petro Yurchuk says "If the level does not rise by summer, then there may be a phenomenon like shortness of breath on the lakes. Of course, there will not be any on the Svityaz, Lucimer, and Pulyemske lakes, as these are deep water reservoirs. But small lakes can perish at all" [9].

What's wrong with bog blueberry fields? While the weather is a known problem, bog blueberry farms are a relatively new phenomenon in Volyn region and their impact on the water level in lakes has not been fully explored. This berry has become widely grown in recent years. There are many new plantations that need watering. Farmers dig canals and artificial ponds that are filled with water directly on leased areas. And, perhaps, Svityaz needs the water that the farms are accumulating now [2]. According to Maria Khristetskaya, in the rainy year the impact of artificial lakes on the lakes of Shatsk region would probably be invisible, but in 2019 the activity of bog blueberry farms added to the impact of adverse weather conditions, so a cumulative negative effect was manifested. "As for the impact of bog blueberry-growing businesses, we also do not rule it out. But this issue still needs to be carefully studied and investigated. The extent of their impact is currently unknown" [5].

Outdated and faulty reclamation infrastructure. Almost 150 years ago, Svyatyaz was connected by a canal to the lakes just below Luke and Peremut (they are connected by a short and fairly wide strait, which is why a lot of people consider them to be one lake). And in fact, the waters of the Svityaz feed these lakes. For many years thanks to the discharge of excess water, the channel managed to prevent the village Svityaz from flooding. In the 60s of

the last century with the aim of controlling the runoff on the channel the gateway regulator was installed— a plate, through which water does not flow from the lake, but with its excess there is an overflow. Unfortunately, after so many years, the gateway is in emergency condition: the plates are broken, and they do not perform their function at all, the water is leaking constantly. In the region, money cannot be allocated for its repair (besides, not only one gateway needs repair, but also dozens of others). Now the channel is covered with sandbags, which, according to the experts, is a very short-term solution to the problem: firstly, they can be quickly washed away and secondly, the channel cannot in any case be completely closed or blocked because it will affect the lakes which Svityaz feeds. But if it is necessary to close it, then first a gateway on the canal that connects them to the river Kopaivka, which flows into the Western Bug, has to be repaired.

Maxym Soroka feels indignant as to why people are only concerned about the situation with Svityaz, while being completely indifferent to the other lakes: "Why do people pay attention only to those natural objects that they use to meet their needs? Nobody made any report about the dire environmental situation on the lakes below the cascade. If such situation persists, the population of frogs and aquatic living organisms that birds feed on will decrease. There will be no forage base - the birds will either fly away or die out. If there are no birds, there will be so many mosquitoes next year that no one will want to come for their holidays" [10].

Is the Khotislavsky Quarry to blame? One of the most widely discussed topics in the media and on social networks is the impact on groundwater that feeds the Shatsk Lakes of the Khotislavsky chalk open cast located in Belarus. In September, a delegation from Volyn visited Khotyslav to find out whether there was a real negative impact on the water level in Ratniv lakes (which is closer to the Belarussian deposit) and Shatsk region, or

whether it was just false alarm. As it turned out, there is a pump of small capacity, which pumps 200 cubic meters of water per hour, in addition, it does not work constantly. To put that in context, there are 46 pumping stations and 146 pumps in Volyn. And these devices pump at least 2.5 thousand cubic meters of water per hour. Therefore, the impact of the pump from the Khotislavsky Quarry is negligible compared to the amount of water pumped out by the Volyn residents. However, the quarry is still under development. So far its depth is 12 meters but in a few years it should reach 40 meters. And it is unknown whether its work will affect the groundwater at all. Therefore, the monitoring of groundwater and surface water levels, that were discontinued in 2014, should be resumed in order to assess potential negative impacts and to agree early on the development restrictions on quarrying [10].

Conclusion. Unfortunately, the vast majority of the local population does not realize the scale of the shallowing. The problem seems to them too abstract and distant. However, the situation is far more serious than it seems.

According to the experts, the situation with Svityaz is not catastrophic as of now. Indeed, Shatsk Lakes are not experiencing the best of their times because of the climate and the unreliability of the floodgates, but they are getting enough water from underground sources to withstand these difficulties. However, human inactivity or, on the contrary, devastating intervention can aggravate the situation. In ecology, there is a concept of synergistic effect - when one action does not cause disaster but several actions that complement each other's effects have a critical impact. It is possible to draw a parallel to the game of "Jenga": when the wooden bars make up the tower, and then players carefully one at a time remove these bars. So is the ecosystem - consisting of a large number of such bars. And they can eventually be removed, but one of them will be the last s- and everything will fall apart. Therefore,

if efforts are made to address at least the problems that human actions can solve, the ecosystem will continue to function and the lakes will continue to exist.

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**ОБРАЗ ВОРОГА В МЕДІА:
ІСТОРИЧНИЙ ТА СУЧАСНИЙ АСПЕКТИ**

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У статті розглянуто формування «картини ворога», яка за допомогою мас-медіа перетворюється на інформаційну війну. Проаналізовано, яким чином засоби масової інформації передають громадськості певні думки та смисли, що стосуються безпосередньо представників інших держав в умовах війни і не тільки.

Ключові слова: образ ворога, війна, маніпуляція, пропаганда.

**IMAGE OF ENEMY IN THE MEDIA:
HISTORICAL AND MODERN ASPECTS**

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The article deals with the image of enemy in the media. The historical and modern aspects of forming the image of the enemy with the help of mass media, which help to start an information war, are considered. It has been established how the media convey certain thoughts and concepts that concern the representatives of other states during the war and beyond.

Key words: image of the enemy, war, manipulation, propaganda.

Problem statement. Humans as social creatures form the image of the enemy for their own survival. They can lead a proper life only if they consider themselves a part of a certain organized community. Since most members of a group share similar values, visions, customs, and traditions, they can easily understand each other's behavior, and the group, in turn, brings certain benefits that give meaning and significance to their lives.

The threat to the integrity of the group, especially when it represents a group with a different worldview, affects the very basis of the psychological and biological survival of its members. The “image of the enemy” usually starts to form at exactly this point, which can later turn into an information war.

Recent research and publications. A recent review of the literature on this subject found that “the image of the enemy”, especially when it comes to war, is a topical issue. For example, Marja Vuorinen wrote a book, called “Enemy Images in War Propaganda” which successfully debunks the myths about the good purposes of propaganda and the infusion of certain thoughts to the masses. Harold Lasswell, in turn, has created a theory about political propaganda and utilized Sigmund Freud's methodology of researching. In his review “The American Political Science Review” he refers to the idea of creating “hostility” based on the works of S.Freud.

Aim and tasks of the study. The main purpose of our study is to form a conscious and objective vision regarding the image of the enemy. It includes: how the media promotes certain visions that are needed by stakeholders, what the projected “image of the enemy” is and how this image affects the psychological aspects of humans. Also, we will try to consider how a person, who creates and follows the idea of “otherness”, perceives himself as an individual. Last but not least, by way of drawing a historical

comparison we will make some conclusions about different approaches to the subject of hate speech and the image of the enemy.

Presentation of the main material. The main reason for any conflict or opposition is strife for certain resources and the opportunity to own them. Obviously, there might be some material benefits, but, what is equally important, it can be spiritual, intellectual welfare, existential beliefs and ideology. When it comes to the issue of war, we are not only talking about physical battle. In this case, a motivational potential can be much more valuable when a particular country forms a common vision of 'its own' and 'someone else's' concept.

One might say it is a certain deeply-rooted psychological drive due to which some people may try to form some social cause. There is the reason why we have press, because at any stage every military campaign starts from information and it spreads into the masses.

When different states interact in certain ways, they create a specific attitude and vision about each other. And it is considered to be a norm as each interaction and relationship between humans must have its own name and definition. Actually, the main problem of war psychology is the perception of the enemy. In various social relations – from interpersonal to international, the problem of the "enemy" is always relevant [1].

The information we find on newspaper pages or across different media spaces including television or the Internet sources is often used as a way of influencing readers to start thinking in a certain direction. Throughout human history, the image of the enemy has had a significant impact on political and social processes. The problem is paradoxical: sometimes there is no real reason for "hostility". "Enemy" as a definition and as the perception of the subject of «otherness" is rooted quite deep in the society [2].

In this study we have tried to disclose this complex topic as widely as possible so that we could dig deeper to reveal the roots of the truth and objectivity. Firstly, we will consider the “portrait of an enemy” or how mass media and some political powers convey the idea of a stranger to the audience? Do we ever wonder how the real enemy looks like? It is worth comparing one’s vision with opinion or even propaganda from special interest groups. How is the image of an enemy formed during the war, taking into account historical and modern aspects?

The study reveals that the media usually portrayed the enemy or the opponent only in a negative light or even dismissive and humiliating form emphasizing and exaggerating certain unpleasant facts and details. Immediately before the start of any war, the authorities do not deny the importance and necessity of the existence of the enemy, but quite the opposite – they convince the public that they are united not by parades, but by common disapproval of a particular person or nation, etc.

Also, “the enemy” was presented in the press in such a way that the reader had the anticipation of some kind of triumph or victory [3]. During World War I, press materials based on propaganda described “the opponent” as brutal and barbaric, denying his belonging to the “cultural world”. He is not the one, who needs the empathy, because he is only interested in wreaking havoc and creating a threat to people’s lives.

Turning back to the basics of human psychology, it’s quite logical that when the reader holds that kind of text in his hands, he realizes his superiority over others: “I’m not as foolish as they are, so I’m a much better personality”! Sarcasm and irony are also used to project the “image of the enemy” of a certain emotional nature. It’s such a common thing when the media use a kind of satire just for exaggerating the behavior, manners or even the appearance of the foe.

On the other hand, according to Marja Vuorinen (“Enemy Images in War Propaganda”), inventing the vision of enemy, ironically, starts from invention and creating of one’s Self. And that is exactly right. It is a fact that a human being has a tendency to perceive himself as a good one and define the self as protagonist in his own film [4].

The idea of creating “hostility” can be related to the works of Sigmund Freud. His concept of otherness begins with some cultural aspects in order to protect people’s personal mental comfort zone and health [5]. The main point of any politics of enmity is the definition of the self only in a positive manner. This includes: honesty, religiosity, good manners, consciousness, kindness, toil, while “the other” is being evil, immoral, cruel, violent, brutal, tough, etc.

Here are vivid historical examples. During World War I the opponents used to shift the responsibility for waging war onto another side. Accordingly, one of the main tasks of Russian propaganda was to form an idea of the empire's defensive position and its participation in overcoming, together with its allies, the Austro-German aggression. It was necessary to instill in the public the idea that it was exactly the enemy who was preparing for this war, and then the enemy started it and broke the existing peace among them. To prove that, they looked for evidence the opponent had found grounds to start the conflict [6].

For illustrative purposes, I want to present an example known to everyone from the school so that the reader may develop a different angle on this topic. So, let us start from the following statement: Austria-Hungary has been preparing for war since spring. French and British newspapers claimed that Austrian reservists in Africa and America were called up a month before the assassination of Archduke Franz Ferdinand [3]. What does that mean? It means that foreign press was obviously trying to divert

attention from oneself and direct it to the enemy. The mass media had found the evidence before Ferdinand was assassinated, so I think that creating “the image of the enemy” in the First World War is a good example of hate language.

In terms of propaganda, it would be too easy to justify the fact of war by blaming it on some ethical aspects but not on religion. Propaganda in wartime should cultivate and reinforce hatred of the enemy. Paradoxically, this feeling should unite citizens in the fight against the enemy. The unity of the civilian population cannot be achieved through military discipline and drilling. This is obtained by the constant repetition of certain ideas. Actually, propaganda stimulates this process quite effectively.

While depicting the enemy and his losses, attitude of the population to the war, press often widely used hyperbolic and unverified facts or even untruth. Jews and German colonists were blamed for espionage in favor of the opponent. Propaganda operated not only by the facts, but also by hearsayings. For example, someone could say that he heard a rumor that in Stanisławów, Austrians hanged and shot several dozen citizens, including prominent Polish public figures, on the denunciation of local Jews. This information could be also used in the press for several reasons which are beneficial to someone.

Summarizing all the above in a historical way I want to highlight the main conceptual propaganda techniques that we have looked into based on the example of the World War I:

1. Austria-Hungary and Germany were portrayed as the main culprits of the war.
2. The Russian purpose of the war: to help the allies (especially Serbia); just and comprehensive peace.
3. Accentuation of enemies' crime: violation of conventions, crimes against civilians, use of prohibited weapons, etc.
4. Supporting the population's confidence in victory [7].

Taking into account the modern aspect of forming the image of an enemy, is there much difference between 20th century and the current situation in Ukraine and in the world in general? If until this day the basis of the division was "we" and "they", then the modern information war is moving in the direction of uniting the various "they" into a single "we" [8]. The information war of modernity, first of all, is a worldview confrontation for the human mind. We tend to believe that everything, first and foremost, depends on us and how we can form our clear position and opinion. We need to learn how get the right and true information through the filter of consciousness and intellectual maturity.

Conclusion. In this work we have tried to prove certain significant points. Firstly, the deep analysis of a definition of "other" is a main key to perceiving not only the enemy, but also the whole nation in general. It is essential to realize that every broadcast from the mass media is aimed at convincing us of something, so we should be careful while consuming the information product and accepting a certain opinion.

Secondly, a basic indicator of a wise approach to this issue is how we form the "image of ourselves". It is necessary to realize and define one's positions, attitudes and beliefs to make the right conclusions in perspective. Thus, a person will be able to develop a conscious attitude to the world around him.

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КАРАЛЬНІ ОРГАНИ ФАШИСТСЬКОЇ НІМЕЧЧИНИ (СС, СА, СД, ГЕСТАПО, НАДЗВИЧАЙНІ СУДИ)

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У статті характеризується структура карально-репресивного апарату нацистської Німеччини. Значну увагу приділено злочинам, що здійснювались у тоталітарній державі. Проаналізовано особливості приходу до влади нацистів у Німеччині та ідеологію „Третього рейху”. Окрему увагу приділено дослідженню історико-правового значення Нюрнберзького процесу.

Ключові слова: каральні органи, нацисти, СС, гестапо, РСХА, нацистська Німеччина.

THE PUNITIVE ORGANS OF THE FASCIST GERMANY (SS, SA, SD, GESTAPO, EXTRAORDINARY COURTS)

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The article describes the structure of the punitive and repressive apparatus of Nazi Germany. Much attention has been paid to crimes committed in a totalitarian state. The author analyzes the Nazis' coming to power in Germany, the ideology of the Third Reich. In particular, the historical and legal significance of the Nuremberg process is investigated.

Key words: *punitive organs, the nazis, SS, gestapo, RSHA, Nazi Germany.*

Problem statement. The modern world is undergoing global transformations in the economic, social, political, and legal spheres, which is often accompanied by contradictory trends in public life. In many countries, ultra-revolutionary and neo-fascist movements are being formed and functioning, promoting radical ideas to the masses. These ideas had been implemented in Germany for twelve years (1933-1945) when the country was under the rule of the Nazis. Nazism and the war led to terrible consequences: millions of people died at the front, were destroyed in concentration camps, and died of starvation. Currently, in many European countries, the situation is similar to that which was typical for the 30s of the 20th century.

It seems to us that the whole nightmare associated with the destruction of people, the practice of the Holocaust, and cruel propaganda is in the past. However, there are still organizations and political movements, which actions can lead to the restoration of Nazi ideals. Under the aegis of democracy and freedom of speech,

neo-Nazi marches and torchlight processions that use fascist symbols, slogans, and appeals are openly held in European countries. Concepts are actively substituted and dissenters are persecuted. Besides, in some states, neo-Nazi organizations are used to carry out coups. That is why it is necessary to study this period of history in order to avoid the mistakes of the past.

Recent research and publications. The studies in the sphere of history and the history of law have given considerable attention to the history of the punitive organs of Nazi Germany. Among many works, one can see the work by H. Heinz “The Order of the Death’s Head: The Story of Hitler’s SS”, dedicated to the study of the history of the state and the structure of the punitive apparatus of Nazi Germany. The work “Empire of death” by D. Melnikov exposes the criminal activities of the special services of the fascist Reich, and emphasizes that terror was part of an unknown Nazi policy [8].

Furthermore, in my opinion, the book “SS in activities” [11], based on documentary materials written by the Germans themselves, deserves the most attention. In addition to documents, the book contains photo evidence of crimes committed by the German military, official trials of criminals, and materials from various SS institutions. A special place is occupied by the official materials of the Nuremberg trials.

Of particular interest is the study by G. Williams “SS Hitler’s Instrument” where attention is devoted to the history of the emergence and criminal activities of the SS [14].

The purpose of the study is to examine and identify the patterns of development of the punitive mechanism, as well as the nature and features of the activities of the punitive bodies of Nazi Germany. Its achievement provides for the implementation of **the following tasks**: 1) studying the background of the Nazis coming to power and its strengthening; 2) investigation of the activities of

the punitive bodies of Nazi Germany; 3) analysis of crimes committed by the punitive authorities of Nazi Germany; 4) evaluation of the historical and legal significance of the Nuremberg trials.

Presentation of the main material. Since the years of the Weimar Republic were quite difficult due to the internal political and economic situation, mass rallies and demonstrations took place. At the same time favorable conditions for the growth of the right of radical forces were created, but Hitler was not able to seize power by force for a long time.

There were changes in the party system: in 1919 the Workers' Party emerged, which was anti-Semitic and national by nature. In February 1920, at a rally, Hitler proclaimed the program of the party, which consisted of 25 items. After that, the name of the party was changed to the National Socialist German Workers' Party (NSDAP) and later Hitler headed it himself.

From the first days of coming to power, the Nazis aimed at uniting the Germans into a single entity, clear off the Aryan race from "alien blood", overcome ideological, confessional, class contradictions by establishing a single party to eliminate anti-Nazi ideology and public organizations, as well as to standardize the state apparatus. An important point in the Nazi regime's emergence was its legal coming to power of both Hitler as the leader and his party.

By the time of coming to power (January 30, 1933), the Nazis had already controlled the state apparatus and punitive bodies (SA, SS), the NSDAP militarized formations were created in 1921. The Sturmabteilung were conceived as semi-military alliances of the National Socialist Party, as an instrument of terror and physical repressions against the opponents of fascism. Special place among the punitive bodies of Nazi Germany was occupied by SS detachments, special detachments, which task was to destroy

the internal enemies. They were protecting the internal security of the empire. The Schutzstaffel were also entrusted with the protection of concentration camps. The Nazi leadership, having eliminated any framework that limited the activities of punitive bodies, used them to conduct open and unlimited terror.

Since Hitler feared the growth of the influence of the leaders of the SA, on June 30, 1934, a “bloody purge” of the top of the storm troopers called “The Night of long Knives” was carried out, which was important in strengthening the role of the SS. On April 26, 1933, a decree of the Prime Minister of Prussia, G. Hering, established a secret state police – the Gestapo, the secret state police of the Third Reich, designed to fight dissidents, dissatisfied and opponents of the Nazis regime, and which became the symbol of Nazi terror. The Decree of June 17, 1936 gave the Gestapo legal status.

In addition, the army intelligence, the Abver, acted as a part of the Supreme Command of the Wehrmacht (OKV). That body was established for military intelligence and counterintelligence in 1919 by the government of the Weimar Republic. The main purpose was to carry out subversive activities against the states considered as hostile to Germany. In February 1944, a decree was issued on the disformation of the Abver.

The restructuring of the judicial system was also directly related to the establishment of a punitive mechanism. In March 1933. Special courts were established. They considered cases on political crimes directed to them from ordinary courts. The Special Court consisted of three judges and sat without a jury. According to the Law “On changing the provisions of criminal law and criminal procedure” of April 24, 1934, the supreme judicial body of the empire was established: “People’s Tribunal for Treason” (People’s Trial Chamber), consisting of 5 persons, personally appointed by A. Hitler. The task of the People’s Court

was to punish the regime's political opponents quickly and ruthlessly. By that time various procedural rules were changed, as well as possibilities of objection to the judicial order and appeal were considerably limited.

In 1936 the formation of the SS troops (Waffen SS) began. Parts of the SS were divided into two groups: "SS Dispositional Troops", which included the "Leibstandarte Adolf Hitler", was created in September 1933; and the detachments of "Dead Head". During that period SD began to develop a system of total control over the society. Spheres of SD and Gestapo activities often intersected, so there were conflicts between them. The jurisdiction of the SD included counterintelligence, but that service had some limits to arrest; the Gestapo did not have such restrictions and often interfered with the SD authority. In 1937 Heydrich divided the spheres of activity: Gestapo got the control over the cases against the Communists, crimes against the state, emigration cases, and SD – cases in the spheres of: science, art, education, national studies, party, and state administration.

In 1938, W. Frick allowed the Gestapo to issue warrants for the "security arrest". By that time, the lists of arrested persons had been approved in the Ministry of Internal Affairs. "Custody arrest" became the prerogative of the secret police, because it was directed "against individuals who, by their activities, harm the strength and security of the people and the state" [14]. After the Blomberg-Fritsch affair on February 4, 1938, the Fuhrer's decree on the new structure of the leadership of the Wehrmacht was published. The Supreme Command of the Armed Forces was founded. The purpose of all that restructuring was to completely subordinate the army to the Fuhrer.

The period of 1937-1938 was characterized by an orgy of arrests, death sentences, and the beginning of the program of destruction of "inferior" Germans ("euthanasia program"),

approved by Frick. As it was officially stated in Hitler's order, the Nazis killed "people suffering from hereditary diseases". And not the Aryans. As a result the Reich Main Security Office (RSHA) was formed. Reinhard Heydrich was appointed the head of RSHA, and after his death in 1942, Ernst Kaltenbrunner, was officially named Chief of police, security and SD. The RSHA was formed through the merger of Sicherheitsdienst (SD; SS intelligence service) with the Sicherheitspolizei. RSHA united both state bodies (Gestapo and Kripo) and party (SD). However, the main goal Heydrich set for himself as a complete merger of the SD and the security police, did not happen. The RSHA was not a part of any ministry. On the one hand, the true purpose and powers of the organization were masked. On the other hand, it was the circumstance that gave the department independence and control.

By a directive of July 31, 1941, the commissioner for the four-year plan, Goering, instructed the head of RSHA R. Heydrich to prepare a "final solution to the Jewish question" [8]. In relation to the Jews, total genocide was carried out. All identified as the Jews and persons with closely related kinship were subject to physical elimination. The real factories of death were: Dachau, Buchenwald, Auschwitz, Maidanek and others. In January 1941, by order of Himmler, the concentration camps were divided into categories: 1) for those who have committed a minor crime; 2) for dangerous criminals; 3) for those who have no hope of reeducation; 4) for particularly dangerous criminals without the hope of correction.

Along with the concentration camps, the most terrible part of the history of the SS is connected with the SD groups and the security police. Back in 1938 the formation of the *einsatzgruppen* began. In history, only a few such organizations could compete with them in their terrible reputations for atrocities committed. *Einsatzgruppen* were formed due to a specially created security service

and Gestapo agents. Their main task was to conduct “cleansing” among the local population after the occupation of certain territories by the Nazi troops.

The International Military Tribunal at Nuremberg became the first experience in the history of mankind in the conviction of crimes of a state scale, the decisions of the Tribunal created an important legal precedent, according to which not only military criminals had to be convicted, but also the political system that enabled the crimes. In Nuremberg it was Nazism, its ideology, all the military and punitive bodies of the Nazi Reich. The Nuremberg Tribunal stated that the SS had been used for purposes that were criminal, “including the persecution and the extermination of Jews” [5]. It was of particular importance that not only the SS as an organization but also its employees were responsible for directly carrying out those crimes.

Thus, the Nuremberg Tribunal played a significant role in the defeat of Nazism, since it, as the first International Criminal Court, was able to prove the guilt of the defendants in committing serious international crimes against humanity and convicted the main German military criminals. Its goal was to inform the public of Germany on the whole range of the crimes of National Socialism and to eliminate any public debate that questioned the crimes committed by the Germans.

The Nuremberg process created the prerequisites for the establishment of the foundations of the modern world order, especially in such areas as human rights protection and international humanitarian law, as well as the development of new principles and norms in all other areas of international law. Its decisions have led to the creation of international criminal law and called for the fight against international crimes and crimes against humanity, wherever they may be committed.

So, during the twelve years of Hitler's rule, most of the democratic and civil liberties were destroyed in Germany, and the activities of all but the ruling parties were forcibly curtailed. To eliminate resistance, the Nazis created a huge system of punitive bodies to fight against the political opponents of Nazi power. Those organizations had actually unlimited rights. An important characteristic of the German punitive bodies of that period was the racial orientation of their repressions. A large number of people of the Jewish, Slavic, Gypsy nationalities were destroyed during the Second World War.

National socialism was characterized by the fact that there was no system in it. In the Third Reich, there was a constant change of the centers of power among top officials, an increase of rivalry between the leaders. The lack of authority of any authorities could be considered as a means of supporting the unity of the Fuhrer, and the competence of one or another action was not considered as the fulfillment of orders given by various authorities, but only as the fulfillment of Hitler's will. However, the totalitarian character of the state did not mean its obligatory effectiveness, and the totality itself turned out to be a fiction.

Hitler believed that the state bureaucracy would be completely inappropriate and ineffective, and therefore paid much attention to such non-traditional organizations as the SS, the SD, the Gestapo and others. Germany became a state of arbitrary police regulations, and the supreme law was the order of the Fuhrer.

Assault troops (SA), security squads (SS) and some special military units led by Hitler supporters were directly subordinated to the party center. Significant role in the system of repressive apparatus was given to the secret police, Gestapo, which directly subordinated to the government and had a huge apparatus, great resources and unlimited powers. All society, anyhow, had been under the control of "security detachments". The leadership of

the SS reported directly to Hitler. In the historiography of Nazism there is a widespread definition of the role of the SS in Germany as that of a state in the state.

The judicial system in Nazi Germany was in full subordination to the party and political police. However, the total degree of control over the judges did not succeed in Nazi. That was mainly due to the commitment of the German lawyers to the idea of Rechtsstaat (legal state).

Mass terror was an integral part of the Nazi policy, total supervision. In Germany itself, the SS operated secretly, and many Germans were unaware of the scale of criminal cases. After the defeat of Nazism, when the actions of the Nazi organization became known, the latter turned to a symbol of unprecedented in the history, horrific crimes against humanity in the eyes of the world community. Nazism stated human qualities, attitudes, abilities and behavior depended totally on the racial type.

The repressive apparatus concerned not only the Jews but also the Gypsies, following the logic of Adolf Hitler and the party they were subject to complete destruction as inferior peoples. The persecution was also against the Communists, the homosexuals, the various religious associations, the Adventists, and the Masons. We must not forget many millions of deaths caused not only at the war battlefields but also to the civilian population of many countries occupied by the fascists.

Conclusion. During twelve years of Hitler's rule, most of the democratic and civil liberties were destroyed in Germany, and the activities of all but the ruling parties were forcibly curtailed. To eliminate resistance, the Nazis created a huge system of punitive bodies to fight against the political opponents of the Nazi power. Those organizations had virtually unlimited rights. An important characteristic of the German punitive bodies during that period was the racial orientation of their repressions. A large number of people

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ПОРУКА І ГАРАНТІЯ ЯК ВИДИ ЗАБЕЗПЕЧЕННЯ ВИКОНАННЯ ЗОБОВ'ЯЗАНЬ

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У статті проаналізовано одні із найбільш вживаних засобів забезпечення виконання зобов'язань: поруку та гарантію. Розглянуто забезпечувальне праввідношення, його основні аспекти, акцентовано увагу на загальних положеннях поруки та гарантії, які закріплюються в законодавстві України, їх основних ознаках, права та обов'язки, що закріплюються за боржником та кредитором, а також те, чим ці інститути відрізняються один від одного.

Ключові слова: зобов'язання, порука, гарантія, засоби забезпечення виконання зобов'язань, боржник, поручитель, кредитор.

SECURITY AND GUARANTY AS TYPES OF ENSURING THE FULFILLMENT OF OBLIGATION

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The article deals with the most commonly used ensuring of the fulfillment in obligation: a security and a guaranty. Attention is paid to the general provisions of securities and guaranties, which are enshrined in the legislation of Ukraine, their main features, as well as rights and obligations of the debtor and creditor.

Key words: *obligations, security, guaranty, means of ensuring the fulfillment of obligations, debtor, guarantor, creditor.*

Problem statement. The institute of security and guaranty is now one of the most important in the field of lending, since without it it would be impossible to use, for example, a pledge to the debtor who has no property, etc. So, creditors can secure their interests, even if the debtor has no ability to fulfill his obligations.

Recent research and publications. Pursuant to the law, a security is a contract in which the guarantor entrusts the debtor for the performance of his/her duty, and the guaranty is an official act where a bank or another financial institution or an insurance organization guarantees the creditor the performance of the debtor's duty. Thus, it is necessary to research how the security and guaranty institute works, what advantages and disadvantages it has and how these types of contracts are beneficial. These problems are covered in scientific works by A.B. Grinyak, A.R. Chanisheva, O.V. Dzera and others [4-6] who have investigated the place security and guaranty occupy in the civil law, how they enforce credit agreements, mortgages, etc.

The goal of the research is to understand how security and guaranty influence the system of lending. Accordingly, the following tasks are fulfilled: to analyze the laws of Ukraine and international treaties in order to understand how this institute works today; to define the place security and guaranty occupy in the system of civil law. The object of the research is the institute of security and guaranty. The subject of the research is how security and guaranty can enforce obligations in different types of contracts.

Presentation of the main material. *The concept and characteristics of the security relationship.* In order to begin the description of the security relationship (ensuring the fulfillment of obligations), it is worth noting what an obligation is. According to the Civil Code of Ukraine [1], the provision on obligations is enshrined in Art. 509: it is a legal relationship in which one party (the debtor) is obliged to perform in favor of the other party (creditor) a certain action (transfer property, perform work, provide a service, pay money, etc.) or refrain from committing a certain action (negative obligation), while the creditor has the right to demand from the debtor to perform his/her duty. The signs of obligation are as follows: the debtor has a certain obligation, characterized by action or inaction; the creditor may require the debtor to fulfill the obligation imposed on him; the subject of the obligation includes actions of property and non-property nature.

Turning to the topic of ensuring the fulfillment of obligations, it is worth noting a definition. Means of securing the fulfillment of obligations are additional precautionary measures of a special nature and allow to achieve execution regardless of whether the creditor has suffered damages and whether the debtor has property that can be enforced under enforcement documents. Among these means are the following ones: 1) to warn a potential person who may violate the terms of the obligation of such consequences that may adversely affect the debtor and occur in

case of non-performance or improper performance of the contract; 2) to create a mechanism that will allow in case of the debtor's not fulfilling the obligations to satisfy their interests; 3) to avoid negative consequences that may occur to the creditor in case of default [4].

According to the norms of Art. 547 of the Civil Code of Ukraine, transactions to ensure the fulfillment of obligations must be made in writing, non-compliance with this requirement entails the invalidity of the transaction. In fact, it can be fixed either in the obligation to which it is directed, or by an additional agreement between the parties. At the same time, some of them must not only be in writing, but also notarized, and in some situations, state registered.

It is necessary to dwell on the general conditions for all means of ensuring the fulfillment of obligations provided for in Article 548 of the Civil Code of Ukraine: 1) fulfillment of the obligation (main obligation) is provided if it is established by the contract or the law; 2) an invalid obligation is not subject to security; 3) the invalidity of the transaction to ensure the fulfillment of the obligation does not cause the invalidity of the main obligation.

Security is a type of ensuring of the fulfillment of obligations. Turning to the topic of security, it is worth focusing on the definition. A security is the guarantor's obligation to the creditor to be liable for the debtor's breach of obligations. The guarantee arises on the basis of the security agreement. It can be concluded between two or three parties, but the last option will be the most advantageous, as it allows you to fully consolidate the rights and obligations of each party. Some scientists believe that the definition given in Article 553 of the Civil Code is not entirely correct due to some logical contradictions. For example, Karasava O.P. notes that the phrase " security is guaranteed" does

not reveal the essence of the security, which is the obligation of the security to be liable for the obligations of the debtor in the main obligation in case of violation [3]. As an example we can take Article 2011 of the French Civil Code, which states that someone who becomes a guarantor of an obligation assumes responsibility to the creditor for the performance of this obligation by the debtor if he/she fails to do it himself/herself [2].

There is an opinion in the scientific literature that the obligation, which is ensured by the security, where the guarantor must fulfill in case of the breach by the debtor, is a monetary obligation, because the payment of the principal debt is the subject of a monetary obligation and not any other obligation. In general, this opinion is quite common, but this does not mean that the security cannot ensure the fulfillment of other obligations, such as, for example, the implementation of certain actions in favor of the creditor. Thus, the contract is created only in writing. In case of non-compliance, it is considered insignificant. This provision applies to all types of security for the fulfillment of obligations and is enshrined in Art. 547 of the Civil Code of Ukraine. The debtor and the guarantor are jointly and severally liable in case of violation obligations (Part 1 of Article 554 of the Civil Code of Ukraine).

General grounds for termination of the obligation are provided in Chapter 50 of the Civil Code of Ukraine. In addition, Art. 559 provides additional grounds for termination: 1) termination at the end of the security obligation; 2) termination of the guarantee occurs when after the due date, when it is necessary to fulfill the obligation, the creditor refuses to accept the appropriate performance, which was proposed by the debtor/guarantor; 3) the guarantee is terminated in case the debt has been transferred to another person; 4) termination upon expiration of the guarantee, which is established by the contract.

Guaranty is the second type of ensuring of the fulfillment of obligations. The definition of guaranty is enshrined in Art. 560 of the Civil Code of Ukraine, which states: the bank, other financial institution, insurance company (guarantor) guarantees to the creditor (beneficiary) the debtor (principal) of its obligation. K.Y. Molodyko defined this concept more broadly: the guarantee is a way to ensure the fulfillment of obligations, according to which the guarantor, on the basis of a unilateral transaction made in writing, is obliged to pay a specified monetary reward to the beneficiary. The guaranty is not a contract, but a unilateral transaction [3].

In Art. 568 of the Civil Code of Ukraine the following grounds for termination of the guaranty are stated: 1) payment to the creditor of the amount for which the guaranty was issued; 2) expiration of the term for which the guaranty was issued; 3) avoiding by the creditor the rights granted to him by returning the guaranty to the guarantor or by submitting a written application.

In **conclusion**, it should be noted that the security and guaranty are very important within the means of ensuring the fulfillment of obligations, as they are most effective due to the fact that a third party – guarantor – is involved. Because of this, there is an ability of fully protect the interests of the parties.

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УКРАЇНСЬКА МОВА – ГЕНЕТИЧНИЙ КОД НАЦІЇ ТА СИМВОЛ ДЕРЖАВНОСТІ

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У статті проаналізовано історико-юридичні аспекти закріплення статусу української мови як державної. Зосереджено увагу на тому, що українська мова є ідентифікаційним інструментом, генетичним кодом нації, який вирізняє українців з-поміж інших. Звернено увагу на важливість закріплення української мови як державної в нормативно-правових актах та їх ролі для формування свідомої нації. Висвітлення питання функціонування української мови як

державної в наукових джерелах сприяє розумінню цінності української мови для нації та її майбутнього. Єдина мова в державі сприяє незалежності, єдності та безпеці. Тому українська мова потребує законодавчої недоторканності та уваги в наукових дослідженнях.

Ключові слова: *українська мова, код нації, символ державності, статус української мови як державної, мовна ситуація.*

THE UKRAINIAN LANGUAGE AS THE NATION'S GENETIC CODE AND THE SYMBOL OF STATEHOOD

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The article analyses the historical and legal aspects of consolidating the status of the Ukrainian language as the state language. The focus is on the fact that the Ukrainian language is an identification tool, the nation's genetic code that distinguishes Ukrainians from others. Attention is drawn to the importance of consolidating the Ukrainian language as the state language in regulations and their role in forming a conscious nation. Coverage of the Ukrainian language functioning as the state language in scientific works contributes to understanding the value of the Ukrainian language for the nation and its future. The sole state language in Ukraine contributes to the country's independence, unity and security. Thus, the Ukrainian language needs legislative immunity.

Key words: *the Ukrainian language, nation code, state symbol, status of the Ukrainian language as a state language, language situation in Ukraine.*

Nations do not die from a heart attack.

Firstly, they lose their language.

Lina Kostenko

Problem statement. It is important to analyse historical and legal aspects of confrontation between adherents and adversaries regarding the recognition of one state language – Ukrainian in Ukraine. Also, it is necessary to clarify the question of fundamentality of the Ukrainian language for the nation and the state.

Recent research and publications. The question of the status of the Ukrainian language as the state language was partially reflected in the researches of O. Tkachenko, O. Grinov, A. Zagnitko, B. Azhnyuk, N. Gotko, I. Lopushinsky, Y. Radevich-Vinnytsky, S. Pavlyuk, V. Ivanyshyn, O. Potebni, P. Kononenko and others. The issue of the Ukrainian language does not subside from year to year, so this issue is important and relevant to the coverage in scientific works.

The purpose of the article. The purpose is to analyze the status of the Ukrainian language as the state language since the independence of Ukraine and its symbolism for the construction of the united state and the formation of a conscious nation. The task of the article is to draw the attention of Ukrainians to the importance of Ukrainian language functioning as the state language and its significant value for the unification of society, a means of strengthening the state unity and identity of the Ukrainian nation.

Presentation of the main material. For centuries, Ukraine has been fighting for its independence, upholding its customs, traditions, culture and language, as one of the determining factors of state formation and cultural identity of the Ukrainian nation.

The question of the Ukrainian language has always been raised in the works of poets, writers, artists, politicians, lawyers, and the Ukrainian intelligentsia in general. Unfortunately, the tragic fate of Ukraine caused the invaders to exterminate the Ukrainian

elite and carry out Russification, Polonization, Madarization, etc. These factors deliberately contributed to the extermination of everything that was Ukrainian, in particular, causing the extrusion of the Ukrainian language at different times. In the 14th century, Galicia was ruled by Poland, while Volyn, Eastern Podillya and Kyiv region were under the Grand Duchy of Lithuania at that time, later the Ukrainian lands were divided by the Russian and Austro-Hungarian empires among themselves, and then Ukraine was part of the USSR. Taking into account the historical past, namely the period of Russians' resettlement to Ukrainian lands and the expulsion of Ukrainians to Siberia, Stalin's repression, famine, "shot revival" (розстріляне відродження), Solovki – Ukrainian has passed through the thorns of the Soviet totalitarian system. The invaders tried their best to subjugate the population of Ukraine, to dominate the Ukrainian lands and to assimilate Ukrainians with the Russian people, so that the Ukrainians did not claim self-determination and creation of their own state. At that time, the Ukrainians stood, did not succumb to lordship, tsarist, Soviet oppression, and finally, Ukraine was proclaimed an independent state in 1991. Since then, the state has tried to legally consolidate the status of the Ukrainian language.

The first steps to officially recognize Ukrainian as the state language were made in 1989. At that time, the issue of recognition of the Ukrainian language as the state language of the Ukrainian SSR was raised by cultural figures, including writers at meetings, plenary meetings and congresses of the Union of Writers of Ukraine. The Law "On Languages in the Ukrainian SSR" was adopted by the Supreme Soviet of the USSR on October 28, 1989, and although it recognized Ukrainian as a state language, it provided ample opportunities for other languages. Undoubtedly, this law became a huge achievement of national - democratic forces of the time. However, it cemented the significant importance of the

Russian language. For example, state officials and local self-government officials must be fluent in both Ukrainian and Russian, the acts of the highest authorities should be published in both languages and education in general schools was required in two languages.

The second step of legal consolidation was on July 16, 1990. It was the adoption of the Declaration on State Sovereignty of Ukraine, where in section 8 "Cultural Development" was stated that "the Ukrainian SSR provides for the national and cultural revival of the Ukrainian people, their historical consciousness and traditions, national and ethnographic features, functioning of the Ukrainian language in all spheres of public life. The Ukrainian SSR expresses its concern for meeting the national-cultural, spiritual and linguistic needs of Ukrainians living outside the Republic" [3].

The third stage was the Declaration of Independence of Ukraine of August 24, 1991, which "continued the millennial tradition of state formation in Ukraine" [4].

The fourth stage, which became extremely important for the formation of the Ukrainian state-making, was the adoption of the Fundamental Law of the State - the Constitution of Ukraine of June 28, 1996. Article 10 stated that "the official language in Ukraine is Ukrainian. The state ensures the comprehensive development and functioning of the Ukrainian language in all spheres of public life throughout Ukraine"[5]. This article also stated that "the use of languages in Ukraine is guaranteed by the Constitution of Ukraine and is determined by law" [5]. But since the declaration of Ukrainian independence, the language issue has continued to be governed by the 1989 Law "On Languages in the Ukrainian SSR" and no new law has been envisaged in the near future.

The fifth stage, which from a legal point of view settled the question of the use of the Ukrainian language as a state language, was the decision of the Constitutional Court of Ukraine in the case

"On the constitutional submissions of 51 people's deputies of Ukraine on the official interpretation of the provisions of Article 10 of the Constitution of Ukraine on the use of the state language by state authorities and local self-government bodies and its use in educational process in Ukrainian educational institutions (the case of the use of the Ukrainian language)" in 1999. Namely, it was explained that "the state (official) language means the language to which the state is given the legal status of a mandatory means of communication in public spheres of public life. The Constitution of Ukraine gives the status of the state language to the Ukrainian language (Article 10, paragraph 1). This is fully in line with the state-building role of the Ukrainian nation, as stated in the preamble to the Constitution of Ukraine, the nation that historically resides on the territory of Ukraine, constitutes the absolute majority of its population and gave its official name to the state.

The provisions of Article 10 of the Constitution of Ukraine, according to which "the state language in Ukraine is Ukrainian", should be understood so that the Ukrainian language as a state language is an obligatory means of communication throughout the territory of Ukraine when exercising powers by state authorities and local self-government bodies (language of acts, work, record keeping, documentation, etc.), as well as in other public spheres of public life that are defined by law (part five of Article 10 of the Constitution of Ukraine).

In addition to the state language, Russian and other languages of national minorities may be used in the exercise of their powers by local executive bodies, bodies of the Autonomous Republic of the Crimea and local self-government bodies within the limits and in the order determined by the laws of Ukraine"[7]. For a long time, just the interpretation of the Constitutional Court of Ukraine on the status of the Ukrainian language as the state

language served as a benchmark for the proper understanding of the concept of "state language in Ukraine".

The next stage of the legal regulation of the issue under the study was the Law of Ukraine "On the Principles of State Language Policy" of July 3, 2012, the so-called "Kivalov-Kolesnichenko Law", which was declared unconstitutional on February 28, 2018. The Kivalov-Kolesnichenko Law provided for the establishment of official use of regional languages in the work of local state authorities, provided that at least 10 percent of native speakers reside in the territories covered by the authorities of these bodies. Provisions of this nature in the law posed an extreme threat to the identification of the Ukrainian language in the society. This could have had irreversible consequences, such as forgetting the Ukrainian language, Russification, and the seizure of the country, since it created conditions for the dominance of Russian over Ukrainian and, consequently, the destruction of statehood. The Constitutional Court of Ukraine in its decision stated that the law was adopted in violation of procedural order, namely it was adopted in the absence of a comparative table for the second reading, the committee's opinion, without giving the full name and number, it was not discussed in the second reading, the deputies were not in their seats during voting, the speakers were blocked, and the voting was not fair [9]. It is obvious that this law was adopted at the request of a separate group of parliamentarians and did not express the will of the Ukrainian people.

The issue of the Ukrainian language in an independent Ukraine is a painful one, always having to compete with the officials and supporters of the "Russian world" in order to win the priority position in the society. The fact that no one has forbidden or is forbidding the Russian-speaking part of the Ukrainian population to speak the language that they are comfortable with, means that it does not prevail in the sphere of public life. We live

in Ukraine, it is an independent state and we have our Ukrainian language, which at the legislative level should have the status of the state and in the minds of Ukrainians to take root as the state language.

As in any civilized state, the language is “an instrument for uniting the society, the means of strengthening the state unity and territorial integrity of the country, its independent statehood and national security” [10]. The Ukrainian language should be appreciated, honored by the Ukrainians. The citizens of Ukraine must have an opportunity to own and use freely and unhindered their language. The fact that at the legislative level it will have the status of the state and will prevail in the sphere of public life, will help to dispel the misconception that the Ukrainian language is not authoritative or is not respected among the elite of the society. Unfortunately, some Ukrainians still have such thoughts. Some of them think that it is not prestigious to speak Ukrainian, so they switch to Russian. These actions explain the fact that Russian prevails among the "upper" sections of society, where young and ambitious aspire to reach. It is sad that this is happening even after the 2014 Dignity Revolution. It is difficult to say how long it will take for the Ukrainians on the subconscious level to choose a language to speak, because consciousness does not change instantly. In order for the Ukrainian language to occupy the leading positions, it is necessary to develop programs, institutions at the state level that will promote the development and functioning of the state language. First of all, it must come from family, kindergarten, school, after-school centers, university, work, etc., so that people will be surrounded by Ukrainian since early age. If at every stage of life a Ukrainian is accompanied with the Ukrainian language, then there will be no mistaken thoughts in this country to switch to a different language. At the present stage of state-building

processes, it is not an easy task to increase the prestige of the Ukrainian language.

Another important milestone in Ukrainian state-making was April 25, 2019, on the 28th year of independence, the Verkhovna Rada of Ukraine adopted the Law of Ukraine “On Ensuring the Functioning of the Ukrainian Language as the State Language”.

Article 1 of the Law of Ukraine “On ensuring the functioning of the Ukrainian language as the state language” of April 25, 2019 proclaims that “the only official (official) language in Ukraine is Ukrainian. The status of the Ukrainian language as the sole state language is conditioned by state-building self-determination of the Ukrainian nation. The state status of the Ukrainian language is an integral element of the constitutional order of Ukraine as a unitary state. The Ukrainian language, as the only state language, serves as the language of interethnic communication, is a guarantee of human rights protection for every Ukrainian citizen regardless of their ethnic origin, and is a factor of unity and national security of Ukraine” [10].

A lot of discussions took place before, but it has not subsided after the enactment of this law. These were caused by the Russian-speaking population and other national minorities in Ukraine who thought that their rights would be limited. In my opinion, no one's rights are restricted by this law. The law was adopted at the request and implementation of the Constitution about the state language in Ukraine it is one of the basic vectors for the use of the Ukrainian language in the public sector and in local self-government, the municipal sector and enterprises of all forms of ownership, public and other organizations, in education and science, medicine, in the service, energy and industry sector, cinema and theaters, the media and on websites, the activities of the military and law enforcement agencies. Foreign languages and languages of national minorities are used freely in private

communication, religious ceremonies, the premises of foreign language learning, cultural life of national minorities, in the work of border guards, law enforcement, doctors and other professions who deal with people who do not know Ukrainian, etc.

Finally, the Ukrainian language, as the symbol of statehood, is specified in a separate legal act. Together with the coat of arms, flag and anthem of Ukraine, language is an integral feature of an independent state. This landmark event has recently taken place and we want to believe that the change of political forces will not cause harm to this law, but will contribute to its implementation.

Conclusion. Taking into account all the factors, we may reach the conclusion that the Ukrainian language is extremely important for our country. It is the identification tool, the nation's genetic code that sets us apart from others. We want to believe that national self-consciousness of citizens will awaken and it will be concluded that without the possession of such wealth as the language, we have every chance to become an obscure crowd, a mass of people who live on the common territory, but not united by one language. Consolidation at the legislative level of the Ukrainian language as a state language is an undeniable requirement for an independent state and its acquisition is enshrined in the Constitution of Ukraine and specified in the laws. The consolidation of the status of the Ukrainian language as a state language is an important factor in the state-making processes of Ukraine, which contributes to self-awareness of Ukrainians of their identity, symbolism and centuries-old tradition.

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УНР У ПЕРІОД ДИРЕКТОРІЇ (1918 – 1920)

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Ця стаття розкриває історичний шлях української державності. Розглянуто процеси державотворення в Україні в різні історичні епохи, їхні характерні властивості, які слід враховувати на сучасному етапі. Українська державність існувала з 1919 в умовах тотальної політичної нестабільності. Проаналізовано обрану Директорією лінію компромісу між лівосоціалістичними та поміркованими силами.

Ключові слова: державотворення, епохи, резолюція, УНР, Директорія.

THE UKRAINIAN PEOPLE'S REPUBLIC IN THE DIRECTORY PERIOD (1918 – 1920)

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This article reveals the historical path of Ukrainian statehood in different historical epochs; it analyzes characteristic features that should be taken into account at the present stage. Ukrainian statehood existed since 1919 in conditions of total political instability. The line of compromise chosen by the Directory between the left-wing socialist and moderate forces is discussed.

Key words: *state formation, epochs, realization, UPR, Directory.*

Problem statement. In the difficult conditions of today, the question of using the historical experience of Ukrainian state-making becomes relevant. First of all, it concerns the times of the Ukrainian revolution, during which numerous attempts were made to develop national power. Perhaps the most significant in this regard was the period of tenure of the UPR Directory or the Second UNR. By that time, the most influential Ukrainian political forces had already gained experience in the struggle for power, which was characterized by both unconditional achievements and some shortcomings and miscalculations. Therefore, the Ukrainian leaders at that time had an additional opportunity to reconcile their own political positions and use them in the cause of state formation.

Recent research and publications. The Ukrainian statehood of the times of the UNR Directory (1919–1920) remains the least studied period in the history of Ukraine in 1917–1921. One of the reasons for this is the lack of the investigation of the material due to a number of objective and subjective circumstances. The political issues of the UPR Directory period deserve further thorough study. This period is devoted to the scientific works of such scholars as: V. Golubok, Y. Dashkevich, M. Hetmanchuk, L. Deshchynsky, V. Verstyuk, L. Zashkilnyak, O. Karpenko, V. Kondratyuk, S. Lytvyn, M. Lytvyn, S. Makarchuk, O. Pavlyshyn, S. Pavlyuk, I. Patera, O. Rerent, O. Rublev and others. However, many issues need further study on the problems of formation, the UNR directory. In addition to the works of modern historians, the research of V. Kuchabsky, T. Lyakhovich, I. Mazepa, I. Nagaevsky, V. Petriv, V. Prokhoda, M. Stakhiv, P. Fedenko, M. Khristyuk, L. Shankovsky, O. Yurchenko were also used.

The purpose of the article. The main purpose of the study is to review historical sources and their general characteristics. The goal is accomplished by solving the following tasks: 1) to consider the conceptual basis of the development of the UNR directory; 2) to study the state-building process in the UPR of the day of the Directory; 3) determine the activity of the UNR Directory on the creation of constitutional and legal foundations of Ukrainian statehood; 4) analyse the internal policy of the UPR Directory.

Presentation of the main material. The historical path of Ukrainian statehood is extremely complicated and thorny. State formation in Ukraine has centuries-old roots and continues to this day. However, in different historical epochs it had characteristic features that should be considered at the present stage. The days of the Ukrainian national-democratic revolution of 1918-1920 were a turning point in national history. After a long break, the desire of the Ukrainian people to create their own state was realized. After the Directory came to power, the UPR was restored and the next stage of Ukrainian state-building and its constitutional design began.

Ukrainian statehood has existed since 1919 in the conditions of total political instability. The absence of the Directory, when it was headed by the UNR, a clear vision of the prospects for the development of a corresponding political agenda became the catalyst for the political struggle that continued within the national camp. The line chosen by the Directory was a compromise between left-wing socialist and moderate forces that did not work under political conditions of that time. The transfer of political strife to the sphere of public life was the reason for the frequent change of the executive power. The UNR underwent four changes in government, each with a different composition and political agenda. The national course of the UNR fluctuated according to the intensification of a political group.

National democracy was not able to rally around a common goal – to build a Ukrainian independent state. In the aftermath of a tense military campaign, the fierce search for new allies in the fight against white and red Russia made politicians forget about party disputes for a while.

The achievements of the legislative activity of the study period include the attempt to codify the legislation of 1917-1920, in force at the time of the Directory. Work in this direction was carried out in two stages, the first of which was completed, resulting in the preparation of the "Complete Law of Ukrainian States". The implementation of the second stage of the scholars started, but, unfortunately, did not finish.

Changes in the authorities of the Directory led to corresponding changes in the legislative process. The absence of a balanced mechanism for the distribution of powers among the members of the Directory led to the concentration of all power in the hands of S. Petliura, and therefore the legislative process also approached the authoritarian one. At both the doctrinal and practical levels, legislative technology in its modern sense as a system of rules for the presentation of regulatory material in the drafting legislative acts in all the studied state entities was at the initial level of formation and was not systematically studied by regulating urgent issues of the current (specific) moment.

However, the aforementioned normative acts did not become a full-fledged source of the right of the "second" UNR, the legal basis of its government, though they testified to the intentions and attempts of the Ukrainian statesmen and politicians to limit S. Petliura's sole power, to clearly define the powers of the Council of People's Ministers, to make the government viable.

Conclusion. Therefore, when evaluating the state-building program of the Directory Day as a whole, it is necessary to note its inconsistency and lack of a clear program of the legal reform. In

the times of the Directory, as a result of the lack of unity of Ukrainian forces in state-building, a parliamentary-type republic acquired the presidential image. The idea of creation of a Ukrainian independent, legal, democratic parliamentary republic of Western European model was forever imprinted in the history of political thought of that period.

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ТРУДОВИЙ ДОГОВІР ЯК ПІДСТАВА ВИНИКНЕННЯ ТРУДОВИХ ПРАВОВІДНОСИН

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У цій статті розглядається тема: трудового договору як основи виникнення трудових правовідносин. Особлива увага приділена поняттю трудового договору як юридичного факту та змісту трудового договору.

Ключові слова: *трудовий договір, трудові правовідносини, юридичний факт, зміст трудового договору.*

LABOUR CONTRACT AS THE BASIS OF LABOUR LEGAL RELATIONS

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In this article such topic as labour contract as a basis of appearance of labour relations is discussed. Particular attention is paid to the concept of labour contract as a legal fact and the content of the labour contract.

Key words: *labour contract, labour legal relations, legal facts, content of labour contract.*

Problem statement. The main means of realizing the right to work is the labour contract, which occupies a special place in the labour law, because on the basis of the employment contract labour legal relations between the employee and the employer arise, which

inevitably causes the inclusion of these entities in the system of relations governed by labour law.

Labour relations are relationships that are based on an agreement between an employee and an employer to perform an employee's work for a fee, the need to subordinate the employee to the rules of the internal labour regulations of the enterprise, the labour collective in providing the employer with the working conditions stipulated by labour law.

Work is the basis for the creation of all public goods, financial and political processes. It is through work person has the ability to express and realize themselves as individuals.

Recent research and publications. In Ukraine, the issue of adopting a new labour code, which has been developing and debating for a long time, is still relevant, and therefore the concept of a labour contract requires detailed theoretical analysis and further elaboration in the legislation. Defining the legislative concept of labour contract is not perfect, which increases the possibility of illegal labour contracts in the shadow economy.

In the legal literature, issues related to the application of the labour contract and the emergence of labour relations are devoted to the research of V.A. Andronova, N.B. Bolotina, S.V. Vishnevetskaya, O. Hevel, P.D. Pylypenko, V.I. Prokopenko, S. Silchenko, V.M. Sloma.

The purpose of this article is to analyze the labour contract as the immediate basis of the appearance of labour legal relations.

Presentation of the main material. The Constitution of Ukraine proclaimed a person, his rights and freedoms the highest social value. One of the basic laws guaranteed is the right to work. Thus, according to the Constitution of Ukraine, everyone has the right to work, which includes the opportunity to earn a living by work, which he freely selects or freely agrees to. The Constitution of Ukraine is formulated on the basis of Article 23 of the Universal

Declaration of Human Rights, which states that everyone has the right to work, to free choice of work, to equal pay, to just and favorable conditions of work and to protection against unemployment [1]. Accordingly, only the employee himself has the exclusive right to dispose of his ability to productive and creative work.

The human right to work is realized through the conclusion of labour contract, which manifests the principle of freedom of work. In the process of exercising this right, a relationship arises between two entities - the employee and the employer, and, as a rule, the labour contract is the basis for their emergence.

The labour contract is the central legal institute of labour law. Thanks to the labour contract, a person exercises the right to work, which is guaranteed by the Constitution of Ukraine. Its importance also lies in the fact that the emergence and then the existence of labour legal relationships, which are the core of the subject matter of labour law, are related to the conclusion between the employee and the employer of the labour contract.

The Labour Code of Ukraine defines the labour contract as an agreement between an employee and an employer, under which the employee undertakes to perform the work specified in this agreement, subject to internal labour regulations, and the employer agrees to pay the employee wages and provide the necessary wages and wages performance of work provided by labour law, collective agreement and agreement of the parties.

Therefore, from the above statement, we can distinguish the main features of the labour contract, which characterize it as a legal phenomenon: the existence of an agreement based on the free will of the employee and the employer regarding the terms of the labour contract; the obligation of the employee to personally perform the work specified in the labour contract; the obligation of the employee to obey in the course of work the rules of internal

employment; the obligation of the employer to pay the employee wages; it is the duty of the employer to provide the working conditions necessary for the employee to perform the work provided for by the labour law, the collective agreement and the labour contract.

The labour contract, as the central institute of the industry, is perhaps the most researched category in the science of labour law, but it continues to attract the attention of scientists, both because of its importance for regulating labour relations and in view of changes occurring in public life. The labour contract belongs to a group of legal acts, as it is concluded as a result of the legitimate willful actions of its parties. It is considered concluded from the moment of reaching agreement between the parties to the agreement on all material terms.

In all areas of law and industry legal sciences, there are basic constructions that determine the branch independence of these legal entities. For labour law, it is the labour contract. After all, it is the labour contract as the basic branch of theoretical construction that unites and connects all structural subdivisions of labour law (working time and rest time, labour protection wages, etc.).

First of all, legal facts are specific circumstances of life, with the presence and / or absence of which rules of law attribute the origin, change or termination of legal relations. Legal facts are best demonstrated by their industry affiliation. Law-generating legal facts in labour law are those phenomena of objective reality with which the existence of labour law relates to the emergence of labour and closely related legal relations. Therefore, the legal facts that serve as the basis for the emergence of the labour relationships concluded in accordance with the law are the positive actions of their participants. After all, the implementation of the labour

contract always contributes to the creation of new products, meeting the needs of citizens, ensuring their well-being.

Among the legal facts that give rise to labour legal relations are the labour contract, contract, appointment, election to the post, replacement of the post by competition, recruitment of young specialists and others. The labour contract is a single contract in the whole system of branches of law, when one entity falls under the authority of another due to the conclusion of the contract [4, p. 273]. Accordingly, as long as the labour contract between the parties is not concluded, the labour legal relationship that is the subject of labour law regulation is absent.

Therefore, the labour contract is an unquestionably legal fact that gives rise to the labour legal relationship. It should be noted that in the science of labour law, the labour contract is considered not only as a legal fact, but also as a form of realization by citizens of the right to work and as an institution of labour law, which integrates the rules governing the hiring, transfer and dismissal. Determination of its content is important when concluding the labour contract. In labour law theory, it is generally accepted to divide the terms of the labour contract into two types: necessary and optional.

Necessary are those conditions that determine the legal nature of the contract as labour. Therefore, the necessary conditions are essential features, features of the labour contract, and that's why the parties must necessarily agree on each of them and fix them in the contract. Necessary conditions include:

Work function. The work function is perhaps of the greatest importance in the system of labour legal relationships, as it is a kind of core around which all other elements of labour relations are brought together. It is the central condition of the labour contract. The specified function is not any individually defined job, but a set

of labour operations that combine a specialty, qualification or position.

Work place. There is no definition of the term "place of work" in the legislation. The place of work is usually determined by the location of the enterprise as a party to the labour contract.

The term of the labour contract. The term of the labour contract is set by agreement of the parties. There are no minimum or maximum time limits in the legislation. The term of the labour contract must be specified in the employment order, with which the employee must be informed on the receipt.

Remuneration. An important condition of the labour contract is an agreement on remuneration for work. The employee has the right to pay for his work in accordance with the acts of the legislation and the collective agreement on the basis of the labour contract [2]. The labour contract cannot be concluded without agreeing on the issue of wages.

Start time. Actual admission to work is considered to be the conclusion of the labour contract - regardless of whether the hiring was properly executed, if the work was carried out at the behest or with the knowledge of the owner or his authorized body [3].

With regard to the optional conditions of the labour contract, they are not binding for approval in hiring. Therefore, such conditions become negotiable only if one of the parties insists on their inclusion in the content of the labour contract.

The labour contract is the most important mechanism that ensures the social protection of the employee and resolves the contradiction between the employee and the employer. The concept of the labour contract, enshrined in the current legislation, needs to be changed to reflect the emergence of new types of labour contracts. Therefore, the labour contract holds a special place in labour law. On the basis of the labour contract, the employee's labour legal relationship with the employer arises, which inevitably

causes the inclusion of these entities in the whole system of relations governed by labour law.

Conclusion. Based on the analysis of the processed doctrinal sources and current labour legislation in the field of labour contract, it can be concluded that the fact of the labour contract is legal fact, namely the basis of the emergence of labour legal relations regardless of the form of labour contract, which to a different extent guarantees the rights and obligations of the parties. All employees have the same legal status, and any owner with respect to such employees is obliged to abide by all the rules and guarantees stipulated by labour law and collective agreements and agreements.

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У цій статті увага зосереджується на проблемі впровадження реформи децентралізації в Україні. У статті простежуються основні етапи процесу реформ, шляхи формування місцевих бюджетів та їхні ресурси, що підтримуються різними доходами. Публікація сфокусована також на актуальних питаннях внесення змін до законодавства, що забезпечують процес децентралізації, вдосконалення процесу організаційно-правового забезпечення територіальної організації влади. Розглянуто проблему формування органів місцевого самоврядування відповідно до термінів і умов завершення процесу добровільного створення об'єднаних територіальних громад. Проаналізовано правову базу розвитку сільських територій в Україні. Чинне законодавство, як правило, відповідає найкращим стандартам та практиці країн-членів ЄС.

Ключові слова: децентралізація, об'єднані територіальні громади, реформа, територіальний розвиток, законодавство.

UNITED TERRITORIAL COMMUNITIES**Veronika Sidak**, First-Year Law StudentESP Supervisor: **A.I. Radu**, Ph.D. (Philology), Assoc. Prof.

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The article focuses on the problem of implementation of the decentralization reform in Ukraine. The publication traces the main stages of the reform process, ways of forming local budgets and their resources that are supported by from different sources.

Important issues of amending the legislation in order to provide the process of decentralization and improve the organizational-and-legal provision of the local institutes of power are under discussion. Special attention is paid to the problem of the formation of local self-government in accordance with the terms and conditions of the process of voluntary creation of the united territorial communities.

The legal basis for the development of rural territories in Ukraine is analysed. The current legislation corresponds the best standards and practices of EU member states.

Key words: *decentralization, united territorial community, reform, territories' development, legislation.*

Problem statement. The importance of considering the topic is based on the fact that in 2014-2016 Ukraine finally undertook a number of very important steps towards decentralization of public administration, first of all, adopting the Law of Ukraine “On Voluntary Association of Territorial Communities”. Under these conditions, the role of territorial communities of local self-government in the socio-economic development of the country has increased.

Recent research and publications. Various aspects of this problem are presented in the works by such scholars as O. Batanov, L. Hasenko and T. Lytvynenko, I. Zaporozhets, etc. [4; 1; 7-8].

The purpose of the article is to provide an overview of the process of forming the united territorial communities (UTC) based on the first results, risks and challenges.

Presentation of the main material. The Law on Voluntary Unification of Territorial Communities, adopted in 2015, launched the next administrative-territorial reform. Ukraine is the first in the post-Soviet space, if not take into consideration the Baltic countries, to implement decentralization reform. Residents of

several disparate villages, towns or cities may form a single administrative center – a united territorial community. All previous attempts to conduct such administrative reorganization were unsuccessful. The purpose of the reform is to provide the communities with the opportunity to ensure the viability and capacity of their territories and the quality services to their residents from their own resources.

Local government can be considered as a specific form of implementation of the Ukrainian people's power being the public authority of the territorial community. The territorial community is the primary subject of local government and has such functions as:

- 1) to carry out election of bodies and officials of local government, who are empowered to implement public power and to resolve issues of local importance;
- 2) to resolve independently issues of local importance in a local referendum;
- 3) to realize through various forms (public hearings, local initiatives) and institutes (associations of citizens), ongoing control over the municipal government and implementation of its decisions.

In Ukraine, the fundamental principles of local self-government are fixed in the Constitution of Ukraine (Chapter XI). The main task of decentralization is the formation of effective local government for giving qualitative public services and acting in the interests of the community. The united territorial communities aim at creating and supporting a favorable living environment necessary for human development, self-realization, and protection of the rights of the members of the UTC.

With the formation of the united territorial community, a new administrative center is created, where the main community council is located. The council is elected by the UTC and is subordinate to the community, not the president or ministers. The

council creates an executive committee to manage the funds. The committee reports to the community how they spend money [3].

Medicine, education, administrative services, development and security are the competence of the united community. Only the leaders of the UTCs, who deal with local issues and budget, are responsible for everything.

Integration does not always mean success. More money and powers are at the local levels, but also responsibility for all the aspects of the UTCs functioning. Responsibilities and resources are transferred from the central authorities to the local ones, because only in this way a strong state can be built.

The main laws that determine the status of a united territorial community include: the law “Local Self-Government”, the law “Freewill Association of Territorial Communities”, and the law “Local Elections”. In accordance with the law of Ukraine “Freewill Association of Territorial Communities”, a specific mechanism of voluntary association of territorial communities has been initiated.

Formally, the law of Ukraine “Local Self-Government” (Article 6, Part 3) retains the right of the territorial community, which voluntarily remains in the united territorial community or leaves it, but this mechanism does not work yet. The position of the legislator is unclear, because such territorial communities have already lost their finances and powers, and, therefore, they are legally incapacitated.

The right to the local self-government is guaranteed by the state both if it is independent or under the responsibility of bodies and officials of local self-government to resolve issues of local importance within the Constitution and laws of Ukraine.

The community unification is needed to concentrate human, infrastructure, and land resources to make the new administrative unit more powerful and capable. The territorial community

development strategy must be designed in such a way as to combine economic, social and environmental objectives. In cases where such a combination is complicated, certain compromises are to be reached. Local self-government bodies should represent the common interests of territorial communities of villages, towns and cities.

The united territorial community is considered to be formed from the day the decisions of all councils that have decided to voluntarily unite into a territorial community came into force. Legally, when the council that initiated the voluntary association adopted the decision to form a UTC, the property, rights and responsibilities of territorial communities are transferred to the UTC.

Foreign experts estimate that decentralization is one of the most difficult reforms for it takes decades in some countries. According to the Ukrainian experts, it requires consolidation of efforts at all the levels of government and constant support of international partners. The formation of the UTC in Ukraine, which started after the adoption the law of Ukraine “Voluntary Association of Territorial Communities” (2015) is in line with the clearly stated policy of decentralization of public administration.

The experience of leading countries in implementing a new system of governance based on decentralization of power can be of real use in Ukraine. But the path of these countries also indicates that uniting communities in a unified way, without even taking into consideration the specific features, using even the most correct model can be ineffective.

According to experts, the declared processes of voluntary association of local communities, extension of powers, in particular, use of land resources, change of the administrative and territorial structure of the country have hidden risks, since their practical implementation is sometimes through forced unification

communities and territorial affiliation contrary to the principles of voluntariness, legality, transparency, and openness [7].

Before decentralization, local communities did not have the motivation to do anything. There were many problems which needed solution, but the local officials did not have sufficient authority or resources to solve them. Decentralization provided an incentive for local governments to improve the conditions for local businesses. In 2016 communities' own revenues increased threefold to UAH 3.25 billion. In addition to taxes, the state also provides assistance. In such a way the state motivates people to create their own territorial communities.

Conclusion. Decentralization is a complex process that has to be carefully designed with taking into consideration all local customs. The simplistic notion of decentralization will simply exacerbate local corruption.

The main goal of decentralization is to make Ukrainians more independent. The transfer of additional rights and, at the same time, duties, will relieve the central government of local problems. As a result, high-level executives will think more about national problems and less about how to get money out of local budgets without making cities and villages exhausted. On the other hand, community residents will become closer to power and power will be closer to residents. Besides, the result of the reform is in creating: 1) economically, financially and infrastructure-friendly communities; 2) new local elites; 3) horizontal relations between public authorities, local self-government, and the private sector. Therefore, the integration of territorial communities is the way to the local self-government at the new level.

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Ключові слова: *життя, право на життя, зміст права на життя, початок життя.*

THE RIGHT TO LIFE

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In this article we made the attempt to analyze such theme as the right to life; research the recognition and development of the right to life as natural, essential and inalienable human right, modern aspects of the right to life's content and to the problems of their solution, including the problem of the determination of the moment of the human life beginning.

Key words: *life, the right to life, the content of the right to life, the beginning of life.*

Problem statement. The relevance of this article: Every Constitution in the world includes fundamental rules and principles which are essential for our society and for the citizens, including those regarding to the fundamental human rights and freedoms. The centre of these rights and freedoms is the right to life, an absolute right of every human. But there are still discussions in the society about such aspects of the right to life as the moment of beginning of life, abortion, euthanasia.

The main purpose of this article is to understand the basic content of the right to life and to research the world law practice on such issues as abortion, euthanasia and beginning of life. Article objectives to explore include studying: recognition and development of the right to life; restrictions on the right to life; modern aspects of the right to life's content and the problems of their solution.

Presentation of the main material. The right to life belongs to the type of human rights, which are inalienable and imprescriptible, which are inherent to all human beings. By virtue

of the right to life, any human enjoys all the other rights prescribed and guaranteed by the constitution and by the international laws.

Human rights are a constant concern for the international community, which materialised in many legal instruments adopted both at a global, and at a regional level over the years. The expression "human rights" is referred to the inalienable and imprescriptible rights of the human being. From the wide variety of the rights a human has, it is only certain rights which are fundamental. The difference between fundamental rights and the other subjective rights is determined according to two criteria: a) their importance for the individual, citizen; b) their importance for the state.

It could be said that fundamental rights are those subjective rights which belong to the citizens and are necessary for their life, liberty, dignity and freedom, indispensable for the development of human personality, the rights which are enshrined in the Constitution and are warranted by the Constitution and the laws. The right to life belongs to the category of fundamental rights and, from a historical perspective, it is one of the first rights proclaimed and enshrined in international law.

The first paper adopted by the General Assembly of the United Nations, shortly after the end of the World War II, is The Universal Declaration of Human Rights which proclaims that all human beings are born free and equal in dignity and rights. It is thus established a usual ideal that is to be accomplished by all the states in the world. The Universal Declaration of Human Rights gives a new meaning, and a particular power to human rights, and, moreover, to their legal defence. The Universal Declaration of Human Rights speaks about a common ideal. The Universal Declaration of Human Rights has assembled and engaged the international community since. By means of this Declaration, the proclamation and guarantee of human liberties emerge from the

small frontiers of the state, and become a issue of the international community, a worldwide problem. It is now a universally held opinion that all human beings are born with an equal degree of freedom, rights and liberties. Included among the rights and liberties particularly emphasised in international documents are the rights: to life; to pursue a life without torture or suffering inhuman or degrading treatment or punishment; to equality before the law, to being assumed innocent unless judged otherwise; to protection of one's dignity and keeping self-respect in the face of aggression; to freedom of thought, religion and conscience; to disseminate thought without being constrained by national borders; to ownership; the provision of state security for all; of unarmed and non-aggravated public meeting; to the freedom to establish an association or a union; of education and of political elections through popular representation.

The right to life provided in Article 3 of Universal Declaration of Human Rights: 1) everyone has the right to life and to live in freedom and safety; 2) everyone has the right to life, liberty and security of person. This implies that:

1. No one, including the Government, may attempt to end your life. Also the Government should take appropriate measures to safeguard life by making laws to defend you and, in some conditions, by taking action to protect your life if it is at risk.
2. Public authorities should also take into account your right to life when making decisions that might put your life in danger or affect your life span.
3. If a member of family perishes in conditions that involve the state, you may have the right to request an investigation. The state is also necessary to investigate suspicious deaths and deaths in custody.

Also Article 6 of Convention on the Rights of the Child states that: 1) States Parties recognize that every child has the

inherent right to life; 2) States Parties shall ensure to the maximum extent possible the survival and development of the child.

In Ukrainian law the right to life is provided in Chapter II of Constitution of Ukraine, mostly in Article 27:

1. Every person has the inalienable right to life.
2. No one shall be arbitrarily deprived of life. The duty of the State is to protect human life.
3. Everyone has the right to protect his or her life and health, the lives and health of other persons against unlawful encroachments.

Article 28 declares:

1. Everyone has the right to respect of his or her dignity.
2. No one shall be subjected to torture, cruel, inhuman or degrading treatment or punishment that violates his or her dignity.
3. No person shall be subjected to medical, scientific or other experiments without his or her free consent.

The right to life is also known as an ‘absolute right’. These rights can never be interfered with by the state. In any case, there are circumstances, in which it is not applicable. For instance: a person’s right to life is not breached if they die when a public authority uses necessary force to: stop them carrying out unlawful violence make a lawful arrest; stop them escaping lawful detainment, and stop a riot or uprising.

Naturally, in these conditions, the force that is being used must be essential and strictly proportionate. Force is ‘proportionate’ when it is appropriate for the occasion and not more than necessity to address the problem concerned.

The positive obligation on the state to protect a person’s life is not absolute. According to some limited sources, the state might not always be able fulfill this obligation. Which means, for

example, that the state does not have to provide vital medicine to everybody in all circumstances.

Abortion is the term, used to indicate the termination of a pregnancy by removal or expulsion of an embryo or fetus before it can develop and survive outside the uterus. In many developing countries it is illegal to have an abortion. However, there are also many developing countries that have legalized having an abortion. Abortion, covered under such topics as medical issues, is acceptable to the society. Mothers under the risk of perishing along with their child covered under medical laws allow abortion. This is the protection of the life of the mother. The most crucial question lies in the importance of the mother's life over the life of the child. Such debates are focused on the mother and the child such in a way that they try to distinguish which of the two lives is more valuable. According to the law of most countries fetuses are considered not human beings by legislators until they are born. Therefore they cannot share the same rights as human beings, they believe that a mother is not harming the fetus when she expels it from her womb. Which means that she is not breaking any rule of law. But still there are communities which believe that conception brings about a human being. Which means that during the fetal stage, it is already human being, and expelling it from the womb would be the same as murdering it. At this time, world health organization consider that every woman has the recognized human right to decide freely and responsibly without coercion and violence the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. It is legal in Ukraine to have an abortion on request during the first twelve weeks of pregnancy. Between 12 and 28 weeks, abortion is available on a variety of grounds, including medical, social and personal grounds, and for any reason with the approval of a commission of physicians.

Euthanasia is the term used to indicate the practice of intentionally ending a life to relieve pain and suffering. There are two procedural types of euthanasia: passive euthanasia is a procedure which is used when life-sustaining treatments are withheld. Although the definition isn't precise. If a doctor prescribes big doses of strong painkilling drugs, opioids for example, this may eventually cause the patients deterioration. There may be an argument if this is passive euthanasia. Active euthanasia is a procedure when someone uses lethal substances or forces a patient's life to end, whether it is asked by the patient himself or somebody else. Many countries have a tendency to legalize the possibility of providing euthanasia. Some of these countries are the Netherlands, Belgium, Finland, Sweden and many others. In these countries euthanasia is considered as a way to alleviate the suffering of the patient or in other words mercy killing.

It is the killing of patients that are on the verge of death and have minimal chances of recovery. Nevertheless in the Ukrainian legislation it is stated that no one can be arbitrarily deprived of life. It is the duty of the state to protect the human life. It is the right of everyone to protect their life and health from the unlawful encroachments. Therefore, euthanasia is considered murder in Ukraine.

Conclusions and prospects for further research. The right to life belongs to the category of human rights, which are inalienable and imprescriptible rights which are inherent to all human beings. This means that nobody, including the Government, can attempt to finish your life. It also means that the Government should take appropriate measures to safeguard life by making laws to protect you and, in some circumstances, by taking steps to protect you if your life is at risk. The issues outlined in the quest for the right to life such as abortion, euthanasia, legal killing and

others present an ethical dilemma. An ethical dilemma refers to a situation where both options to solving an issue present solutions that are neither positive nor negative. Both of them apply although they present certain inclinations that are undesirable. Such issues are hard to deal with due to their moral and psychological complexity. The right to life is paramount in that human beings have only one life to live.

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СПАДКУВАННЯ ЗА ЗАКОНОМ

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У статті здійснено аналіз поняття «спадкування», а також висвітлено причини невдалого формулювання

законодавцем даного поняття. Особливу увагу приділено поняттю «склад спадщини» та аналізу елементів складу спадщини. Встановлено наявність яких юридичних елементів є необхідним для здійснення такого суб'єктивного права як прийняття спадщини за законом. Проаналізовано час і місце відкриття спадщини. Сформульовано черги спадкування за законом та їх склад. Визначено можливість зміни черги спадкування, способи та умови її здійснення. Встановлено порядок прийняття спадщини та його особливості. Встановлено способи прийняття спадщини. Визначено юридичну значимість свідоцтва про право на спадкування. Підсумовано всі основні ознаки спадкування за законом

Ключові слова: спадкування, спадкування за законом, склад спадщини, прийняття спадщини.

LEGAL SUCCESSION

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The concept of succession is analyzed in the article. The reasons for the unsuccessful formulation by the legislator of this concept are also determined. Particular attention is paid to the definition of heritage scope and to the analysis of elements of heritage scope. The most necessary legal elements of acceptance of inheritance are established. The time and place of the opening of the inheritance are analyzed. The turns of inheritance by law and their composition are formulated. The possibility of changing the inheritance turn, methods and conditions of its realization are determined. The procedure for accepting of inheritance and its peculiarities are established. Methods of inheritance acceptance

are established. The legal significance of the certificate of the right to inherit is determined.

Key words: *succession, legal succession, inheritance scope, acceptance of inheritance.*

Problem statement. The value of succession is that every member of society is guaranteed that his property will be determined by him personally. That is why the necessity of analysis of legal norms arises. Also there is a fair amount of diverse opinions about definition of succession and its elements.

Recent research and publications. The legal succession was researched by many domestic scientists. Romovska Z.V., Glushko O.A., Karpenko R.V., Sloma B. M., Segeniuk A.V., Borysova V.I., Goncharova Y. A., Zaika Y.O., Kukharev O.E., Pecheny O.P., Ryabokon E.O., Spasibo-Fateeva I.V., Fedorich I.Y., Fursa S.Y. and others.

The purpose of the article. The main purpose of the study is to determine the features and peculiarities of the legal succession analyzing national legislation. The object of the study is the social relations arising in connection with the conclusion, execution and termination of the legal succession.

Presentation of the main material. Book 6 of Civil Code of Ukraine regulates inheritance relations. But these relations also are regulated by Family Code and secondary legislation.

Article 1216 contains the conception of succession. Succession is the passing of rights and obligations (inheritance) from a natural person who died (the testator) to other person (the heirs) [1, p. 290]. But in practice, not all of these rights can be inherited, which is provided by some specific rules of civil law. For example, the inheritance personal non-property rights (the right to a name, academic title, dignity and goodwill); the right to participation in partnership and the right to membership in

associations of citizens, unless otherwise established by law or the constituent document thereof; the right of compensation the damages resulting from mutilation or other health disturbance; right to alimony, pension, aids other payments established by law shall not be included. That is why many researchers think that the definition of succession needs improvement.

In obedience to Civil Code of Ukraine the inheritance scope includes all rights and obligations that belonged to the testator at the time of opening the inheritance and did not terminate in consequence of the testator's death. This article has caused a lot of controversy between researchers. A group of them consider that the legislative definition of the inheritance is unsuccessful, since the concept of "property" is the most extensive in civil law, and rights and obligations are only integral parts of property (in the context of the definition of property under Part 1 of Article 190 of the Civil Code of Ukraine) and do not exhaust its contents [6, p. 2]. Therefore, in the legal literature there are two approaches to the definition of inheritance: 1) as a set of rights and obligations; 2) as property (things, rights and obligations).

Civil Code of Ukraine provides two ways property that can pass through inheritance: by will and by law. Legal succession is applied if there is no will, it does not cover all the inheritance scope, and inheritance is not accepted. It also can take place when inheritors made mutual agreement on heritage share or when all the inheritance was divided equally among inheritors of the first available line.

Inheritance by law requires: 1) the presence of a degree of affinity with the testator or stay on hold for a period of time prescribed by law; 2) fact of person's death (it can be actual death or person can be legally declared as dead); 3) acceptance of inheritance.

In accordance with article 1258 of the Civil Code of Ukraine, heirs shall have the right to succession in turn. Each legal heir obtains the right to inherit when there is the absence of the heirs of the previous line, removal of them from the right to inherit, rejection of their inheritance or refusal to accept it. The Civil Code of Ukraine refers to the first line of heirs' children, including those conceived in the lifetime and born after death of the testator, the survivor spouse and the parents. The second line includes testator's sisters and brothers, grandparents. The third priority legal heirs shall be the testator's aunt or uncle. To the fourth line legislator refers persons who lived as one family with the testator for at least five years before the inheritance opening (death of testator). The fifth turn legal heirs shall be other testator's relatives up to the sixth degree of kindred. The degree of kindred shall be determined by the number of death between the testator and the relative. The fifth-degree relatives include the children of the heir's cousins, great-grandchildren. But lines of heirs are not the imperative rule. They can be changed in two ways. According to the first one, interested heirs may sign notarized agreement which can change the sequence of legal succession. This agreement can not violate the rights of heirs who are not the parties of agreement and heirs eligible to hereditary portions. Another one is called compulsory way and is determined by court decision. The legal heir of one of the sequent turns may receive the right to succession together with the heirs of the turn eligible to succession. But there are few conditions which court must establish. According to Article 1260 of Civil Code of Ukraine to such conditions include 1) person must be legal heir, 2) the testator was helpless as a result of age, illness or mutilation, 3) legal heir provided care, material support or other assistance, 4) such assistance has been provided for a long time. This list of circumstances is exhaustive and does not require extensive interpretation. The provisions of this article regarding the

possibility of changing the order of inheritance are due, firstly, to the idea of justice and, secondly, to the need to encourage potential heirs to care for the testator.

The shares of legal heirs in the inheritance shall be equal. By oral agreement with regard to movable property, the heirs may change the share of one of the heirs in the inheritance. By written notarized agreement with regard to immovable property or transportation means, the heirs may change the share of one of the heirs in the inheritance.

Inheritance shall be opened in consequence of the person's death or declaring the person is dead. The time of opening of inheritance shall be the day of the person's death or declaring the person is dead. From this moment hereditary legal relations arise. The day of death should be understood to mean a specific calendar date (day). There is an important difference between date of person's death and date of registration of person's death. The place of opening of inheritance shall be the last place of testator's residence. If the place of the testator's residence is unknown, the place of opening of inheritance can be the location of immovable property (house, flat, land). When a person is not an owner of any immovable property the place of opening of inheritance can be the location of movable property.

Acceptance of inheritance is a unilateral act, since its implementation depends solely on the will of the heir. The fact of inheritance by one of the heirs produces legal effects only for him / her and in no way affects the legal position of the other heirs. There are two ways of acceptance of inheritance. The first is that the heir who lived together with the testator at the time of the opening of the inheritance shall be deemed as having accepted the inheritance if no refusal was declared during the six-month period. But some researchers consider it only a kind of "a way" because it is not consistent with the nature of the inheritance, which is a unilateral

act [12, p. 46]. Another way is to file an inheritance application to the notary by heirs who did not live together with the testator as of the moment of inheritance opening. The deadline for filing an application is six months from opening inheritance, but such a deadline may be renewed by the court in the case of a valid reason. Such a reason may be a long business trip or illness. The next step is to receive a certificate of the right to inheritance. The legal value of a certificate of the right to inheritance is that: 1) it is evidence of the legality of the transferring of an ownership right from the testator to the heirs; 2) the six-month term provided by law for acceptance of inheritance does not give the right of alienation of property of the testator before expiration of six months. When issuing a certificate of the right to inheritance, the notary checks: the fact of death of the testator, time and place of opening the inheritance, the inheritance scope. If there is legal succession notary must check the acceptance of the inheritance in the manner prescribed by law. Having received a certificate of the right to inheritance, the heir becomes the owner of the property. It means that he / she has the right to own, use and dispose of the property.

Conclusion. To sum up all mentioned above the legal regulation of succession is carried out by laws and secondary legislation. At the legislative level concept of succession, the inheritance scope and its elements, time and place of the opening of the inheritance, turns of inheritance by law and their composition, elements of acceptance of inheritance, procedure for accepting of inheritance and its peculiarities are defined. In general, succession is sufficiently regulated by the Civil law. But scholars of civil law raise questions about the expediency and validity of some provisions. Provisions on the definition of succession, the inheritance scope and the methods of acceptance of inheritance remain particularly controversial.

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ПРИНЦИПИ КРИМІНАЛЬНОГО ПРАВА УКРАЇНИ

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Стаття присвячена з'ясуванню ролі, значення принципів кримінального права в правовій системі, визначенню їхньої природи. Розглянуто питання про поняття, класифікацію та реалізацію принципів кримінального права у правовій системі України.

Ключові слова: *принципи кримінального права, кримінальне право, правосуддя, справедливість, система принципів права, законність.*

PRINCIPLES OF CRIMINAL LAW OF UKRAINE

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The article is devoted to find out the role of the principles of criminal law in the legal system, determining their nature. The concept, classification and implementation of these principles in the legal system of Ukraine are analyzed. Principles of criminal law are considered as a system of fundamental values that plays a huge role in the criminal law in general.

Key words: *principles of criminal law, criminal law, justice, the system of principles, legality, equity.*

Problem statement. With the beginning of the development of society and law in general, the criminal law of Ukraine began to form. Criminal law was formed to accomplish certain tasks. The main task of which was to combat crime at certain stages of society. The criminal law of Ukraine is an independent branch of law and is aimed at ensuring the rights and freedoms of the individuals and the citizens. Criminal law has its own characteristics, such as the universality of rules of law, formal certainty in regulations, subject matter, method and principles of law.

Recent research and publications. The topic of the principles of criminal law has repeatedly been the subject of research by such scientists as Kelina S. G., Kudryavtseva V. M., Zagorodnikov M. I., Krieger G. A., Beliaev M. A. and Kovaliova M. I. The principles of criminal law are an essential part of the entire criminal system. Legal regulation will be considered effective only if the principle is clearly reflected in the rules of law and harmonized applying in the activities of the relevant authorities and society in the aggregate.

Criminal law does not define the concept of principles, but they are given considerable attention. In general, the principles of criminal law are divided into two groups: common law, which take place in any branch of law; special law, which is inherent only in criminal law, as an industry.

The principles of law affect the justice, the enforcement of legality and order in the state and guarantee the proper abidance by the person his rights and interests. The problem of the studying law has its own theoretical and practical significance and needs additional study.

The purpose of the article is to study, compare the principles that form the basis of criminal law in Ukraine, it involves the following tasks: to explore the concept of criminal law

principles; to become acquainted with approaches of the definition of problems in the study of the principles of law in general; identify the types of criminal law principles; compare general and special principles;

Presentation of the main material. The basis of Ukraine's criminal law is the implementation of principles. It is the implementation of the principles that is of great importance in the justice system, as violations of the principles show deficiencies in the administration of justice. Such a violation is characteristic mainly of the sphere of combating crime.

The regulation of social relations in the legal sphere in the field of criminal law requires improvement; so much attention is paid to the principles of law. The existent Criminal Code of Ukraine did not regulate such issues as the principles and their meaning [5]. Unlike the Criminal Code of Ukraine, the system of principles and concepts is enshrined in the Criminal Procedure Code of Ukraine [2].

The foundation of the principles that underlie criminal law and common law determined by the meaning of the social group and social ties and are formed on that the dangerous human behaviour and protection against imminence based on [1].

The deepest concept of the principles of law is expressed in the theory of law. According to the theory of law, principles are the initial, fundamental ideas of a particular industry or law as a whole, and establish the general principles of the mechanism of legal regulation [11].

Considering the Ukrainian legislation, it should be noted that the basis for formulating the principles of criminal law is the Constitution of Ukraine [3]. The principals of criminal justice that guaranteed by the Constitution of Ukraine:

Legality. Principle of legality consists of two distinct norms that derive respectively from two fundamental principles of

criminal justice, the principle, "No person shall be punished in the absence of a bad mind," and the principle that underlies the maxim, "Every person is presumed innocent until proven guilty." The first norm of legality explains the rules regarding ex post facto legislation, and rules regarding "notice" and "fair warning" of judicial decisions. When a person is punished for violating a rule that was non-existent or unclear at the time he acted, he is punished for conduct that the state now condemns and seeks to prevent by means of penal sanctions. Accordingly, at the time the person is prosecuted, his claim is not that he did not do anything that the state regards as wrong, but rather that he neither knew nor should have known that he was doing something that the state would come to regard as wrong. He ought, indeed, to be excused for his mistake, but only because of a principle that is common to excuses generally: "No person ought to be punished in the absence of a guilty mind." He should be excused because even when a person does something the state condemns and seeks to prevent, he ought not to be blamed for it unless he was motivated in a certain way, namely, by an attitude of disrespect for the legitimate interests of the political community by whose norms he is bound. The Second norm of legality informs several of the remaining rules, though not all of them. The second norm is that a person ought not to be punished in the name of a political community unless it can confidently be said that the community officially regards his conduct as warranting the criminal punishment at issue. It can also be also violated when a person is punished for violating a statute that has fallen into desuetude, regardless of how widely promulgated or narrowly defined the statute may be [9].

The principle of equity. It has two aspects: the fairness of the criminal law; justice of punishment. In ancient law, there was the so-called principle of "talion" - eye for eye, tooth for tooth. That is, a person wants to be held accountable for a bad act,

especially if it is a cruel act. Justice creates certain restrictions that do not allow a person to commit a crime, regulates human behavior. Justice is measured differently for everyone. For some, one statement will be valid and another for another. Sometimes the notion of benefit outweighs the principle of justice [11].

Justice, on the one hand, is not only a concept used in criminal law but also a religious one. Criminal law links the principle of justice to responsibility and consequence, crime and punishment.

In the criminal law of Ukraine, the principle of justice is aimed at imposing punishment, the size, the perpetrator, the circumstances and the impact of the punishment imposed on the sentenced person. The principle of justice must be individual in nature. That is, to apply the same punishment to different people would be unfair; punishment for a crime of slight gravity should be different from punishment for a serious crime.

The principle of justice also means the equity in relation to person who commits crime and the victim of the perpetrator. For example, the European Convention for the Protection of Human Rights and Fundamental Freedoms contains such indications of justice, as the punishment applied to the offender must correspond to the seriousness of the crime, the degree of guilt and other peculiarities that occurred at the time of the crime [4].

The inevitability of responsibility. With regard to the modern Ukrainian state, the principle of inevitability of responsibility and its implementation are absent. This is due to the imperfection of the legislation and the need to improve certain structures for the prosecution of perpetrators.

The person committing the criminal offense is held liable to punishment as the final stage of the process. Assuming that the purpose of legal liability can be achieved without the use of

coercive measures. In such a case, the person is just exempt from punishment [10].

Ensuring that the guilt is proved. One of the consequences of the presumption of innocence is the placing of the burden of proof on the prosecution. It is the responsibility of the prosecution to establish the guilt of the accused. As a result, if the accused raises a defence then it is the responsibility of the prosecution to disprove the defence, not the responsibility of the accused to prove his defence [6]. There are exceptions to the rule that the prosecution bears the burden of proof in relation to every issue arising in the course of a criminal trial.

Innocent until proven guilty (the presumption of innocence). The basis of our system of criminal justice is that a person, although charged with an offence, is considered innocent until proved guilty of the offence. The judge must be satisfied beyond a reasonable doubt that the person is guilty. Where there is a reasonable doubt, the person must be acquitted (that is, found to be not guilty of the offence). The fact that a person has been charged does not mean that she or he is guilty, and any discussion of the charge should make it clear that at this stage the offence is only alleged [7].

Ensuring the right of an accused person to a defence. It is that the law assigns the accused as a party to the trial such a set of procedural rights, the use of which allows him to defend himself personally in court against the charge of committing crime, to defend their legitimate interests (this can be called personal protection). This principle gives the accused the right to exercise with the help of a defender, and in some cases recognizes the participation of the defender as mandatory (it can be called professional protection). That relies on the investigating authority, the prosecutor in the court has an obligation to explain to the accused procedural rights and to enable him to exercise those rights

and to protect himself against suspicion and the charges, as well as the protection of his personal and property rights (this can be called service protection) [6].

Ensuring appeal and cassation against a court decision save as in cases established by law. The constitutional principle of providing for an appeal and cassation appeal against a court decision guarantees the right to appeal to a court on appeal or in cassation to be implemented, except for the statutory prohibition against such appeal.

The constitutional right to judicial protection envisages, as an integral part of such protection, the possibility of restoring the violated rights and freedoms of citizens, whose lawfulness of claims is established in due process of law and formalized in a judicial decision. Specific guarantees that would enable it to be fully implemented and to ensure effective renewal of rights through justice, which also meets the requirements of justice, which is also consistent with Article 13 of the Convention for the Protection of Human Rights and Fundamental Freedoms [6].

The right to a court, one of the aspects of which is the right of access to a court, is not absolute and may be subject to restrictions; restrictions on content are allowed, especially with regard to the conditions of admissibility of an appeal. However, such restrictions should be applied for a legitimate purpose and maintain the proportionality between the means used and the intended purpose.

Conclusion. Having studied the topic of the concept, the importance of the principles of criminal law of Ukraine should be noted that all principles governing human behavior have a significant impact on society and have been expressed in customs, traditions and rituals. The principles have developed over time and have caused a great deal of debate among scientists.

The principles of criminal law of Ukraine are the basis of criminal legislation and are the essence of law-making, law-enforcement and law-enforcement activities of public authorities. Consequence of the principles of criminal law determines the criminal policy of the state, and ensures the proper implementation of the purpose of criminal law. In order to correctly abiding the principles existed in the criminal law of Ukraine, it is necessary that only those acts which are defined as crimes are recognized as criminal offenses and other criminal offenses are recognized as an administrative offense.

In behalf of ensuring compliance with the principles of law enshrined in the constitution of Ukraine to the provisions of the Criminal Code of Ukraine, it is necessary correctly determine the body of crimes. For example, Article 443 of the Criminal Code of Ukraine (encroachment on the life of a representative of a foreign country) should be abolished because it contravenes the principle of equality envisaged in the Constitution of Ukraine. That means that the life of foreigners is recognized as more valuable than the citizens of Ukraine. Such a statement contravenes the principle of equality, and the act is subject to other crimes against a person.

The role of the principles is very important for the proper construction of the field of law itself, including criminal law and its envelope. Neglect of the principles of law leads to inefficiency of the system itself, deformation of the state of consciousness of a person, certain groups, manifests a neglect of the laws and values of law as a whole. If the principles are violated, there is a negative attitude to the law as a whole and thus deforms the society itself and its condition.

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**ЗАХІДНА УКРАЇНА У СКЛАДІ ПОЛЬЩІ (1921-1939 рр.):
ПРАВОВИЙ СТАТУС НАСЕЛЕННЯ,
ДЕРЖАВНИЙ ЛАД І ПРАВО**

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У статті розглянуто правові аспекти життя українського народу західних земель у 1921-1939 рр. Значну

увагу приділено правовому статусу населення, державному ладові та праву. Звернено увагу на керування польського уряду на західно-українських землях. Надано оцінку ставленню польського уряду до українців.

Ключові слова: польська влада, ополячення, Ризький мирний договір, адміністрація.

WESTERN UKRAINE AS A PART OF POLAND (1921-1939): LEGAL STATUS OF THE POPULATION, STATE SYSTEM, AND LAW

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The article describes the life of the Ukrainian people of the western lands from 1921 to 1939. Much attention is paid to the legal status of the population, the state system, and law. The author analyzes the way the Polish government governed the West-Ukrainian lands. In particular, the attitude of the Polish government towards the Ukrainians is examined.

Key words: *Polish authorities, annexation of Poland, the Riga Peace Treaty, administration.*

Problem statement. The processes of national revival in Ukraine, the objective need for its entry into the European space, leads to the formation of close relations with its closest neighbors, in particular those with Poland. Formation and stability of the Ukrainian-Polish relations are impossible without studying their historical patterns, which require deep scientific analysis and making relevant conclusions.

Particularly important among the problems that require such a research is the problem of the legal status of the Ukrainian

population, the state and law system of the Western Ukraine in the state structure of Poland.

The current state revival of Ukraine must be based on an objective rethinking of its past state-making process, especially those stages that have corrected the course of national state-making in Ukraine. An urgent need is to study the state-legal experience of solving the problems of territorial power and start with a retrospective study of the legal status of those lands that today make up the territory of Ukraine. One of such lands is Western Ukraine.

The territorial framework of the study is limited to Western Volyn (Volyn Voivodeship) and Eastern Galicia (Lviv, Stanislawski and Ternopil Voivodeship), that is to the territory of Western Ukraine. The chronological framework of the study includes the period from 1918 to the outbreak of World War II in 1939.

The purpose of the study is to find out the characteristics of the legal status of the Ukrainian population, the state and law system of Western Ukraine in the state structure of Poland in the period of 1918-1939. Based on this goal, **the tasks** of the study are as follows: 1) to analyze the prerequisites of the Riga Peace Treaty; 2) to give a state-and-legal evaluation of the provisions of the Riga Peace Treaty in the context of the state interests of Ukraine; 3) to highlight the legal issues in the process of Galicia's accession to Poland; 4) to find out the legal conditions for the creation and existence of voivodship autonomy; 5) to disclose the balance of functions and competencies of governmental bodies and local self-government and define the features of their legal regulation; 6) to determine the place and role of local self-government bodies in Western Ukrainian lands in the system of state bodies of the Polish state.

Presentation of the main material. After the collapse of the Russian and Austro-Hungarian empires, the Ukrainian people

failed to acquire an independent state and unite all their lands in it. The Ukrainians, the only people in Europe, were not able to achieve the desired freedom and independence because of the imperialist policies of the Entente governments and their lack of organization. Galicia out of the Austrian imperialists came under Polish rule under the Riga Peace Treaty of 1921. The western part of Volhynia, Polesie and Kholmshchina, formerly part of tsarist Russia, also retreated to it. This territory is called Western Ukraine in historical literature.

The newly formed Polish state contained the highest percentage of national minorities in Europe. In the 30's of the 20th century the Poles accounted for 68.9%, the Ukrainians – for 13.9%, the Jews – for 8.6%, the Belarusians – for 3.1%, the Germans – for 3.9% correspondently [1, p. 192]. Overall, the minorities made up about a third of Poland's population.

In the spring of 1920, the Directory concluded with the Poles the so-called Warsaw Pact on a joint attack on Ukraine against the Bolsheviks. Under the agreement, Poland received the Ukrainian lands to the west from the Zbruch-Stry line, that is, Galicia, a large part of Volyn, Polesie, and the Kholmshchyna. The directory pledged to include two ministers, the Poles, in its government, to grant concessions to the Polish capitalists, and so on. An integral part of the agreement was the military convention, which detailed the procedure for the occupation of Ukraine by the Polish troops. All Ukrainian railways appeared under the Polish command. The Ukrainian authorities relied on the Polish troops after their entry into the territory of Ukraine. The financial and economical agreement and the railway convention were to be concluded.

With the Warsaw Pact, the Polish authorities recognized the independence of the UPR, headed by Chief Ataman Simon Petliura and pledged not to conclude international agreements against

Ukraine. The treaty provided national and cultural rights for the Poles in Ukraine and the Ukrainians in Poland.

Thereafter, a series of wars took place between Poland and the Soviet Union for the western lands. On March 18, 1921, a final peace treaty was concluded in Riga, consisting of 26 articles and having 10 annexes, which specified certain articles of the treaty. On April 30, 1921, an instrument of ratification was exchanged in Minsk and the treaty entered into force. The treaty declared the end of the war between Poland and the Soviet republics, establishing a definitive line of state border, which generally coincided with the line established on October 12, 1920.

The content of Riga's provisions on Ukraine was ambiguous. The treaty defined the independence of Ukraine. But the term *independence* lost in the treaty its ideological color. Since only the Ukrainian SSR was an official party to the negotiations, the document affirmed the independence of the Ukrainian Soviet Socialist Republic. The Ukrainian states – UNR and ZUNR – were outlawed, and their state fate was only discussed in the context of the prohibition of cooperation with the negotiating parties [9, p. 21].

After the First World War new national states appeared, a new political order was formed in Eastern Europe. However, the universally recognized principle of self-determination of nations was not always applied, as a result not all the peoples gained their statehood. About 7 million Ukrainians, mostly former subjects of the Habsburg Monarchy, proved to be the only great nation that did not gain independence at that time [6, p. 369]. However, the main reason was the huge numerical superiority of the Poles. According to the Riga Peace Treaty of 1921, Halychyna and Western Volhynia, which were called Western Ukraine in the literature, were forcibly included into Poland.

The Polish invaders turned Western Ukraine into their inner colony. Those so-called cresses had the official name of Poland

“B” (West-Ukrainian voivodships), unlike the native Poland “A” (central Polish voivodships). According to official Polish statistics, only 7.9% of the population is employed in the industry of Western Ukraine. By the way, the wages of the workers in Western Ukraine did not reach 50% of the workers’ wages in Central Poland. The industry of Western Ukraine developed mainly due to small businesses.

Large rural estates dominated in Poland’s agriculture. More than 5% of all land was owned by the Polish landowners-magnates. Only a fifth of all land belonged to hundreds of thousands of peasants in Western Ukraine. More than 60% of peasant farms had less than 2 hectares of land, and 16% of farms were landless. Poverty and unemployment led to mass labour emigration. For example, only in 1926 alone in Lviv voivodeship 9,129 applications were issued for the issue of passports abroad. In Western Ukraine there were 17 organizations engaged in the recruitment of the Ukrainians as cheap human resources to travel to America [2].

The impoverishment of the masses, in particular that of the peasantry, and the tense revolutionary situation in the early days of the Polish state forced the government to proclaim agrarian reform by confiscating the land and giving it to the peasants for free. In order to solve the issues of agriculture and agrarian reform, two ministries were initially created: the Ministry of Agriculture and the Ministry of Agrarian Reforms, which in 1932 were united into one Ministry of Agriculture and Agrarian Reforms.

The severe economic and political oppression was supplemented by the state system of national oppression, the suppression of the Ukrainian national culture. The press of that time wrote: “The ruling circles of Poland are pursuing a policy of violent firing of the Ukrainians. The lands of Western Ukraine are inhabited by the Polish military colonists, the so-called settlers. The Poles, who make up the minimum percentage here, are the

dominant force holding the apparatus of power. The Polish language is dominant in all parts of the administrative apparatus. All officials and judges are Poles who do not recognize a language other than Polish. Persons of non-Nepali nationality do not have access to any position. The ruling circles of Poland support their domination of national minorities through punitive expeditions, court vessels, white terror, and inciting ethnic hatred”.

In leading the attack on the Ukrainian culture, the occupants tried to influence the Ukrainian labor intelligentsia, including teachers. Poles did not allow teachers to work in the Ukrainian schools. Not a single state Ukrainian teacher’s seminary remained. After that, the Polish government went on a decisive attack on the Ukrainian public schools, closing them down, creating Polish ones instead. Establishing a tracquistic school, the Polish invaders, in order to reassure the Ukrainian population, promised that their training would be conducted on the basis of equality between the Ukrainian and Polish languages. In reality, they were trying to survive takimng the native language of the Ukrainian population away from school.

When enrolling in higher educational establishments, the Ukrainians were subject of exclusive restriction, which resulted in the closed the access of the Ukrainian youth to higher education.

Because of the unbearable social and national oppression, the increase in poverty, the lack of school premises and teachers, the number of children left outside school increased. Many people remained illiterate.

In the 1930’s the anti-Ukrainian orientation of the Polish politics intensified. By the order of the Polish government, in September-November 1930, in Galicia, the campaign of pacification was carried out (from the Latin *pacification* – *appeasement, reconciliation, tranquility*) by the army and police forces: strict repressions against the Ukrainian population, abuse of

the Ukrainian leaders. The Ukrainian cultural institutions and cooperatives were destroyed by mass arrests among the Ukrainians in villages and towns.

In order to break the unity of the Ukrainian people, a campaign was made to convert the Orthodox into Catholics. The conversion to Catholicism was violent.

Despite the brutal terror of the invaders, Western Ukrainians did not put up with the forcible seizure of Western Ukraine, with its actual position as an internal colony of Poland.

The apparatus of public administration was a differentiated system of bodies. According to the territorial division of the country, the management was divided into central and territorial (local). The central administration was exercised by a council of ministers and ministers. Territorial equation was divided into government administration and self-government.

The central bodies of state power and management acted through a network of grassroots bodies of state administration of the first and second instance (grassroots and middle link), which were scattered across the state. Not all ministries in Poland had their own separate bodies on the local level, and most of them used the grassroots bodies of the Ministry of the Interior known as the General or Political Administration. Therefore, in those bodies there were separate departments that dealt with the affairs of separate ministries.

Self-government was divided into: territorial units (also called general), economic and professional ones. The state of self-government, which reflected both on its organizational structure and sphere of competence, and on the degree of dependence on government administration, depends on the form of political order. Liberal-democratic regimes give it considerable functional autonomy, while totalitarian regimes seek to limit its competence and autonomy until fully subordinated to administrative bodies.

Conclusion. After the First World War, Ukrainian political forces failed to unite ethnic Ukrainian lands into a single state. In particular, the territories named Western Ukraine have become an integral part of Poland on the basis of international treaties.

With the end of World War I, the Polish state revived by solving a territorial issue, at the same time had to solve the problem of the status of the nationalities that inhabited the lands included in its state boundaries. The population of Western Volhynia and Eastern Galicia did not intend to agree with the status of forcibly assimilated lands. The Polish state tried to solve the problem by means of polonization, falsification of the results of the census, colonization via the land reform, the eradication of the Ukrainian language and culture, and pacification.

In spite of everything, the Ukrainian people went through all the difficulties and eventually united.

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ПІДСТАВИ ТА УМОВИ ВІДСТОРОНЕННЯ ПРАЦІВНИКІВ ВІД РОБОТИ

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У статті досліджується питання щодо відсторонення працівників від роботи згідно українського законодавства. Розглянуто розмежування відсторонення працівника від роботи й суміжних правових категорій, чітко сформульовано поняття «відсторонення працівника від роботи та встановлено основні принципи відсторонення.

Ключові слова: відсторонення працівника від роботи, розмежування, простій, переведення, звільнення.

GROUNDINGS AND CONDITIONS FOR SUSPENSION OF EMPLOYEES FROM WORK

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The article deals with the issue of suspension of employees under Ukrainian law. The demarcation of the employee's suspension from work and related legal categories is considered, the definition of «suspension of the employee from work and the basic principles of suspension are defined.

Key words: *suspension of the employee from work, delimitation, idle time, transfer, suspension.*

Problem statement. Modern labor law seeks to develop legal mechanisms capable of balancing the interests of workers and employers. In many respects, this task has been accomplished by amending numerous amendments to the current Labor Code of Ukraine and adopting a number of new legal acts aimed at regulating labor and related relations. However, some of the problems still require careful study, as they are of great importance both to the science of labor law and to law enforcement. One such issue is the suspension of an employee from the work.

Unjustified suspension not only violates the constitutional right to work, but also creates conditions for staff turnover, deterioration of the social and psychological climate in enterprises, institutions and organizations, and the emergence of labor disputes. At the same time, the legal provision of the citizens' realization of the constitutional right to work, its protection are the most

important tasks of labor law, which require clear and consistent legal regulation.

Recent research and publications. The science of labor law has made a significant contribution to addressing problems related to suspension. Some issues of legal regulation of relations in this area are reflected in the work of such scientists as M.G. Alexandrov, I.M. Vaganova, I.G. Vorobyov, S.Yu. Golovina, N.V. Glevskaya, O.P. Epstein, V.V. Lazor, O.S. Pashkov, S.V. Popov, V.I. Prokopenko, V.O. Protsevsky, O.I. Protsevsky, Ya.O. Pushkar, L.O. Sirovatska, G.S. Skachkova, P.R. Stavys'kyi, N.M. Khutoryan, G.I. Chanisheva, V.I. Shcherbina, O.M. Yaroshenko and others.

Without neglecting the importance of the scientific works of these jurists, we note that a comprehensive dissertation research on the suspension of an employee from work in a market economy has not yet been conducted. Some important aspects of this topic are either poorly understood or need further elaboration. This applies, in particular, to the content and purpose of the suspension, its legal nature, the basic principles, the provision of legal rules on this phenomenon in labor law and in the system of law in general.

The purpose of this article is to determine, on the basis of the research of legal experts, analysis of the current legislation of Ukraine, international and foreign acts, the essence of their implementation, the nature of the employee's suspension from work, the reasons for it, the procedure and legal consequences of implementation, and develop scientifically sound proposals and recommendations to improve the legal regulation of suspension.

In order to achieve this goal, the following research tasks are set in the paper: to formulate the definition of "suspension of an employee from work" and to name its characteristic features; to distinguish between suspension of an employee from work and related legal categories (suspension, disciplinary action, transfer, downtime, etc.); to clarify the legal nature of suspension of the

employee; to establish the basic principles of suspension of the employee from work; to give examples of other cases of suspension, according to Art. 46 of the Labor Code.

Presentation of the main material. The characteristic features of suspension from work as a legal category include: a) the employee is forced to withdraw from the performance of work specified in the employment contract; b) this process takes place at the initiative of the employer or the authorized state body; c) it is temporary; d) suspension is possible only in cases provided for by labor law; e) during this period the place of work is retained and, as a rule, wages are not stored. As a result, it is concluded that the suspension of an employee from work is a temporary refusal of the employer or an authorized state body to provide the employee with the work specified in the employment contract, in cases provided for by law, with the preservation of the place of work and, as a rule, without salaries.

Unlike release, suspension is not related to termination of the employment contract (the employee does not receive a final calculation, he is not issued a work record). Removed shall retain the right to terminate the employment contract in accordance with the procedure established by law, for leave, wages and compensation for the period of this procedure. It is subject to legal rules on the transfer to another job, the imposition of disciplinary penalties, etc.

The main difference between transfer to another job and suspensions is their grounds and legal consequences. The first should be understood such changes in the terms of the employment contract, as a change of place of work and job function. When removed, such changes do not occur, although the legal position of the employee is temporarily changed (he does not perform any work function, he is not paid wages). As a general rule, transfers to another job are allowed only with the consent of the employee.

When removed, consent is not needed. With the consent of the employee, it is possible to transfer to another company, institution or organization, as well as to another locality. Suspension is always carried out within the same organization.

Suspension should also be distinguished from downtime. In the event of downtime, the employee is deprived of the opportunity to perform his or her duties for reasons other than those dependent on him or her. When removed, he is temporarily deprived of the opportunity to perform his duties for reasons which, as a rule, depend on him. Based on the analysis of the situation at the enterprise during the downtime, according to Article 34 of the Labor Code of Ukraine, employees can be transferred, with their consent and with the specialty and qualification, to another job at the same enterprise or to another enterprise, but in the same locality for up to one month. At the same time, the transfer does not take place: the employee is temporarily not allowed to perform the work function. The issue of remuneration is also addressed differently.

It is argued that suspension is not a measure of punishment. The purpose of the first is to prevent possible adverse effects, while the purpose of the second is to punish the offense.

It is noted that the principles of suspension of employees - these are the guiding, initial provisions expressed in this substitution of labor law (enshrined in legal rules or derived from them), expressing its unity, reflect the basic approaches to the legal regulation of relations for the suspension of workers from work and determine the overall orientation of its development.

The principles of suspension of an employee include: a) the combination of the interests of the employer, employees and the state; b) differentiation of the bases of this phenomenon; c) the preventive and preventive nature of this procedure; d) free time of suspension of the employee from work; e) comprehensive legal protection of the dismissed employee. These suspension principles

are desirable to be legally enshrined, which will help to improve the quality of rulemaking in this area, prevent errors of law enforcement practice, increase the responsibility of the owner and authorized state bodies for their actions, enhance the legal protection of employees.

Pursuant to Article 46 of the Labor Code, suspension from office (position) is possible in other cases provided for by law. So let's look at them in more detail. Namely, in case of failure of medical examination. According to Article 7 of the Law "On Ensuring Sanitary and Epidemic Safety of the Population", enterprises, institutions and organizations are obliged to eliminate upon submission of officials of the State Sanitary and Epidemiological Service from the work of persons who are carriers of infectious diseases, patients with dangerous infectious diseases, or persons who have been in contact with such patients, with the payment of prescribed social security assistance, as well as persons who avoid a compulsory medical examination or vaccination against infections. In these cases, such persons are not provided for the payment of social security benefits and salaries.

Suspension from office of a civil servant. According to Article 72 of the Law of Ukraine "On Civil Service", the ground for suspension of a civil servant from the performance of official duties is the non-performance or improper performance of official duties, which could have caused or led to the death of a mother, death or death, moral harm to natural or legal persons, the state, territorial community.

The decision to dismiss a civil servant from the performance of his / her duties shall be taken by the head of the civil service or the subject of appointment respectively. The duration of such suspension may not exceed the time of disciplinary proceedings. In the event of suspension from office, a civil servant shall be obliged to remain in the workplace in

accordance with the rules of internal service and to facilitate the conduct of disciplinary proceedings.

In the event of disciplinary proceedings being closed without the civil servant being held liable to disciplinary action, he or she shall be paid in due course the termination of his / her duties in the amount of average salary.

Suspension of a civil servant from the performance of official duties in case of committing a corruption offense shall be carried out in accordance with Article 30 of the Law of Ukraine “On Prevention of Corruption”. According to this rule, the suspension of a person authorized to perform the functions of a state or local self-government, equivalent to a person from the performance of a task, taking an action, taking a decision or participating in its adoption in the conditions of real or potential conflict of interest is carried out by decision of the head of the relevant body in cases, if the conflict of interest is not of a permanent nature and provided that it is possible to involve in such a decision or to take the appropriate actions of other employees of the relevant body, enterprise, establishment Novi organization. Suspension of a person empowered to perform the functions of a state or local self-government, equivalent to a person from performing a task, committing an action, taking a decision or participating in its adoption in the conditions of real or potential conflict of interest, as well as engaging in such a decision or taking the appropriate actions of others employees of the relevant body is carried out by decision of the head of the body or the relevant structural unit in which the person works.

Suspension in case of criminal proceedings. According to Article 154 of the Criminal Procedure Code of Ukraine, suspension from office may be carried out in respect of a person suspected or accused of committing a crime of moderate, serious or serious crime, and regardless of the gravity of the crime, a law enforcement

official. That is, according to the norms of the Criminal Procedure Code of Ukraine, it is possible to remove any employee, not just an official, from work. The Criminal Procedure Code of Ukraine stipulates that the suspension is carried out on the basis of the decision of the investigating judge for a term not exceeding two months. The term of suspension may be extended in accordance with the requirements of the article. The suspension may be canceled by the decision of the investigating judge during the pre-trial investigation or the trial, during the court proceedings at the request of the prosecutor or the suspect or accused who were removed from office, if the further application of this measure is no longer necessary.

Suspension of the driver. The reason for the suspension may be the absence of a document that entitles you to drive. According to Article 16 of the Law of Ukraine "On Traffic", the driver must have a driver's license when driving a vehicle. The absence of such a certificate from the employee, who, according to the staff list, performs the duties of the driver, is grounds for dismissing him from work. In this case, the employer has the right to dismiss the employee from work, and if possible - to transfer him to another job, the performance of which does not require a certificate, which should be stipulated in the order.

The article presents a theoretical generalization and new solution of the scientific problem, which consisted in comprehensive coverage of the problems of suspension of the employee and formulation of scientific and practical recommendations for improving the legal regulation in this field.

Having analyzed the work of several law experts, one can determine the definition of suspension of an employee, namely the temporary refusal of an employer or an authorized state body to provide an employee with a job specified in the employment

contract, in cases provided for by law, with the preservation of the place of work and, as a rule, without preservation salary.

Suspension is not a disciplinary action in administrative and legal literature, some authors attributed the suspension from work for social influence, disciplinary influence, others – up to administrative penalties. However, suspension does not pursue the purpose of punishment employee; this is a special temporary measure that wears a warning nature. It shall continue on or before the legal fact specified in the law, or the cessation of the circumstances that led to the suspension, or resolving the issue of further fate of the dismissed employee

Conclusion. To sum up all mentioned above, in dismissing an employee, the employer is obliged to act on the basis, within the limits of the powers granted and in the manner prescribed by law, impartially, to observe the principle of equality before the law, preventing all forms of discrimination, justified, that is, taking into account all circumstances, decision making: legal basis for suspension from office; the consequences of suspension from office for others; statutory provision for the suspension of a discharged employee, the deadlines for suspension, which must correspond to the time required to remedy the reasons for the suspension, unless a different deadline is set by the competent authority.

The suspension of an employee from work and, in general, the Labor Law of Ukraine has not yet been fully considered and worked out, so work in this area can and should be done for the benefit of Ukrainian workers.

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ФІЛІЇ ТА ПРЕДСТАВНИЦТВА ЮРИДИЧНИХ ОСІБ

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Стаття присвячена вивченню питання правосуб'єктності юридичної особи з наявними відокремленими підрозділами. Автор надає визначення поняття «мережева правосуб'єктність юридичної особи» та описує її основні ознаки, окремі елементи правосуб'єктності, які характерні для відокремлених підрозділів юридичної особи, а також і характерні особливості відокремлених підрозділів юридичної особи, які не дозволяють назвати їх абсолютно правосуб'єктними утвореннями.

Ключові слова: юридична особа, мережева правосуб'єктність, відокремлений підрозділ, філія, представництво, теорія права.

AFFILIATES AND REPRESENTATIVE OFFICES OF LEGAL ENTITIES

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The article is devoted to the study of legal personality of a legal entity with available separate units. The author defines the concept of "network legal personality of a legal entity" and describes its main features, the individual elements of legal personality that are characteristic of the separate units of the legal entity.

Key words: legal entity, network legal personality, separated subdivision, branch of a legal entity, representation of a legal entity, theory of law.

Problem statement. Legal personality of a legal entity is a complex phenomenon both in external expression and in internal content. This legal phenomenon has continuously developed throughout the history of jurisprudence, it has not stopped its evolution and now, sometimes far ahead of its formation, both legal opinion and legislative regulation of the real social relations of the relevant content. The legal entity, in turn, has also undergone a difficult path of intense evolutionary movement. In recent decades, this process has become significant not only in law but also in all other spheres of public life, and especially in economic practice, where a legal entity has squeezed an individual into the background. Legal personality of a modern legal entity quite naturally reveals new, more and more complex forms of existence, acquiring its functional basis, in particular, in the form of a network of separate structural units.

Recent research and publications. Studies of individual aspects of legal personality of the legal entity, as well as the subject of law in general were carried out by both domestic authors and foreign ones, in particular Alexandrov V.E., Arkipov S.I., Grudnitskaya S.N., Kozlova N.V., Kochin V.V., Okunev I.S., Serova O.O., Stukalova Y.V., Sumsky D.O., Filik N.V., and other.

The main purpose of this article is to conduct a general theoretical study of the phenomenon of "network legal personality" of those legal entities that have an extensive system of separate units, to disclose the content of the concept of "network legal personality of a legal entity", as well as to identify the main features of this legal phenomenon.

Presentation of the main material. One of the less explored forms of legal personality of a legal entity is the so-called "network legal personality". Despite the fact that the existence of legal entities with a branched network of separate units has become almost the norm today, the phenomenon of "network legal personality" has not been thoroughly considered and understood by the scientific legal community, and the term "network legal personality" can be considered as a whole. in practice and in the theory of jurisprudence. This state of affairs is rather strange given that the first manifestations of "network identity" have been observed since the Middle Ages, when merchants who could not operate in many places at one time created trade guilds or societies (the first forms of "legal entities of the network type ") in order to expand the areal of their affairs.

However, if in the Middle Ages such a process meant the creation of a new separate "entity", then the modern separate units of a legal entity, although relatively independent entities, still remain a special component of the legal entity-founder and in relations with other entities its legal personality. Remaining the sole entity, a legal entity may create separate divisions outside its core business to expand the latter. Yes, nowadays the separate divisions of a legal entity are branches and representative offices, which do not appear as separate legal entities. Separate units should not be identified with subsidiaries of a legal entity, since the subsidiary, although dependent on the parent company, but by its legal nature acts as a completely separate entity, empowered with separate rights and responsibilities, separate organizational structure and property. The main type of separate subdivision of a legal entity is a branch, which is located outside its location and performs all or part of its functions (Part 1, Article 95 of the Civil Code of Ukraine) [1].

From a legislative definition, the concept of a branch may give the impression that the branch completely or partially removes its legal personality from the parent organization. However, this is not at all true, because a branch cannot acquire rights or obligations for itself in its relations with the outside world, because: 1) it is part of a legal entity and acts in its composition; 2) legal capacity is not assigned to the branch, but is only realized by it within the rights and obligations of the legal entity itself. Thus, the legal personality of the legal entity is not transferred to the branch, but only extends to it. In another type of separate subdivision, the legislator defines a representative office – a separate subdivision of a legal entity, located outside its location and providing representation and protection of interests of a legal entity. There is no reason to speak of the independent legal personality of a separate subdivision of a legal entity, since this phenomenon presupposes the existence of a subject on which the rights entrusted with obligations and which can properly exercise them are enshrined.

A separate unit is not an independent entity; it is only an organizational element of a legal entity that realizes a certain part of its legal capacity, tort and capacity. However, the legislation of Ukraine has tendencies to approach the status of separate units to the status of legal entities. For example, the Tax Code of Ukraine, together with legal entities and individuals, defines the separate units as independent taxpayers, and states that they must keep tax records of the individual taxes they pay [2]. In addition, separate units can open separate accounts with banking institutions. This approach indicates that, although the separate units are not legally endowed with independent legal personality, they are internal organizational entities with signs of legal personality.

However, the existence of a set of features of an individual entity does not make a separate unit such. Confirmation that separate divisions are not endowed with independent legal

personality is the provision of separate legislative acts, for example:

- *Claims arising from the activities of a branch or representative office of a legal entity* may also be filed at their location (Civil Procedure Code of Ukraine). However, such claims are not filed with a branch or representative office, but with the legal entity itself, whose interests were represented by such separate divisions, which, among other things, testify to the lack of separate divisions in their own divisions [3]. Thus, a separate unit cannot act as a separate plaintiff or defendant in court.

- *Property rights* can arise only in individuals, and separate units are not recognized by persons (Civil Code of Ukraine) [1]. As we noted earlier, separate divisions may be vested in the property of the "parent" legal entity, but without transferring ownership of such property to them. Without the ability to use the property assigned to it, the detached unit loses its own ability to act.

A separate unit (including one registered in the territory of another country) cannot enter into an agreement with its parent legal entity, since such an agreement will be concluded by the same person, which contradicts the nature of the contract as a transaction involving two or more parties [4, p. 741–777]. It is accepted that the legal status of the head of the branch is almost similar to the legal position of the head of the legal entity, since they both exercise the authority entrusted to them by organizational and social units. However, this is not entirely true. The head of a branch or representative office in foreign relations expresses not the will of a separate unit headed by him, but the will of a legal entity whose interests are subject to representation and legal protection in accordance with the provision on the branch (representation). In addition, the powers of the head of a separate unit may be limited or clearly defined within the power of attorney issued by a legal entity. The fact that the head of a branch or

representative office represents the interests of a legal entity but acts in the internal organizational processes directly on behalf of a separate unit, may indicate that such an organizational entity, although not endowed with its own full legal personality, has separate characteristics. An interesting and noteworthy is the position of Grudnitskaya, which states that separate units can be considered as enterprises without the right to legal personality [5, p. 137]. The author cites as an example EU legislation and international tax treaties, which define separate subdivisions as independent entities of economic relations [6, p. 81]. In another of his studies, Grudnitskaya considers the issue of legal personality of local units of public associations, which were created and acted as separate legal entities for a long time, but due to changes in the Ukrainian legislation they were forced to liquidate and acquire the status of "separate unit" [7, p. 102].

Conclusions and prospects for further research.

Affiliates and representative offices, acting on behalf of a legal entity, exercise their rights and represent their interests, but do not bear legal responsibility for the offenses committed by them. Legal entities that are carriers of a network legal entity are characterized by the following features:

1. A legal entity has one or more properly organized separate units.
2. Separate units are active participants in external legal relations, conduct activities and represent the interests of a legal entity.
3. Separate units have a set of attributes that indicate their relative independence (bank account, separate tax records, the presence of a manager, etc.), but in the relationship with the outside world this independence is poorly expressed.

Thus, we can say that the study of real forms of legal personality of a legal entity and, in particular, the so-called

"network legal personality of a legal entity" is a fairly relevant trend in modern scientific search. The analysis of this subject may open the way for scientists to re-understand the phenomenon of "legal personality", which, in turn, will allow one step closer to understanding the nature and place of a legal entity in the complex system of modern legal coordinates.

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ПІДСТАВИ ВИЗНАННЯ ЗАКОНІВ ТА ІНШИХ ПРАВОВИХ АКТІВ НЕКОНСТИТУЦІЙНИМИ

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У статті характеризуються підстави, що визначають які прийняті закони та інші нормативно-правові акти можуть вважатись неконституційними. Зокрема, перелічено типи нормативно-правових актів, які можуть визнаватись неконституційними.

Ключові слова: конституційність, неконституційність, правові акти, Конституційний Суд України, Конституція.

THE GROUNDS FOR RECOGNIZING LAWS AND OTHER LEGAL ACTS AS UNCONSTITUTIONAL

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The article considers the grounds that define which laws and other normative legal acts may be considered unconstitutional. In particular, the types of normative legal acts that may be identified as unconstitutional are listed.

Key words: constitutionality, unconstitutionality, legal acts, Constitutional Court of Ukraine, Constitution.

Problem statement. During the adoption of laws or other legal acts the greatest attention is given to their constitutionality

(accordance to the Constitution), as far as the Constitution is the main document (law) of the state that defines the state system, procedure and principles for the functioning of representative, executive and judicial authorities, electoral system, rights and duties of the state, society and citizens of the state.

The purpose of the article is to define the grounds for the recognition of laws or other legal acts as unconstitutional.

Presentation of the main material. Constitutionality of laws and legal acts is the basis of the rule of law in the state. To perform such a mission the government of Ukraine created a special body – the Constitutional Court of Ukraine. The Constitutional Court is the only body of constitutional jurisdiction in Ukraine. The Constitutional Court of Ukraine is a legal entity, it has a seal with the state emblem of Ukraine and its name. Thus, the task of the Constitutional Court of Ukraine is guaranteeing the rule of the Constitution of Ukraine as the main law throughout Ukraine. Its organization, powers and procedures are determined by the Constitution of Ukraine.

Laws and other legal acts or separate opinions, which are recognized as unconstitutional, lose their validity from the day of the adoption the decision on their unconstitutionality by the Constitutional Court of Ukraine. Material or moral harm that was inflicted to individuals or legal entities by the Acts and actions that were recognized as unconstitutional are compensated by the State in accordance with the procedure established by law.

Article 152 of the Constitution of Ukraine defines grounds for the recognition of unconstitutionality of legal acts or their separate parts. One of these grounds is the inconsistency between the Constitution of Ukraine and a legal act. The analysis of the decisions of the Constitutional Court reveals that during the process of making a decision on the constitutionality of the legal act, the court comes not only from the literal content of the prescriptions of

the Basic Law, but it also takes into account its spirit, reflected in the content of separate concepts, principles, etc.

Let's consider some examples:

1) clarification of the content of the definition of Ukraine as a social, legal state became one of the grounds for recognizing the unconstitutional provisions of the Law of Ukraine of December 7, 2000 "About the state budget of Ukraine for 2001", as well as other laws on suspension of the action of certain legislative acts in the part of granting benefits, compensation and guarantees for certain categories of citizens (The Decision of the Constitutional Court of Ukraine of 20 March 2001);

2) the Constitution of Ukraine (article 27) proclaims the inalienable right of every person to life. In this context, and according to the fact that Ukraine is a social, democratic, legal state in which life and health, honor and dignity, immunity and human safety are recognized as the highest social value, the Constitutional Court of Ukraine with its decision of December 29, 1999 recognized the provisions of the Criminal Code of Ukraine in the part that included the death penalty as a kind of punishment unconstitutional.

The second reason for the recognition of unconstitutionality of laws and other legal acts is the violation of the established procedures for their consideration or entry into force. For the characteristics of this reason, it is necessary to address to the decision of the Constitutional Court of Ukraine of July 7, 1998, in which the Constitutional Court, giving the official interpretation of the parts 2-3 art. 84 of the Constitution of Ukraine outlined separate constituents of such procedure concerning Parliament: laws, decrees and other acts of the Verkhovna Rada of Ukraine are accepted only at its plenary sessions. Laws or other acts have to gain a required number of votes for their support; At the meetings of the Verkhovna Rada of Ukraine The Deputy of Ukraine has no right to vote instead of other deputies of Ukraine.

According to the decision of the Constitutional Court of Ukraine violation of such procedure by the Verkhovna Rada is the basis for recognizing laws or other legal acts as unconstitutional. The decision of the Constitutional Court on recognition of unconstitutionality of laws, other legal acts, or their separate parts means the loss of validity from the date of adoption of such a decision. The legal act or its separate parts, which are recognized to be unconstitutional, cannot be reenacted in the same version. The deviation from this approach would mean the infringement of constitutional prescriptions on mandatory execution of Constitutional Court decisions. The recognition of laws and other legal acts or their separate parts as unconstitutional shall be the basis for the abolition of provisions of legal acts that are based on acts recognized as unconstitutional. This approach is consistent with the principles of the legal state that are defined in the current Constitution of Ukraine, as well as the hierarchy of forms of law in the state.

Important fact for the settlement of legal relations is the provisions of art. 74 of the law of Ukraine “About the Constitutional Court of Ukraine” of October 16, 1996, according to which the Constitutional Court may indicate the preeminence of its decision in consideration of general jurisdiction by courts in connection with legal relations arising from the action of the non-constitutional act. At the same time, regardless of this guidance in accordance with art. 3472 of the Civil Code of Ukraine recognition of the unconstitutionality of law, which was used by the court in resolving the case, is the basis for revising the decisions and rulings of the courts of the first, appellate, and cassation instances.

The Constitutional Court of Ukraine with all the legal force of its decisions and conclusions is not endowed with the legal mechanisms capable of forcing them to be performed when necessary. The unconditional fulfillment of these acts must be

based on a higher authority of the Court, local self-government bodies, as well as at the proper level of performing discipline and legal culture.

Part 3 of the same article provides the reimbursement of material or moral damages inflicted to individuals or legal entities by acts or actions recognized unconstitutional. Refunds shall be made according to the law. This right can be implemented by applying to a court of general jurisdiction with a claim for damages in accordance with Part C of Art. 11 of the Civil Procedure Code of Ukraine.

The Constitutional Court of Ukraine, giving the decision on November 25, 1997, in case of constitutional appeal of the citizen Dziuba, gave an official interpretation of provisions of Part 2 art. 55 of the Constitution of Ukraine noted that everyone (a citizen of Ukraine, a foreigner, a stateless person) has a state-guaranteed right to appeal in court of general jurisdiction against the decision, action or inaction of any public authority, body of local Government, officials and officers, if he/she considers that their decisions, actions or omissions violate or restrict his/her rights and freedoms. Such complaints are subject to direct consideration in the courts.

Conclusion. Summing up, we conclude that there are two basic grounds for the recognition of laws or other legal acts as unconstitutional: 1) the inconsistency of the Constitution of Ukraine; 2) violation of the Constitution procedure for their consideration, adoption or entry into force.

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ПРАВОВІ ЗАСАДИ ЗДІЙСНЕННЯ ФІНАНСОВОГО МОНІТОРИНГУ

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Стаття присвячена характеристиці правових засад здійснення фінансового моніторингу в Україні. Визначено основні цілі та завдання фінансового моніторингу. Досліджено основні напрями діяльності Державної служби фінансового моніторингу в Україні. Зроблені висновки та надані пропозиції щодо покращення.

Ключові слова: *фінанси, фінансовий моніторинг, Державний фінансовий моніторинг, легалізація «відмивання» брудних грошей, одержаних злочинним шляхом, фінансування тероризму.*

LEGAL BASIS OF FINANCIAL MONITORING

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The article is devoted to the characteristics of the legal framework of financial monitoring in Ukraine. The main goals and objectives of financial monitoring are determined. The basic directions of activity of the State Financial Monitoring Service in Ukraine are investigated. Conclusions have been made and suggestions for improvement have been provided.

Key words: *finance, financial monitoring, state financial monitoring, legalization of "laundering" of dirty money received from crime, financing of terrorism.*

Problem statement. In the modern world, the theme of counteracting the legalization of proceeds of crime (Anti-Money Laundering / Combating the Financing of Terrorism (further – AML/CFT)) is still relevant. Offenders often try to use the financial systems of foreign countries to launder (legalize) "dirty" funds. Against this background, an important tool for preventing the proceeds of crime is the constant monitoring of transactions and cash flows, in particular, in the accounts of bank customers. However, no financial institution is insured against the likelihood of accidental complicity in the process of money laundering. The main part of the system of counteracting the legalization of funds obtained illegally is the system of financial monitoring. It must, on the one hand, comply with international norms and standards, and on the other hand, take utmost account of the existing financial system. Financial monitoring is a set of measures undertaken by financial monitoring entities to prevent and counteract the legalization (laundering) of proceeds of crime or terrorist financing,

providing for public financial monitoring and initial financial monitoring. Therefore, the issues of financial monitoring remain unexplored, and the legal framework is not entirely perfect and requires the legal experience of the world's leading countries.

Recent research and publications. Important contributions to the study of theoretical issues of financial monitoring have been made by such domestic scientists as D. Bekerska, G. Bekh, L. Voronova, O. Kopylenko, M. Kucheryavenko, E. Dmytrenko, and among foreign ones: S. Zapolsky, M. Proshunin. Experts such as G. Gurzhiy, V. Kirsanova, Ya. Yanushevych have been investigating the theory of financial monitoring in Ukraine.

The purpose of the article is the following: to research the identification and analysis of the main legal principles of financial monitoring in Ukraine and the general characterization of domestic and foreign regulatory acts in this field.

Presentation of the main material. In administrative law, control is defined as the process of influence of the controlling entity on the controlled entity in relation to the latter's activities in order to achieve the stated purpose. Financial control can be considered as a type of control over the scope, as well as a complex and purposeful financial and legal activity of financial control bodies or their subdivisions or representatives, persons authorized to exercise control based on the provisions of the acts of the current legislation [1, p. 6]. The etymological content of the category "monitoring" can be described as a process of observation (tracking) with appropriate further analysis and reflection of the results obtained. Part of the relationship with financial monitoring in terms of content and scope of activities will be close to financial control.

Under the Law of Ukraine "On prevention and counteraction to legalization (laundering) of proceeds from crime, terrorist financing and the financing of proliferation of weapons of

mass destruction” (hereinafter referred to as the Law) [2], financial monitoring is a set of the measures which financial monitoring entities take to prevent and counteract legalization (laundering) of the proceeds of crime, terrorist financing, and financing proliferation of weapons of mass destruction, including state financial monitoring and primary financial monitoring. Moreover, the financial monitoring entity is, in accordance with Article 1 of the aforementioned Law, "the actions with the assets related to the respective participants of financial transactions which carry out them, provided there are the risks that such assets may be used to legalization (laundering) of the proceeds of crime or terrorist financing or financing of proliferation of weapons of mass destruction, as well as any information on such actions or events, assets and their participants" [2]. In general, the financial monitoring system consists of the initial and state levels.

Initial financial monitoring is explained by the Law as a set of measures which are taken by initial financial monitoring entities and aim at meeting the requirements of this Law, normative legal acts of state financial monitoring entities, and which include, in particular, mandatory and internal financial monitoring. The reporting entities are: (1) banks, insurers (reinsurers), insurance (reinsurance) brokers, credit unions, pawn brokers, and other financial institutions; (2) payment organizations, participants or members of payment systems; (3) commodity and other exchanges which conduct financial transactions with goods; (4) professional participants of the stock market (security market); (5) postal operators, other institutions which conduct financial transactions with transfer of funds; (6) branches or representative offices of foreign economic entities which provide financial services in the territory of Ukraine; (7) specifically identified primary financial monitoring entities: (a) business entities which provide intermediary services during purchase – sale of real estate;

(b) business entities which trade precious metals and precious stones, and products from them for cash; (c) business entities which conduct lotteries and gambling games, including casinos, electronic (virtual) casino; (d) notaries, lawyers, lawyers' offices and associations, auditors, accounting firms, economic entities which render accounting services, economic entities which provide legal services (except for the entities which provide services within the framework of labour relations); (8) other legal entities which by their legal status are not financial institutions, but provide separate financial services.

The Law defines state financial monitoring as a set of the measures which are taken by state financial monitoring entities and aim at meeting the requirements of the legislation in the sphere of preventing and counteracting to legalization (laundering) of the proceeds of crime, terrorist financing and financing proliferation weapons of mass destruction. The state, acting as a subject of public law, carries out monitoring activities through specially authorized entities. The state financial monitoring entities are the National Bank of Ukraine, the central executive body forming and ensuring the implementation of the state policy in the sphere of preventing and counteracting to legalization (laundering) of the proceeds of crime, or terrorist financing, the Ministry of Justice of Ukraine, central executive bodies which ensure the formation of the state policy in the sphere of providing postal communication services, in the sphere of economic development, the National Commission on Securities and Stock Market, the National Commission which carries out state regulation in the sphere of financial service markets, and specifically authorized body.

At present, the state financial monitoring which is performed by the central executive body which implements the state policy in the sphere of preventing and counteracting legalization (laundering) of the proceeds of crime, terrorist

financing, and financing proliferation of weapons of mass destruction is legally defined as the aggregate of the measures taken by such body to collect, process and analyze the information on financial transactions which is submitted by primary entities and state financial monitoring and other state authorities, the respective authorities of foreign countries, other information which may be associated with any suspicion of preventing and counteracting to legalization (laundering) of the proceeds of crime, terrorist financing and financing proliferation weapons of mass destruction and/or other illegal financial operations, as well as the measures taken to verify such information in accordance with the legislation of Ukraine.

The State Financial Monitoring Service of Ukraine that is a central executive body which implements the state Anti-Money Laundering / Combating the Financing of Terrorism policy is the key element of the AML/CFT system. According to the Statute of the State Financial Monitoring Service of Ukraine [3], the activity of the State Financial Monitoring Service of Ukraine is regulated and coordinated by the Cabinet of Ministers of Ukraine through the Minister of Finance of Ukraine. The main areas of activity of the State Financial Monitoring Service are: 1) realization of the state policy in the field of prevention and counteraction to legalization (laundering) of proceeds from crime, or financing of terrorism, as well as making proposals for its formation; 2) collection, processing and analysis of information on financial transactions subject to financial monitoring, other financial transactions or information that may be related to suspicion of legalization (laundering) of proceeds from crime or terrorist financing; 3) creation and maintenance of functioning of a single state information system in the field of Anti-Money Laundering/Combating the Financing of Terrorism.

The Financial Action Task Force (on Money Laundering) (FATF) [6] develops International Standards and Anti-Money Laundering Measures. The Financial Action Task Force is an inter-governmental body established in 1989 by the Ministers of its Member jurisdictions. The objectives of the Financial Action Task Force are to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system. The Financial Action Task Force is, therefore, a “policy-making body” which works to generate the necessary political will to bring about national legislative and regulatory reforms in these areas.

The Financial Action Task Force has developed a series of Recommendations that are recognised as the international standard for combating of money laundering and the financing of terrorism and proliferation of weapons of mass destruction. They form the basis for a co-ordinated response to these threats to the integrity of the financial system and help ensure a level playing field. First issued in 1990, the Financial Action Task Force Recommendations were revised in 1996, 2001, 2003 and most recently in 2012 to ensure that they remain up to date and relevant, and they are intended to be of universal application. The original Financial Action Task Force Forty Recommendations were drawn up immediately after the creation of the Financial Action Task Force in February 1990 and was published in April of the same year as an international programme to combat the misuse of financial systems by persons laundering drug money. The Financial Action Task Force Forty Recommendations twice reviewed and accepted the new wording at the plenary session in June 1996 and June 2003. The Financial Action Task Force Recommendations allow States to reveal some flexibility in their implementation, taking into account the particularities of the national legal system. Today, around 180

countries, members of the Financial Action Task Force and its regional groups, have confirmed their readiness to implement 40 recommendations in the 2003 edition. An important role in their dissemination and effective implementation has also played the self-assessment and mutual evaluation system adopted by the Financial Action Task Force.

All editions of the Financial Action Task Force Forty Recommendations cover four major blocks of issues: 1) criminal prosecution of persons involved in money laundering, including security measures and confiscation of criminal proceeds; 2) measures taken by financial institutions to prevent money laundering; 3) institutional arrangements, including the establishment of regional structural units to counteract money laundering, as well as the legal and material support for the activities of law enforcement and supervisory bodies; 4) international cooperation in the field of combating money laundering, including as regards the exchange of information between competent authorities [5].

Among the most important innovations foreseen in the 2003 recommendations are the following: the inclusion of counter-terrorism financing as a target for preventative measures and international cooperation mechanisms; the extension of obligations to take preventive measures not only to financial institutions, but also to certain non-profit enterprises and professions; establish a direct order to set up a financial intelligence unit in each country in accordance with international standards.

The recommendations list the actions for which States parties should be held accountable: from participating in an organized crime group and racketeering to insider deals and market manipulation. Section B defines the responsibilities for combating money laundering for financial intermediaries (operators), including the specific nature of their activities.

Conclusion. To sum up, nowadays Ukraine has a fairly codified legislation that generally meets the international requirements for counteraction to the legalization of criminal proceeds, and also has appropriate domestic financial intelligence structures. Therefore, in my opinion, the most important task remains to improve the effectiveness of interaction between the State Financial Monitoring Service of Ukraine and the institutions of primary monitoring.

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ДЖЕРЕЛА ТРУДОВОГО ПРАВА

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У цій статті проаналізовано нормативну природу джерел трудового права, їх функціональне призначення в регламентації трудових та пов'язаних з ними відносин. Досліджуються особливості джерел трудового права, закономірності їх становлення й розвитку, проблеми узгодженості й підпорядкованості юридичних актів, що містять у собі трудові правові норми. Особливу увагу приділено проблемі приведення національного законодавства у відповідність до міжнародних трудових стандартів. Проаналізовано причини виникнення та способи усунення прогалін та юридичних колізій у трудовому праві. Визначено значення та місце у системі джерел трудового права локальних нормативно-правових актів.

Ключові слова: *джерело права, трудове право, нормативно-правовий акт, колізія, прогалина, Кодекс законів про працю, акти локального характеру, міжнародні стандарти.*

SOURCES OF LABOUR LAW

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This article analyzes regulatory nature of sources of labour law, their functional purpose in the regulation of labour relations.

The article investigates features of sources of labour law, regularity of their development and formation, problems of concurrence and subordination of legal acts. Particular attention was paid to the issue of taking national legislation in conformity with international labour standards. The main causes and ways of elimination of gaps and collisions in labour law are analyzed. The role and place in the system of sources of labour law of local normative acts are considered.

Key words: *source of law, labour law, normative act, collision, gap, Labour Code, local acts, international standards.*

Problem statement. As Ukraine is now developing as a democratic, social and law-based state, the problem of legal regulation of labour is becoming more and more important. The reason is that labour legislation has changed a lot recently. It is well-known that labour law regulates labour relations according to the material level of the society's development. Therefore, if the living conditions are changing, the sources of labour law are also altering. Especially, it is characteristic of the current situation, when economic relations and property categories are being modified, companies are denationalized, which leads to further development of labour relations.

First of all, it is necessary to determine what the source of law is. There are several meanings of the sources of law. One of them tells us that the source of law are material conditions of life of the society, economic, political and social needs of the relevant social groups that create the law. According to another approach, the source of law is an external form of expression of legal norms by which regulation of labor relations is ensured.

The sources of labour law have their own special features, which distinguish them from the sources of other branches of law. There is a great number of local acts, which are elaborated and

approved in a particular institution. It helps to provide the most effective regulation. Besides it, as a result of economic development, legal agreements are becoming more and more important. There are such kinds of legal agreements as: general, sectoral and regional agreement.

The next feature of the sources of labour law is the large number of normative acts. It is the reason why normative acts often contain contradictory provisions. The sources of the Ukrainian labour law include the Constitution of Ukraine, the Labour Code of Ukraine, normative acts, local acts, and international agreements, [2; 4; 3; 10].

Recent research and publications. Because of the fact that labour legislation is often changed, a thorough study of this problem is important. The research of different aspects of the sources of labour law has been presented in the works by Ukrainian and foreign scholars such as: N. Hytoryan, S. Ivanov, D. Karpenko, , P. Pylypenko, I. Shamshyn, D. Zoravych. Despite the fact that this problem is studied by a lot researchers, the sources of Labour law need further comprehensive studies because of the complexity of problems in the sphere of Labour law in the context of Ukraine`s integration into the European Union.

The purpose of the research. The aim of research is to study the main characteristics of the sources of labour law. The tasks of the research are as follows: the determination of the notion "sources of law", the definition of the place of the sources of labour law in labour legislation. The research investigates the notion, legal nature, the system of the sources of law and their features.

Presentation of the main material. The main source of the Ukrainian labour law is the Constitution, which has the highest legal authority. The provisions of the Constitution are the norms of a direct effect. Laws and other normative legal acts should be adopted on its basis and conform to it.

The Constitution proclaims the major labour rights and guarantees. For example, according to Article 43 "Everyone shall have the right to work, including a possibility to earn their living by working that they freely agree to". Besides, the Constitution consolidates that the state should create proper conditions for the citizens to fully realise their right to work. The most important principles of labour relations are as follows: the use of forced labour is prohibited, the employees are protected from unlawful dismissal, the employment of women and minors in dangerous occupations is prohibited, everyone has equal opportunities in the choice of profession, those who are employed have the right to strike in order to protect their interests.

The Ukrainian legal system belongs to the continental law system by its nature. It means that codified laws are main legislation sources. The Labour Code of Ukraine came into force in 1972. It has been added by numerous acts that regulate labour contracts, working hours, holidays, payments, social protection and the labour disputes resolution. On November, 5, 2015, the Verhovna Rada of Ukraine passed the draft of the new Labour Code, which is expected to replace the current Labour Code of Ukraine initially adopted in 1971. The main purpose of the Labour Code is to ensure safe and healthy conditions of working places, improvement of quality of work, increase efficiency and provide good relationship between employees and their employers.

Despite the made changes to the Labour Code, it does not provide full regulations of labour relations. Most articles are referral or blanket; therefore it is necessary to use other legal acts. The specific character of labour relations in certain sectors of economy and other objective conditions require specification of certain provisions of the Code in accordance with these conditions by adopting regulations of a by-law nature.

Legal acts are mandatory in the system of sources of labor law. Like other states of the continental system of law, Ukraine adheres to the principles of the centralized establishment of rules governing labor and closely related relations. Although there is a tendency to expand the sphere of decentralized legal regulation in labor law, the acts of public authorities will still determine priorities in the field of labour organization.

Ukrainian legislation has a lot of problems, one of them are numerous gaps. Laws and other normative acts are adopted to solve this problem. At the same time, as the number of laws increases constantly, certain contradictions appear among them.

The secondary legislation includes such normative acts as decrees and directives of the President of Ukraine, resolutions of the Cabinet of Ministers of Ukraine, orders, instructions, and other legal acts.

The decrees of the President of Ukraine in the sphere of labour law are aimed mainly at the implementation of laws and ensuring the guarantees of workers' labor rights established by them. The next source is the resolutions of the Cabinet of Ministers of Ukraine. They are issued in compliance with the Constitution of Ukraine, the Labor Code, other laws of Ukraine, normative decrees of the President of Ukraine. They are the acts of the executive power of Ukraine and in legal hierarchy of sources of law take place after the decrees and directives of the President of Ukraine.

In the system of sources of Labour law, the resolutions of the Cabinet of Ministers of Ukraine are of great importance among the sources of Labour law of Ukraine. They regulate the issues of working conditions of certain categories of employees, approve special "Regulations", a certain "Procedure", which determine the legal status of certain bodies and employees.

The departmental acts are also recognized as the sources of labor law in Ukraine. They include orders, instructions of branch

ministries, which contain provisions for particular issues of regulation of labour relations in the enterprises of a certain branch.

Moreover, a special place among the acts of the ministries is occupied by the instructions and explanations of the Ministry of Labor and Social Policy of Ukraine. The legal documents issued by this body ensure the correct interpretation and application of the current legislation on wages, labour regime in general and in certain sectors of economy.

The aim of local acts is to detail separate norms in conformity with special local conditions. Though, there are limitations stated in the Labour Code. The Labour Code asserts that if conditions fixed in a local act worsen the conditions of employees, they are considered invalid.

Ukraine, as a young state takes into consideration the experience of developed countries and our legislation should develop according to international standards.

Ukraine's first step in this direction were the Declaration of State Sovereignty of Ukraine, adopted on July 16, 1990, in which the Ukraine recognized "the priority of universal norms of international law over those of domestic law."

The Constitution of Ukraine, adopted on June 26, 1996, created the legal basis for the development of interaction between international and national systems of law, determined the conditions for the introduction of international treaties into the national law. According to article 9 of the Constitution of Ukraine «international treaties that are in force, agreed to be binding by the Verkhovna Rada of Ukraine, are part of the national legislation of Ukraine». The functional purpose of this provision is to recognize the extension of international treaties to the relations of subjects of domestic activity and jurisdiction, and to prescribe the application of these rules by courts, other bodies, economic entities, officials, citizens (individuals).

Ukraine is a member of different international organisations. One of them is the International Labour Organisation created in 1919. It sets labour standards that promote the rights to work, encourage decent employment opportunities and enhance social protection. These labour standards are proclaimed in conventions and recommendations of the International Labour Organisation. It is commonly accepted that the Convention and the Recommendation form the International Labour Code.

The recommendation of the International Labor Organization does not impose any obligation on States. By adopting the Recommendation, the International Labour Organisation makes a proposal, "recommends" to States that national labour law rules should comply with the norms set out in the Recommendation.

International agreements are sources of law in Ukraine. According to the decision of the Verhovna Rada of Ukraine international acts make up a part of the national law. It means that these conventions and recommendations have higher legal power than the national legislation and the latter should conform with international legal norms and standards.

Conclusion. We can make a conclusion that Ukrainian legal system has a well-structured hierarchy of normative acts. The sources of Ukrainian labour law are changing as labour relations are developing, a great number of new normative acts are adopted and most of them conform with international labour rights.

On the other hand, as a result of recent transition towards a market economy, Ukraine does not have a mature legal system comparable to the legal systems of most European countries. Although new laws have been introduced and amendments have been made to labour law, this legislation is still underdeveloped and contains many loopholes.

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РОЗПАД НІМЕЧЧИНИ, УТВОРЕННЯ ФРН І НДР: ЇХНІЙ ПОДАЛЬШИЙ РОЗВИТОК. ОБ’ЄДНАННЯ НІМЕЧЧИНИ В ЄДИНУ ДЕРЖАВУ

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У статті проаналізовано історію утворення ФРН та НДР, їх розвиток, об’єднання Німеччини в єдину державу. Ця стаття розпочинається з короткої історії про розпад Німеччини. Визначено основні передумови цього розпаду.

Згадано про зони контролю. Зазначено про Берлінську стіну. Описано етап проголошення та розвитку ФРН та НДР. Детально описано процес об'єднання Німеччини.

Ключові слова: розпад Німеччини, ФРН, НДР, об'єднання Німеччини.

**THE DIVISION OF GERMANY:
THE FORMATION OF THE FRG AND THE GDR,
THEIR FURTHER DEVELOPMENT AND
GERMAN UNIFICATION IN ONE STATE**

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The formation of the FRG and the GDR and their further development, German unification in one state are analyzed in the article. This article overviews a short history about the division of Germany. Main preconditions of the collapse are determined. Zones of control are mentioned. The fact of the Berlin wall is observed. The phase of the formation of the FRG and the GDR and their further development is described, as well as the German unification.

Key words: *division of Germany, the FRG, the GDR, German unification.*

Problem statement. The theme is of the article is very topical, especially in these times when there is a conflict in the east of Ukraine, because there are countries that want to connect our homeland to their lands. And to prevent this, we must pay attention to the German experience and remember this story to avoid such mistakes in Ukraine.

Recent research and publications. The division of Germany was researched by many scientists. For example: A.A. Tsybulno described the German unification: historical background and geopolitical implications. B.J. Tyshchyk in his book described the formation of the FRG and the GDR and their further development, as well as German unification in the one state. These questions are included also in books, written by V.S. Makarchuk, V.D. Honcharenko, V.P. Hlynianskiy and many others. The analysis of all these books and articles indicated that the main provisions of the postwar Germany were made at the Potsdam Conference. There were 4 zones of control. Life in the FRG was easier than in the GDR.

The purpose of the article is to learn the experience of Germany and try to avoid the mistakes of this country, preserving the integrity of the lands of Ukraine.

Presentation of the main material. Germany as a sovereign state ceased to exist on May 8, 1945. After the defeat in the Second World War, its statehood was suspended. Large areas were separated from Germany and the rest areas were divided into 4 zones of occupation: Soviet, American, British and French. December 2, 1946 Britain and the US signed an agreement about the unification of their zones of occupation. In this way Bizone was formed. In February 1948 France joined this agreement and Bizone transformed into Tryzoniya. In the united western area a government began to form rapidly – for example, economic and educational council, the Supreme Court, German land bank, etc. On June 20, 1948 in the western zones a monetary reform was carried out. It introduced a new German mark. The reform stopped inflation, contributed the disappearance of the "black markets." In 1949, the industry has reached pre-war levels. In September 1948 a constitution was designed. The major law came into force on May 23, 1949 when it was approved by the occupation authorities.

The Constitution enshrines fundamental civil and political freedom and declared West Germany as a democratic federal state. Apart from traditional set of bourgeois freedoms, German lawmakers included into the list of fundamental rights an article, the need for which emerged after the Weimar Constitution. German constitution proclaims: a person who uses fundamental rights to eliminate them, will be deprived of these rights. A right of free expression of political views is banned as well.

The formation of the FRG and the GDR. In 1949 a West Germany included 11 lands, each of which received its own constitution, legislative, executive and judicial authorities. By the form of government Germany was a parliamentary republic. Bundestag performed functions of the Parliament, whose deputies had been elected for 4 years. Functions of the president were purely representational, but the power of the Chancellor, who was elected by the Bundestag, was extremely high. In 1949 the leader of the CDU-CSU Konrad Adenauer formed a coalition government. By this formation the FRG was completed. In contrast, on October 7, 1949 the Soviets announced the formation of the GDR on the territory of its zone of occupation, while the FRG was declared in the territory of Tryzoniya [17, p. 297]. As well as the whole of Germany Berlin was divided into 2 parts: its eastern part became the capital of the GDR. In 1952 in Germany the occupation regime was canceled. In 1955, West Germany became a NATO member that completed the split of Europe into two warring camps. Internal political situation in the FRG was formed as a bourgeois parliamentary republic headed by the President and the GDR – as the Socialist parliamentary republic headed by the President as well [7, p. 848].

There are the following comparative characteristics of the FRG and the GDR: 1) Nazi party and ideology were banned (but in 1958 an allied treaty about banning of National-Socialist party in

Germany was canceled); 2) in 1952 the occupation regime in Germany was deactivated; 3) on the whole, political situation was stable; social discontent manifested in the controlled form (on the one hand, due to a high level of life, and, on the other, due to a cruel state control; since 1949 contrary to the Potsdam Conference a military power of FRG began to revive; 4) in 1966 a regular army was established, Germany was increasingly trying to buy nuclear weapons and began to create its own nuclear industry; 5) Nazi party and ideology were banned; 6) in 1956 there was a creation of the National People's Army; 7) on the whole, political situation was stable, as well as in FRG; 8) the symbol of totalitarianism in East Germany was the Berlin Wall, built by the decision of the government of the GDR along West Berlin, and the closure of the border with the FRG (1961).

The Berlin Wall was built on August 13, 1961. Along the border, that counted 44.75 km, between two parts of Berlin there were introduced 81 Street crossing points and 13 checkpoints in the railway network. However, there were also hundreds of illegal crossings from one part of the town to another. It was used daily approximately by thousands of people for various reasons. East Germans wanted to be educated in the GDR, because there it was free, and to work in the FRG. Berlin Wall lasted until 11th of September 1989, during its existence was repeatedly rebuilt and expanded. The wall was one of the most famous symbols of the Cold War and the division of Germany. While trying to cross the border in the direction of West Berlin, many people were killed.

Unification of Germany. In the second half of 1980, the population of the GDR revealed more and more dissatisfaction with the absolute power of the Social Democratic Party of Germany and security, lack of basic civil liberties, censorship, banned private trips to Germany and other Western countries, the GDR isolation from the civilized world. Falsification of elections to the local

authorities in May 1989 caused the outrage and protests from the public. Dissident groups began to unite in a broad democratic movement called "new forum." In summer 1989 escapes of the GDR citizens to the West have gained a mass character [6, p.359]. At the same time in Leipzig, Dresden, Berlin and other cities there were mass demonstrations. People demanded freedom and democratic change. The Government gradually lost control over the situation in the country. At the night of the 10th of November 1989 the opening of the border between East and West Berlin took place. Berlin Wall, which had been for 28 years, was destroyed. During that time more than 5,000 escapees from East Berlin had overcome it. Later a question about the unification of two German states arose. The Constitution provided entry of the eastern states to the FRG after the dissolution of the GDR.

In March 1990 at the elections in the GDR the Christian Democrats won, who agreed on the unification of Germany on the terms of FRG. On 31st of August 1990 in Berlin an agreement about the unification of Germany was signed, which provided entry of the GDR to the FRG [6, p.326]. October 3, 1990 act of reunification of Germany was solemnly proclaimed. That was an event of great historic importance not only for the German people, but also for Europe and the whole world.

Conclusion. The process of unification of Germany was an event of great importance – it initiated the collapse of the socialist camp, contributed to the formation of the current map of Europe and the emergence of the German state to new frontiers – in the world of globalization and European integration. This historical example has shown that if we start to change ourselves without complaining about others, to act together, in a group, we will be able to restore order in our country.

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ПОНЯТТЯ ТА ЗМІСТ ПОДАТКОВОГО ПРАВА УКРАЇНИ

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У статті сформульовано та з'ясовано предмет та методи податкового права. Особливу увагу приділено основним проблемним аспектам цієї теми, які стосуються визначення таких правових категорій як «поняття» та «зміст», та місце в системі права України. Визначено також чинні нормативно-правові акти, що регулюють відповідні суспільні відносини.

Ключові слова: *поняття, зміст, інститут, підгалузь, галузь, норма податкового права.*

THE CONCEPT AND CONTENT OF TAX LAW OF UKRAINE

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The subject and methods of tax law are formulated and clarified in the article. Particular attention has been paid to the

main problematic aspects of this topic, which concern the definition of such legal categories as "concept" and "content" and the place in the system of law of Ukraine. As well, the current national legislation regulating the relevant social relations has been analyzed.

Key words: *concept, content, institute, sub-branch, branch, tax law provision.*

Problem statement. For today, there is a need to unify and improve tax terminology and harmonize the national legislation in this field in accordance with European standards. Having analyzed numerous studies of scholars and theorists of law, we can point out that there is no comprehensive scientific understanding of the concept and key terms; the views are usually diverse. The question of the place of tax law in the system of financial law of Ukraine still remains debatable, since there are various arguments whether it is an institution, a sub-branch or an independent branch of law.

The provision of resources of various spheres of public life, satisfaction of both public interests of the state and local self-government, and the private interests of all citizens of Ukraine are depended on the stable financial system. As well, it should be noted that this stable functioning is first and foremost provided by the qualitative and concerted legal regulation.

Recent research and publications. The significant contributions to the research of the question of the concept and content of tax law have been made by many domestic scientists. I. Babin, N. Prishva, O. Musica-Stefanchuk, L. Voronova, M. Kucheryavenko described this issue in their textbooks. Among them, the fundamental one is a six-volume work by M. Kucheryavenko "The Course of Tax Law". Moreover, L. Voronova is also known to have published a financial terms dictionary. Y. Shemshychenko is prominent for his legal

encyclopedia. The issue was also discovered by foreign researchers I. Enaleeva, L. Salnikova, D. Vinnitsky, R. Farmer, R. Lake and many others [3, p. 1].

The purpose of the article. The main purpose of this article is to outline the concept of tax law of Ukraine and analyze its correlation with the financial law as an independent branch of law, characterize the subject, methods, main provisions and institutions as well as the legal regulation of tax law in Ukraine.

Presentation of the main material. It should be noted that the formation of the terminology in the field of tax law occurred simultaneously with the development of taxation in Ukraine. Based on the analysis of the works of Ukrainian scientists, it is believed that the terminology of tax law of Ukraine is a set of tax legal terms and terminological references used in the tax legislation of Ukraine.

The source of tax law is a form of expression of the law-making activity of the state regarding the adoption of normative acts establishing the rules of tax law by the competent authorities. Thus, it is possible to distinguish the following sources of tax law of Ukraine:

- 1) The Constitution of Ukraine (for example, Article 67, Article 92 of the Constitution of Ukraine);
- 2) The Tax Code of Ukraine, The Customs Code of Ukraine;
- 3) Laws of Ukraine "On taxation system", "On amendments to the Tax Code of Ukraine and some other legislative acts of Ukraine on improving the administration of excise tax" and many others;
- 4) the international treaties, the consent to the obligation of which are given by the Supreme Council of Ukraine;
- 5) legal acts adopted on the basis and on the implementation of the Tax Code and laws on customs (for instance, resolutions of the Supreme Council of Ukraine; decrees of the President of Ukraine; decrees and resolutions of the Cabinet of

Ministers of Ukraine, decrees of the State Tax Service of Ukraine and others, adopted by the relevant bodies in within the limits of powers and under the Constitution of Ukraine and the laws of Ukraine);

- 6) Decisions of the Supreme Council of the Autonomous Republic of Crimea, local self-government bodies on local taxes and fees, adopted according to the rules established by the Tax Code of Ukraine.

The main national act in this sphere, the Tax Code of Ukraine, regulates the relations of the collection of taxes and fees, in particular, the list of taxes and fees that are levied in Ukraine, the procedure for their administration, taxpayers, their rights and duties, the competence of the controlling authorities, the powers and duties of the officials during the tax control, as well as the responsibility for violation of tax legislation. The tax law does not cover relations arising from the payment of tax obligations or the collection of tax debt when talking about a person to whom the legal proceedings are applied [6]. In this Code, many concepts and terms are used in the meaning that differs from the concepts and terms set out in other legal acts.

In order to find out the place of the tax law in the system of law of Ukraine, namely – whether it is a financially legal institute, a sub-branch or an independent branch of law, in order to give the definition of tax law, it is necessary to conduct a comparative analysis of the financial and tax law.

The proposal to introduce into the system of financial law a sub-branch as a set of certain financial and legal institutions was made in the due course by Y. A. Rovensky.

M. I. Piscotin notes that in order to form a sub-branch of the financial law, a set of legal rules must be given certain features and regulate a particular sphere of homogeneous relations. Because of this, the provisions that form it must have a certain specificity that

separates them from the general mass of norms of a given field of law and at the same time gives them a certain internal unity. It does not separate into an independent industry because it has more in common than a specific one, compared to other rules of financial law, and the state does not have a political interest in its independent and separate development [8, p. 116]. Sub-branch of law, following S. S. Alekseev, is the most developed association of legal institutions. According to this, tax law cannot, in principle, be a sub-branch of financial law, since it is included not directly, but as a component of a larger financially legal entity – Public Revenue [1, p. 127].

Some scholars believe that tax law, despite the rapid development of its individual elements, meets the criteria not of branch or sub-branch, but of the legal institute. Moreover, most scientists agree with this point of view, as, according to the national legislation, this opinion really seems to be the most appropriate.

Based on this position, the concept of the tax law can be formulated. The tax law is a complex institution of the financial law that regulates the fundamentals of the revenue part of the budget. The complex nature of the institute of the tax law implies a certain hierarchical structure that includes independent basic tax institutes (institute of taxation of individuals; institute of local taxes and fees; institute of tax liability, etc.). In conjunction with all the institutions of the financial law, the tax law is closely linked to some of them, primarily budgetary law and with the institute of Financial Control (which includes a set of rules governing tax authorities). In addition, a number of financial control bodies exercise their authorities through tax administrations and other tax authorities.

The tax law system is an objective set of financially legal norms that determine the internal structure of the tax law, the content and peculiarities of placement of its institutions. There are some features that characterize these provisions: significance,

stability, formal certainty and protection by the state. The basic one among them is the official establishment (sanctioning or creation) of such norms by the state and protection by the state coercion [7, p. 69]. There are two aspects of the obligation of the tax law. On the one hand, it is about exercising an unconditional imperative tax obligation, which the state attaches paramount importance to in view of the constitutional fixing of its basis under Art. 67 of the Constitution of Ukraine [10]. On the other hand, this is usually an opportunity and a need for the state protection of tax law, in fact, the obligation to apply measures of the state coercion in the case of unlawful acts [7, p. 70].

A comparative analysis of the subject matter and method of legal regulation of tax and financial law shows that today there are no objective grounds to classify tax law as an independent branch of the Ukrainian law. The subject matter of the regulation covers a set of certain, specific relations, which makes it possible to distinguish them from the total mass of financial relations. Their peculiarity is the movement of money into the property of the state and territorial communities from the «bottom up» (from the taxpayer to the budget) in the form of taxes and fees. Relations regarding the distribution of these funds, their allocation to meet the public needs are not subject of tax law, although they are governed by financial law.

There can be distinguished the imperious and property parties. The relations about taxes and fees include both of them. On the one hand, the state empowers the competent bodies with the appropriate authority and controls the flow of the funds to the budget, and on the other hand, the tax revenue is one of the main state ownership channels, though initially in a specific monetary form [5, p. 97].

If talking about the method of legal regulation, the tax law is a little different from the traditional method of the financial law,

which is based on the method of power dispositions. However, it is characterized by a peculiar mechanism of regulation, special intertwining of rules and legal regime. The method of tax law is a financially legal one and involves the application of mandatory rules [7, p. 78]. However, this matter is also disputable. For instance, M. Karasova points out that the state, for the fulfillment of its tasks and functions, sets strict limits of behaviour for the subjects of tax relations within which there is given some freedom of behaviour. She agrees that the main method of the financial law still remains the method of the power prescriptions, nevertheless, in some cases (for example, the conclusion of a financially legal contract when granting a tax credit), a loyal imperative method is used, which is a symbiosis of imperative-dispositive principles [4, p. 124-125]. M. Kucheryavenko also adds that some freedom of subordinate entities is possible only within the limits that are formulated by imperative regulations [5, p. 145].

Conclusion. To sum up all mentioned above, despite the existent regulation of the matter of tax issues, common institutions and concepts of taxation in general are developed and adjusted according to the needs of economic and social development, significantly influencing the formation of the tax legislation. In this regard, the development of a special conceptual apparatus in tax law is of paramount importance. In future, such an apparatus may serve to achieve the uniformity and consistency of terms and concepts in tax acts, the introduction of the necessary minimum of economic terminology used in tax regulation and the harmonization of the scope of tax regulation.

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МЕДІЙНЕ ВИСВІТЛЕННЯ ЧОРНОБИЛЬСЬКОЇ КАТАСТРОФИ: НАСЛІДКИ ПРИХОВУВАННЯ ПРАВДИ

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У статті зроблено спробу дослідити трагічні наслідки Чорнобильської аварії для усього світу, спричинені як самою ядерною катастрофою, так і безпрецедентним та навмисним приховуванням її справжнього масштабу радянською владою.

Ключові слова: приховування правди, Чорнобильська катастрофа, радіоактивне забруднення.

MEDIA COVERAGE OF CHORNOBYL DISASTER: CONSEQUENCES OF SUPPRESSING THE TRUTH

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The article presents attempts to investigate the enormous damage, caused to the world both by the nuclear disaster in Chernobyl itself and by the unprecedented and intentional cover-up of its real scale by the Soviet authorities.

Key words: *suppressing the truth, Chernobyl disaster, radioactive contamination.*

Problem statement. The article emphasizes the importance of conveying all information about the disaster to the public. Information that has been hidden for years now is freely available for detailed study and processing.

Recent research and publications. What we know about Chernobyl disaster is largely based on recent research of historians and journalists. Until recently, information about Chernobyl nuclear power plant explosion had been suppressed by Soviet and even independent Ukraine's authorities. Thus, our research has been conducted based on the factual data that have become known only recently through reports of the Ukrainian Institute of National Memory [5], audio installation of the interviews with the witnesses recorded by V. Marushchenko [4], and also in the works by Vasyuta S.I. [2], Zanuda A. [7] and others.

The aims of the study are: to highlight the information about how the Chernobyl explosion had been suppressed by the media and to show the fragments of documents which have been classified for 20 years.

Presentation of the main material. Chernobyl nuclear power station's is a dark spot in history not only for Ukraine but for a whole world. April 26, 1986. 01:23 AM is a tragic time when there had taken place the events that significantly changed the life of thousands people and had a global consequences.

On that fateful night the fourth energy block had been stopped for preventive repairs and rotor turbogenerator tests. Tests had started at 01:23 AM. In a few seconds the sudden jump of power entirely destroyed the 4-th reactor. Station workers who organized the test immediately died.

At about 01:24 AM the alarm about Nuclear Power Plant (hereinafter) NPP burning had been sent to the remote of the security military station. In five minutes a guard with firefight crew from Pripyat arrived. Firefighters prevented spreading the fire onto other energy blocks. Liquidators who worked at the Chernobyl NPP did not have protection uniform. They had received enormously high portion of radiation and died soon.

Many Pripjat citizens became witnesses of the tragedy by watching the explosion from the windows of their houses. But they didn't realize the true scale of that explosion until the next day. The whole day of April, 26th people were walking and breathing the air full of radiation. Evacuation began only on April, 27th. They were strictly forbidden to take along any clothes, pets and toys. They could pack only documents and some necessities. In order to avoid the panic, citizens of Pripjat were led to believe that they may come back home in 3 days.

"The statement which reveals real causes of the accident is classified. The statement about radiation is classified. The general statement about the country, republic, districts are classified" [1].

In the recently declassified KGB documents we can analyze what was the purpose of the government in the first hours, days, weeks and months after the explosion. The main goal was not the

rescuing people. The main goal was to prevent the spread of information about the disaster.

In their special messages KGB didn't even mention the pressing necessity to inform the public. Quite the opposite, on April 29, 1986 the deputy of Security Committee had written: "Measures are being taken to prevent the spread of panical rumours as tendentiousl information" [2]. The KGB authorities regarded spread of any information about Chornobyl as a lie against the Soviet state. For spreading the information people were sentenced to as much as 3 to 10 years according to Article 62 of Soviet Constitution "Anti-Soviet agitation and propaganda".

Official messages started appearing in Soviet media only on April 28th. The reason for this was international groups' pressure. The Soviet agency TASS informed people with brief messages: "There was an accident at Chornobyl NPS, one of atomic reactors was damaged. Injured workers and firefighters receive the medical assistance. State commission had been created". There was not a single word of warning about the grave health risks and how to minimize them.

Here is the witness's account: "The major Kyiv highways were under strict control by traffic police. It was almost impossible to get away from the city – unless by the forest path" [3]. But at the same time, somebody tried to inform the citizens of Kyiv about real magnitude of the tragedy. "On the phone-box's doors were found cards. At these cards somebody wrote his thoughts about consequences of the tragedy at the NPS", said another witness [4].

Despite everything, on May 1st the Communist party held the parade to mark the International Worker's Day. Hundreds of thousands of people including children were urged to take part, at the time when the radiation level was above the upper limit by a factor of ten. Children of the Party deputies were absent from the celebration. Evacuation started only on May 3. The Government

evacuated the population living in 10-km zone. By May, 6 the transportation of people from the 30-km zone had finally started.

However, suppressing and withholding the information of the disaster had been going on in the following years.

In 1987 the citizens of the Kyiv districts «Troeshchina» and «Kharkiv shosse» who were evacuated from 30-km zone planned to meet in Kyiv centre and protest against the negligible compensation and intentionally incorrect diagnoses. The KGB derailed their plans. “The government had prohibited any negative reactions or revolution in Kyiv and the villages nearby” [5]. But in 1988 the first unsanctioned demonstration dedicated to Chornobyl accident was held in the Independence Square (then – October Revolution square). The organizer was the Ukrainian cultural club. They prepared the banners: ecological – “No to Future Chornobyls” (Ні – майбутнім Чорнобилям), “Get NPPs out of Ukraine” (Геть АЕС з України) and political – “All Power to (the Ukrainian) Council” (Вся влада – Раді) and “Transparency to Ukraine” (Гласність в Україні) [6].

Demonstrators started to be arrested by the militia from the very beginning of the demonstration. But passers-by began joining those who had stayed there (majority of them were women). Generally, there were above 100 people. They had taken each’s other hands and created the “chain”, because militiamen in disguise started to resort to violence and tore apart the banners.

The majority of those detained were set free at that night. But one of leaders of Ukrainian cultural club was arrested for 15 days. He was reading out loud the Constitution article about right of assembly and demonstration. He said: “Who does not agree with me – I let him arrest me”. He was arrested at once, Constitution was tore apart into pieces.

Fall of 1988. The first legal demonstration in Kyiv under ecological claims brought together about 40 thousand people. They

chanted «Let the KPSS on the Chornobyl NPS live!». The German correspondent Andreas Lonce at the moment of explosion was working in Moscow. Message about accident he received from Germany. «Foreign media had called me and reported that something happened, but we were not able to estimate how huge it was. One newspapers wrote about 2 victims. Other media had published information about thousands of deaths».

Report on Chornobyl was placed next to «Sport» column in German newspapers. There were no details about the possible consequences for human health.

In stark contrast to Germany, in France Chornobyl issue was on the first pages of popular magazine. Their correspondent personally visited Kyiv personally. He was deeply impressed by the calmness of the reaction. «Fruit and vegetables are covered by the plastic wrap, like protection from radiation. But people are getting a sun-tan» [7].

Now we think we know everything about Chornobyl explosion. But there was so much suppressed information. Regrettably, there is a great amount of information we will never get to know. Monitoring the results of the international consultative group INSAG investigation, CNPP accident was connected by the whole complex of reasons, such as: 1) an initial project did not match the safety rules and had dangerous flaw in its construction; 2) the staff was not qualified enough; 3) violation of instructions and negligence in handling prevention systems [8].

The consequences of Chornobyl NPS explosion have had massive and disastrous effects. Radioactive contamination has spread over 200 thousands square kilometres, 70% of them is the territory of Ukraine, Belorus and Russia territory.

The disaster in Chornobyl had also other consequences: the economic and political toll accelerated the collapse of the USSR and triggered global anti-nuclear movement. It has been estimated

that the disaster cost came up to 235 billion dollars in damages. Belarus, which saw 23% of its territory contaminated by the radiation, lost a fifth of its agricultural land [9].

Ecosystems affected by Chernobyl have been studied and monitored extensively for the past two decades. Major releases of radionuclides continued for ten days and contaminated more than 200 000 square kilometers of Europe [10]. Nature in exclusion zone is extremely renewing now. Rare species of plants and animals have appeared. In 2017 was registered Chornobyl radiation ecological biosphere reserve. Also, in 10-km zone near CNPP the sun electrostatics and industrial areas will start working, where the utilization of radioactive waste will be the carried out.

Conclusion. Documents which have been classified for a long time prove that the Soviet authorities intentionally suppressed information about CNPP explosion and radioactive contamination from ordinary people and other countries. Witnesses' evidence shows that the government fiercely resisted those who wanted to get to the truth about what had really happened.

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УМОВИ ПРАВОМІРНОСТІ НЕОБХІДНОЇ ОБОРОНИ

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У цій статті розглядаються питання щодо визначення правової природи інституту необхідної оборони як самостійного кримінально-правового інституту, охарактеризовано загальне поняття необхідної оборони, визначено його зміст та встановлено його значення. Здійснено

аналіз законодавства щодо визначення умов правомірності необхідної оборони.

Ключові слова: необхідна оборона, умови правомірності необхідної оборони, посягання, захист.

TERMS FOR LEGITIMACY OF THE NECESSARY DEFENCE

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This article considers the issues of determining the legal nature of the institution of the necessary defence as an independent criminal law institution, describes the general concept of the necessary defence, defines its content and establishes its meaning. The legislation on determining the terms of legality of necessary defence is analyzed.

Key words: *necessary defence, terms of legitimacy of necessary defence, encroachment, protection.*

Problem statement. The Ukrainian society is undergoing social transformations that have significantly changed its structure and hierarchy of values. According to the Constitution of Ukraine, the highest social value is a person, his/her life, health, honor, dignity, integrity, and safety [6]. However, in the current context of a critical political, social-and-economic situation in the country that is at war, there are numerous problems associated with increasing criminality. Violent crimes are particularly widespread. There is a great accumulation of weapons in the society both in the legal and illegal or criminal environment. The number of crimes committed by means of weapons, explosives, and explosive devices is increasing.

So, in such circumstances, the state cannot fully guarantee everyone reliable protection and security against criminal encroachments, and too often a person is left alone to protect his/her life, health and property. For any democratic society, the priority area in the sphere of human rights protection is in creating a proper legal basis for their protection. Therefore, Article 27 of the Constitution of Ukraine enshrines the right of the citizens to protect their lives and health from unlawful encroachment [6]. In this fundamental constitutional provision, the legislator has enshrined the legal basis for exercising the right to the necessary defence. Necessary defence, as an independent criminal institute, has been legally enshrined not only in constitutional, but also in criminal law provisions, since the right to life and health are inalienable, inviolable, natural rights of every person, and their protection is the basis of any civilized system of law.

But unfortunately, persons who have been lawfully defending themselves in the state of necessary defence are too often prosecuted and convicted, so it can be considered that the law enforcement practice regarding the exercise of the right of defence by citizens is extremely unsatisfactory today. Accordingly, the necessity of researching the institute of necessary defence to facilitate the correct establishment of its features in each case, as well as the signs of exceeding its limits and assessing the legitimacy of causing serious harm in exceeding the limits of the necessary defence, is of great theoretical and practical importance.

Recent research and publications. Many scholars in the field of criminal law have worked to clarify the essence of necessary defence as one of the circumstances that excludes the criminality of an act. A significant contribution to the study of these problems was made by M. Bazhanov, V. Stashys, V. Tatsiy, D. Moshenets, Y. Baulin, M. Korzhansky, T. Stolyar, T. Duyunova, B. Orlovsky, G. Andrusyak, I. Slutsky, I. Tyshkevych, V. Tkachenko, and others.

Their works contain provisions that formed the basis of the reform of criminal law in terms of regulating the circumstances that exclude the criminality of the act, including the necessary defence. However, in the works of scientists there are issues that have not been unambiguously resolved. Many aspects of the necessary defense still remain controversial and require further research.

The purpose of the article is to clarify the legal nature of the institution of necessary defence as an independent criminal law institution, as well as analysis of the current legislation to determine the terms of legitimacy of the necessary defence. To achieve this purpose, such tasks were set: to reveal the essence of the necessary defence as a circumstance that excludes the criminality of the act; to determine and characterize the terms of legitimacy of the institution of necessary defence, which relate to encroachment and protection.

Presentation of the main material. Art. 36 of the Criminal Code defines the necessary defence as actions taken to protect the rights and interests of the person who is protecting himself/herself or another person, as well as the public interest and the interests of the state against publicly dangerous encroachment by causing harm to the offending person, at the same time this harm should be necessary and sufficient in this situation for immediate diversion or termination of the encroachment, if the limits of necessary defence are not exceeded [7]. Therefore, the necessary defense is a legitimate measure against a socially dangerous encroachment in the interests of the citizens and the state, which are protected by criminal law by causing harm to the assaulter, subject to certain conditions.

According to Part 2 of Art. 36 of the Criminal Code, every person has the right to the necessary defence, regardless of the possibility of avoiding a socially dangerous encroachment or the ability to seek the assistance of other persons or authorities.

Accordingly, the right to protection is a natural, inalienable, absolute human right, regardless of his/her physical or professional training [7]. It means that no one can prevent a citizen from lawful exercising the right to the necessary defence. The right to the necessary defence is independent, not additional (subsidiary) in regard to the activity of state bodies and officials specially authorized to protect law and order. It also follows from this provision that the existence of the right to the necessary defence is not connected with the ability of a person to seek help from other citizens.

The exercise of the necessary defence is a subjective right, not a duty of the citizen, so the refusal to exercise this right entails no responsibility. Besides, the citizen is not obliged to inform the state authorities or officials of the act of defence he/she has committed, although he/she may make such notification for the correct and timely resolution of a criminal case initiated in connection with a socially dangerous encroachment [3, p. 425].

Since the acts committed in a state of the necessary defence, by their external features fall under the signs of a crime, in order for these actions to be recognized as lawful, certain conditions must be met. Accordingly, when it comes to the necessary defence, the question of protection against attack arises first. Therefore, the terms of legality of defense are characterized as encroachment and protection from it. Therefore, in the theory of criminal law of Ukraine, the terms of legitimacy of the necessary defence are divided into two groups: 1) conditions relating to the encroachment; 2) conditions relating to protection [11, p. 146].

The terms of legitimacy of the necessary defence, which characterize the encroachment, include social danger, availability and reality [5, p. 503]. The first condition of the necessary defense, which characterizes the encroachment, should be called *social danger*. Analyzing Art. 36 of the Criminal Code of Ukraine, it can

be stated that the basis of the necessary defence is an encroachment that constitutes the public danger, and such an encroachment does not necessarily have to be criminal. As E. Kisilyuk and D. Moshenets rightly emphasize in this regard, the social danger of the act is not equivalent to its criminality, because the crime is characterized by a certain set of features, and social danger is one of them. The encroachment can be socially dangerous and illegal in its objective features, but not necessarily criminal. Considering social danger as a condition for the legitimacy of the necessary defence, we must speak of an objective social danger of encroachment, namely: the ability of an act to cause harm or create a threat of harm to the rights and interests protected by criminal law.

Thus, socially dangerous encroachment should be understood as active actions of a person aimed at harming the rights and interests of a person, the interests of third parties, as well as public or state interests of Ukraine protected by the Criminal Code, regardless of the presence of all subjective signs of crime [5, p. 505].

The second term for the legitimacy of the necessary defence that characterizes the encroachment is its *availability*. This condition is determined by the initial and final moments of the socially dangerous encroachment. The encroachment can be considered available in two cases: first, the encroachment has already begun, and, second, there is an imminent threat, the implementation of which is so obvious that failure to take protective measures endangers the rights and interests protected by law [10]. The final moment of encroachment is determined by the fact that the threat of danger passes completely and definitively. However, it is necessary to mention that such a situation is adequately assessed by those who carry out the necessary defence. It is important to realize that the encroachment is indeed over. Thus, the moment of the end of the encroachment must be clear,

understandable to the person who has suffered the encroachment [5, p. 507].

Another important term for the legitimacy of the necessary defence is the *reality of encroachment*. That is, the necessary defence is permissible only against actual encroachment. The encroachment must exist objectively, in reality, and not only in the imagination of the person who protects himself/herself [8, p. 259-260]. Thus, this feature allows to distinguish between the necessary defence and imaginary defence.

The terms of legality of the necessary defence are defined in the criminal law literature as: 1) the legitimacy of the object of protection; 2) protection may be exercised by causing harm only to the person committing the encroachment, and not to a third party; 3) timeliness of protection; 4) the proportionality of the protection of the character and danger of encroachment.

Thus, one of the first terms for the legitimacy of the necessary defence, relating to protection, is the right to protection of a certain range of public relations as objects of criminal law protection. Analyzing Art. 36 of the Criminal Code of Ukraine, it can be noted that the objects of protective actions in a state of the necessary defense are legally protected rights and interests of the protected person or another person, as well as public interests and the interests of the state.

The next term for the legality of the necessary defence, concerning protection, is the infliction of harm to the person committing the encroachment. Inflicting damage to a third party precludes a state of necessary defence. In the case of harm to a person not involved in the encroachment, the actions of the person, who protects himself/herself, must be considered in terms of imaginary defence or criminal liability on general grounds, depending on the circumstances of the case [11, p. 148].

Protection must be timely, which is one of the conditions for the legitimacy of the necessary defence. The timeliness of protection means that protection must coincide in time with the socially dangerous encroachment, that is at the time of taking protective action, a socially dangerous encroachment has already begun or should begin now, but has not yet ended. Therefore, the necessary defence is possible not only from the socially dangerous encroachment that has already begun, but also from the real threat of such an encroachment. The defence may be considered belated if it is applied against an encroachment that has just ended or has been terminated. The termination of criminal acts by the offender must be so obvious to the person defending himself/herself that he/she can realize and understand it [9, p. 115-116].

The final term for the legitimacy of the necessary defence, which characterizes the protection, is the proportionality of the protection of the character and danger of encroachment.

Thus, in accordance with Part 1 of Art. 36 of the Criminal Code of Ukraine, the damage caused to the offender must be necessary and sufficient in this situation to immediately prevent or stop the encroachment [6], which means that the serious damage caused to the offender must correspond to two interrelated circumstances: the danger of encroachment and the situation of protection. The key point in deciding the proportionality of defence is the degree of danger of encroachment, which determines the limits of permissible damage in the necessary defence: that is, the more dangerous the encroachment is, the wider are the limits of permissible damage [2, p. 275]. The situation of protection is determined by real possibilities and means of the protecting person to prevent or stop the encroachment. The nature of such a situation depends on the actual balance of power, capabilities and means of the person protecting himself/herself and the encroacher [1, p. 609]. It is necessary to take into account the place and time, the

unexpectedness of the attack, unpreparedness to repel it, the number of attackers and defenders, their physical data (age, gender, disability, health status, physical fitness). A single factor, even such as the presence or absence of weapons by the parties, may not always serve as an unambiguous criterion for determining the legitimacy of the necessary defence [4, p. 174].

Conclusions and prospects for further research. Thus, we can conclude that by its legal nature the necessary defence is an independent institution of criminal law, the effectiveness of which in practice depends on the state's legislative norms that would ensure and encourage citizens to apply this institution of criminal law to protect the person against socially dangerous encroachments. The legal nature of the institution of the necessary defence is based on the recognition of the natural human right to self-defence against criminal encroachment in all ways not prohibited by law. This right is established by the state as a necessary supplement to the state protection and preventive activities, but at the same time this right is not created, but only recognized and sanctioned by the state.

The social-and-legal purpose of the institution of the necessary defence is not to increase the social and legal activity of citizens, but to legislate guarantees for the implementation of this right. In order to make the necessary defence fully meet the requirements of the Criminal Code of Ukraine, the terms of legality of protection also must be met. The regulation of the institution of the necessary defence in the legislation should primarily reflect the interests of the person whose rights and freedoms have been violated.

Thus, necessary defence as a criminal law institution is a very complex legal concept, so for the effective application of criminal law in practice, this issue requires further research.

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НОВИНИ, ЩО РЯТУЮТЬ ЖИТТЯ

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У статті розглядається необхідність надання правдивої інформації населенню під час пандемії коронавірусу. Встановлено, що багато процесів, під час коронавірусу, є залежними від надання інформації. Проблему правильного інформування та надання потреб журналістам проаналізовано через низку електронних ресурсів. Також зроблено спробу показати, чим жертвують журналісти, щоб здобути новини в пік поширення пандемії.

Ключові слова: *коронавірус, пандемія, журналіст.*

LIFE-SAVING NEWS

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The article considers the pressing importance of providing truthful information to the public during the outbreak of coronavirus. It has been established that many processes during a pandemic are dependent on providing the information. The problem of the properly informing and providing for the journalists' needs is analyzed through many electronic resources. An attempt is made to show what journalists have to sacrifice in order to get the news while the pandemic is spreading.

Key words: *coronavirus, pandemic, journalist.*

Problem statement. Correct and up-to-date information is increasingly becoming a vital factor in our world, especially during the pandemic. Fake news are the major cause of panic and chaos. That is why, the quality of journalism is commonly discussed and there are a lot of well-documented rules about how journalists should behave in emergencies. The role of information is generating considerable interest in terms of research on human demeanor. Journalists' work during the pandemic is attracting widespread interest due to the importance. A remarkable feature of this work is that it can save a lot of human lives.

The purpose of this article is to analyze the role of journalists job in the times of the outbreak of the COVID-19 pandemic, and the task is to find out how information can influence people's actions. Also, the aim is to realize and tackle the consequences of spreading fake news. This paper calls into question the safety of performing media duties during the spread of coronavirus.

Recent research and publications. The media strongly influences the public. Joana Kosho in her article (2016) writes that any issues of everyday life, human crisis or mainstream policies, once covered and analyzed by the media, become the main concerns of the citizens and have a meaningful impact on the public opinion [5].

Also, Maxwell McCombs in his groundbreaking paper "The Agenda-Setting Role of the Mass Media in the Shaping of Public Opinion" explored how the media shapes public opinion. He explains that which aspects of an issue are covered in the news – and the relative emphasis on these various aspects of an issue -- makes a considerable difference in how people view that issue. From the pattern of the total news coverage, the public learns what journalists consider the important issues are and who the prominent public figures of the day are. From the details of this coverage – the

agenda of attributes presented by the news media – the public forms its images and perspective about these issues and public figures. Influencing the focus of public attention is a powerful role, but, arguably, influencing the agenda of attributes for an issue or political figure is the epitome of political power. Determining the way that an issue is framed can significantly influence the ultimate outcome [4].

Presentation of the main material. A coronavirus pandemic has taken over the world. Governments are mobilizing resources to fight COVID-19, but they are not those who personally face this virus. Dedicated professionals are fighting on the front line – the first are doctors, who help to overcome the illness. The others are journalists, who are on the information front line, helping to fight the effects of the pandemic with information tools. The public has to be informed of the ways to reduce the number of infections. That is why a journalist is a healthy man’s doctor who tries to prevent the virus from spreading with the truthful news. People usually listen to the news, because for the great majority of people health comes first [6].

Why could accurate and up-to-date information be comparable to medicine? Firstly, people tend to panic during such challenging times. Any panic is the worst enemy because in this state people are confused, depressed and unpredictable. We could see first effects of panic when the quarantine started worldwide. People began to fight for the products or stealing from the counters. Thereby, the products started to disappear from the shops. “Preparing for an emergency is normal” – said David Savage, who is the assistant professor of behavioral economics in the Newcastle University in Australia. “It is not normal to buy 500 cans of canned beans for quarantine, which can last only two weeks” [1].

Governments around the globe are concerned about this situation, because less goods are imported and exported due to the

pandemic. So, the food and hygiene products are not always delivered to stores on time. Store owners and online shops began to take advantage of this situation. Price for medical masks soared on such platforms as eBay and Etsy. As a result, those companies had to take action against speculators. Also, Ukrinform reports that according to the state statistics, consumer prices in Ukraine increased by 0.8% in March 2020 compared with February 2020. In particular, potatoes went up in price by 26.9% and the buckwheat by 78.9% from March, 2019 to March, 2020. Thus, the crisis has every chance to begin [3].

That is why it is crucial that the media inform the public about this problem without exaggeration. Also, the journalists must never report on any false assumptions about the possible spread of the virus and the duration of the pandemic. In addition, media has to provide information about stores' working hours and emphasize that product markets will not be closed during coronavirus. In this manner, the panic of the population can be reduced, because people trust the news and rely on them in troubled times.

Besides, each channel should spend at least a couple of minutes every day on TV to elicit the rules of dealing with the virus. Editorials and online publications should keep information about basic safety rules against pandemic on their front pages. People will realize the importance and follow them. Such rules should apply to the following: personal hygiene when going outdoors and to the shops, ventilation at home and disinfection of items that are often touched. It should also be displayed how the virus is transmitted and how easy it is to get infected and infect all your relatives. Posts and news about it can save hundreds of lives.

It is equally important to publish statistics daily. Journalists contact the government every day to report disease statistics in their country and in the world. It's much better to show people the real picture. An unknown enemy can also lead to panic. If people do not

see the real numbers, they will begin to guess. Such guesses can far exceed true figures and the public will feel even more threatened and the chaos in the stores can start again. That is why the statistics must emphasize the number of people who have recovered. When the media only focus on the infection and deaths due to the virus, it triggers fear. So, if journalists often mention that people are recovering and doctors are mostly managing patients, the panic will go away. It is also important to inform that people who die from the pandemic are mostly elderly people or those who have weak immunity.

Furthermore, statistics must be provided for those who don't understand the real danger of spreading the virus. These are people who do not follow the rules because they do not see a possible threat to their own lives from this virus. When properly informed, they will realize that the risk for lives still exists. They will also understand that getting infected is as easy as becoming a carrier of the disease and infecting your relatives. This way, the media will be able to prevent a huge number of possible infections.

Gathering information and data in times of pandemic is a challenging task. Doctors and politicians are usually concerned. People need more details from inside the mechanism of fighting the virus. This means that the population needs to talk to the doctors who treat patients with COVID-19. Of course, people can't communicate with them face to face. This can be done only through journalists, who have an opportunity to ask doctors some questions. Usually these are phone interviews. Although, journalists have sometimes a chance to talk live. Such interviews are extremely important because only the person who tries to take care of the infected can know the real situation of the pandemic. Doctors can speak about treatment, the virus or safety rules clearly and without exaggeration. People will believe doctors and follow their advice. This way, journalists will help save many lives.

Of course, being a reporter in such a difficult time is a very responsible work. Firstly, you need to carefully select and filter the information before broadcasting it, because it is easy to spread fake news during the pandemic. People are likely to believe in false information. The population is depressed and gullible during the pandemic. People are not able to distinguish the truth from a lie. Therefore, this work is only for media channels [8].

Consequences of fake news can vary, but they are always ruinous for people and for the state. For example, residents in the UK burned and damaged several dozen of towers transmitting 5G Internet. It happened because someone had posted information that these towers could spread the coronavirus. This theory became viral and people believed it. On April 2, there were about 20 attacks on mobile towers. The Guardian informs that the theory went beyond the Internet, even after assurances from international radiation observers that 5G technology is absolutely safe, just like its predecessors. Four leading mobile operators: EE, o2, Three and Vodafone issued a joint statement calling everyone to be informed about damage to the 5G towers and also emphasized that this theory was absolutely groundless. After all, journalists on influential channels were able to convince people, that towers with 5G cannot spread the coronavirus [2]. Accordingly, journalists saved several millions pounds from the UK budget.

Besides, the conflict can arise not only at the national level. Furthermore, it can be an international conflict. In times of the outbreak of the pandemic unjustified theories are widely spread throughout the globe. In most cases it is the accusation of another state. This could drive a wedge between otherwise friendly countries and nations. This can be triggered by some nonsense.

Also, some fake news is spread concerning import and export of goods. One of the meaningless theories spread in Japan. On Japanese social networks the fake news about shortage of toilet

paper and napkins went viral. It said that these goods were running out, because China does not supply them any longer. Local officials and industry associations had to remind people that almost all toilet paper is produced locally and reserves are sufficient. This was the only way to stop the panic [7]. All in all, there are many more examples of why the current task of media of reporting true information plays a large role in the society.

However, here we would also like to consider potential dangers for the journalists. Firstly, it is a direct threat to life. As mentioned above, journalists often interview doctors or shoot their news in hospitals during the pandemic. Unfortunately, hospitals all over the world are not always 100% safe. Some doctors are poorly protected from the coronavirus and can be potentially ill. This means that journalists are put at risk every time they contact with doctors. Therefore, the profession of a journalist should be highly respected. However, it is not only doctors who can be dangerous for the media. Also, journalists often take some comments from officials during the pandemic. As we know, the government works despite quarantine, so they can be infected, too.

Secondly, journalists also put their relatives' health at stake. After all, it is clear that the disease is highly contagious and is most easily transmitted to those who share the same housing. Even if the journalist doesn't become ill, he can still pass the virus to someone else. Elderly people are most vulnerable, according to statistics they often die from the coronavirus. This fact poses another threat to journalists during the pandemic.

Finally, not only physical health, but also mental health can be affected during such a work. It is easy to get stressed in the process of getting information on the coronavirus. The information reporters gather is often depressing. It is hard to see increasing numbers every day and to listen to doctors about difficult cases and sometimes deaths. The journalist may himself be on the verge of

panic after so much negativity. That is why it is important to have a trained counselor in news agencies and on TV channels.

Unfortunately, such media problems do not always bother the authorities. Most countries have completely forgotten to provide any special equipment for the press to collect the information face to face during the pandemic. But journalists are an important element in preventing chaos in the country. They serve as a resource for the community and by informing they can save lives. Therefore, providing them with everything they need for safety is one of the tasks of the government. Officials should provide journalists with masks, special gloves, antiseptics, etc. In order to properly deal with the pandemic, it is necessary to protect those who put their health and life in danger during their work.

Conclusion. To sum up, we would like to emphasize again on how important the profession of a journalist is. In this article an attempt has been made to prove that keeping the public properly and timely informed will help to prevent spreading the virus and save many lives around the world. We have also tried to show what price journalists must pay to collect all this information. Governments and average people should be grateful to them and authorities should acknowledge the necessity of providing them with the necessary goods and financial assistance.

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ДОГОВІР НАЙМУ ЗЕМЕЛЬНОЇ ДІЛЯНКИ

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У статті проаналізовано договір найму земельної ділянки. Особливу увагу приділено дискусійним питанням щодо

правового регулювання найму землі та доцільністю віднесення договору найму до категорії цивільно-правових договорів та земельно-правових договорів. Визначено основні нормативно-правові акти, що регулюють відповідні суспільні відносини. Сформульовано визначення договору найму земельної ділянки на основі чинного законодавства. Визначено правову природу відповідного договору. Проаналізовано особливості суб'єктного складу, здійснено характеристику істотних умов договору та охарактеризовано окремі умови. Узагальнено порядок укладення договору різними суб'єктами. Визначено вимоги щодо форми правочину. Підсумовано загальні особливості договору найму земельної ділянки та проблемні питання у правовому регулюванні.

Ключові слова: договір найму, відносини найму, земельна ділянка, оренда.

LAND LEASE AGREEMENT

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The land lease agreement is analyzed in the article. Particular attention was paid to the issues of the legal regulation of land lease and the expediency of assigning a lease contract to the category of civil and land contracts. The definition of a land lease agreement is formulated, based on the current legislation. The legal nature of the contract is determined. The peculiarities of the subjects' are analyzed, the essential contract terms are characterized. The procedure of conclusion of the contract by different entities is generalized. Requirements for the form of transaction are defined. The general features of the land lease

agreement and problematic issues in legal regulation are summarized.

Key words: *lease agreement, lease relationship, land, lease.*

Problem statement. There is a fair amount of diverse opinions about understanding the problems that arise in the legal regulation of relations connected with the conclusion of land lease agreements.

The relevance of the study of relations on the land lease agreement is also due to the fact that the Civil Code of Ukraine regulates this contract by only one article. There is a debate in the scientific literature about the correlation between the rules of civil and land law in regulating the relations associated with the lease of land.

Recent research and publications. The land lease agreement was researched by many domestic scientists. Yanovytska H. B., Kuchera V. O., Dzera O. V., Kuznyetsova N. S., Maydannik N. A. described this issue in their textbooks. Baran O. researched the features of agricultural land. Fedorovych V. considered the correlation between civil and land law. Romaniv V. Y. researched real estate lease agreement. This issue was also discovered by Ilnytska N., Shchestyuk O., Rushchynets U., Sydor V. and others.

The analysis of the legal acts regulating land lease relations indicates that the land lease agreement has the features of both a civil and a land contract. Therefore, the general provisions of the land lease agreement are governed by civil law, and the peculiarities of the lease of land are governed by land law.

The purpose of the article. The main purpose of the study is to determine the features and peculiarities of the land lease agreement analyzing and comparing various acts of national legislation. The object of the study is the social relations arising in

connection with the conclusion, execution and termination of the land lease agreement.

Presentation of the main material. Under Article 13 of the Law of Ukraine "On Land Lease", a land lease agreement is a contract under which the landlord is obliged to lease the land to the tenant for a fixed term for payment, and the tenant is obliged to use the land in accordance with the terms of the contract and requirements of land legislation.

Article 792 of the Civil Code of Ukraine also contains the definition of the land lease agreement. Under the land lease agreement, the landlord undertakes to transfer to the landlord the land plot for the period fixed by the contract for possession and use for a fee.

Depending on the moment of conclusion, the land lease agreement can be both consensual and real. The land lease agreement is bilateral, since the rights and obligations arise from both the landlord and the tenant. In accordance with the definitions given in the Law of Ukraine "On Land Lease" and in the Civil Code of Ukraine, the contract is payable.

The parties to the land lease agreement are called the landlord and the tenant. Landlords are citizens and legal entities that own land plots or their authorized persons. Landlords of land plots, which are in communal ownership are village councils, town councils, city councils within the powers defined by law. Landlords of land plots, which are jointly owned by territorial communities, are the district councils, regional councils and the Verkhovna Rada of the Autonomous Republic of Crimea. Landlords of land plots, are owned by state are the executive authorities who, under the law, transfer the landed property or use. The landlord of land plot, which is a part of the inheritance, in the absence of heirs by will and by law, removing them from the right to inherit, rejecting their inheritance, and also refusing to accept heritage after the expiration

of six months from the date of inheritance opening, is a person who manages the heritage.

Land tenants are legal or individuals who, on the basis of the land lease agreement, own and use the land plot. Land tenants can be:

- a) district councils, regional councils, Kyiv and Sevastopol city state administrations, the Council of Ministers of the Autonomous Republic of Crimea and the Cabinet of Ministers of Ukraine within the powers specified by law;
- b) village councils, town councils, city councils, district and regional councils, the Verkhovna Rada of the Autonomous Republic of Crimea within the powers specified by law;
- c) citizens and legal entities of Ukraine, foreigners and stateless persons, foreign legal entities, international associations and organizations, as well as foreign states.

Under the Land Code of Ukraine, land plots can be leased to citizens and legal entities of Ukraine, foreigners and stateless persons, foreign legal entities, international associations and organizations, as well as foreign states. The peculiarity of the land lease agreement is the list of essential contract terms defined by the law. Under the Law of Ukraine "On Land Lease" they are: 1) an object of lease (cadastral number, location and size of land plot); 2) the date of contract conclusion and term of the lease; 3) rent charge, indicating its size, indexation, method and conditions of payment, terms, procedure for its payment and review and responsibility for non-payment.

The object of lease is land plots owned by citizens, legal entities, communal or state property. Land can be leased with or without plantations, buildings, structures, ponds that are on. The term of the land lease agreement is determined with the consent of the parties, but may not exceed 50 years. In certain cases,

depending on the specifics and purpose of the land plot, the term of the contract may not be less than 7 or 10 years.

Land lease payment is a payment that a tenant makes to a landlord for the use of a land plot under a land lease agreement. The amount, conditions and terms of payment of the land lease shall be determined with the consent of the parties to the land lease agreement. The rent is paid in a monetary form. Payments for land lease can be done in any kind with the consent of the parties.

Individuals are subjects of private ownership of land make the decision to lease the plot independently, without making this decision by any documents other than the contract. Decision on the lease of land by legal entities – subjects of private ownership of land is made by the owner (founder) of a private enterprise or the highest management body of legal entities. Thus, the lease of land owned by citizens and legal entities is carried out under a lease agreement between the land owner and the tenant. If the land plot is in communal or state ownership, the right to dispose of such land belongs to local self-government bodies or public authorities within the powers defined by law. The will of the respective authority as the landlord, in this case, is carried out in the form of a decision of such body and is only realized through the conclusion of the land lease agreement.

The form of the land lease agreement is written. Under Article 207 of the Civil Code of Ukraine, a transaction is made in a written form if their content is recorded in one or more documents, letters, telegrams exchanged by the parties. A legal transaction is considered to be committed in written form if signed by its party.

The law does not contain the requirements for notarization of the land lease agreement, but in accordance with Article 209 of the Civil Code of Ukraine such agreement may be notarized by agreement of the parties.

The Decree of the Cabinet of Ministers of Ukraine approved the form of the Model Land Lease Agreement. This form of contract is obligatory, but the content of the land lease contract can be specified in each case by agreement of the parties.

Conclusion. To sum up all mentioned above, the legal regulation of the land lease contract is carried out by laws and secondary legislation. At the legislative level, the essential terms of the contract, the entities empowered to participate in the conclusion of the contract, their rights and obligations, the order of conclusion and termination of the contract, the form of the contract are defined. Some issues may be resolved by the parties at their own discretion. In general, the land lease agreement is sufficiently regulated by the Civil law and The Land law and there are no collisions between normative legal acts of different branches of law, but scholars of civil law raise questions about the expediency and validity of certain provisions.

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ВІДМІННІСТЬ ГРАБЕЖУ ВІД КРАДІЖКИ В КОНТЕКСТІ ОБ'ЄКТИВНОЇ СТОРОНИ

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Стаття присвячена проблемі відмінності грабежу і крадіжки. Увага приділяється саме об'єктивним сторонам цих злочинів. Стверджується, що поняття та особливості досліджуваної категорії мають як теоретичне, так і практичне значення, оскільки використовуються не лише науковцями, але й у правотворчості.

Ключові слова: таємність, відкритість, крадіжка, грабіж, об'єктивні та суб'єктивні ознаки таємності, об'єктивні та суб'єктивні ознаки відкритості.

THE DIFFERENCE BETWEEN ROBBERY AND THEFT IN THE CONTEXT OF THE OBJECTIVE SIDE

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The article deals with the problem of the difference between robbery and theft. Attention is paid to the objective sides of these crimes. It is argued that the concepts and features of the studied category have both theoretical and practical significance, as they are used not only by scientists but also in lawmaking in general.

Key words: *secrecy, openness, theft, robbery, objective and subjective features of secrecy, objective and subjective features of openness.*

Problem statement. Investigating the issue of abduction, namely such concepts as "secrecy" and "openness" is extremely important. In criminal law doctrine, it can help to reduce the number of discussions and ambiguous decisions made in law enforcement activities. That is why the relevance of the topic is justified by the need to understand these concepts, to establish a clear distinction between them.

The purpose and tasks of the study. The purpose of the study is to address theoretical problems of justifying the difference between robbery and theft in the context of the objective side, which will contribute to both the improvement of national legislation and the effectiveness of law enforcement practices in this field. To achieve this goal, the following scientific tasks were set: 1) to find out objective and subjective signs of secrecy; 2) to characterize the objective and subjective criterion of openness; 3) to formulate the signs of the objective side of the crime provided for in Art. 185 of the Criminal Code of Ukraine "Theft"; 4) to identify the signs of the objective side of the crime, provided for in Art. 186 of the Criminal Code of Ukraine "Robbery"; 5) to analyze the positions of scientists on the problem of delimitation of such crimes as "theft" and "robbery".

Theoretical basis. The works of Ukrainian and foreign scholars in criminal law, criminology, civil, criminal procedural law are the theoretical basis of this work. **Normative basis.** The normative basis of the research is the Criminal, Criminal Procedure Codes of Ukraine, normative acts of the Cabinet of Ministers of Ukraine, the Resolution of the Plenary Meeting of the Supreme Court of Ukraine etc.

Presentation of the main material. First of all, it is important to start by combining crimes such as 'theft' and 'robbery'. The objective side of these crimes is that the guilty person unlawfully takes another person's property in their own favor or for the benefit of another, which causes the owner of real and direct property damage. As the objective side of both crimes is characterized by the notion of "larceny", it is important to understand its meaning: "it is a deliberate unlawful seizure by the physical extraction of objects of the material world from any motives against or outside the will of the victim". First of all, stealing of property can be theft and robbery. So, stealing can be done both secretly and openly, depending on the method.

The objective side of the theft is manifested in the action: larceny of someone else's property, that is: secret, illegal, free of charge, against the will of the owner.

Hidden stealing means that property is seized unnoticed by others: in the absence of the owner or other persons or in their presence, but when the victim or other persons are not able to realize the fact of theft (for example, in the eyes of people resting on the beach and not realizing that the perpetrator is stealing other people's things; in the presence of juveniles, etc.). Theft is also considered secret larceny when it is committed in the presence of people who are aware of it, but the subject knows that these people will not interfere with him: he is confident of their, non-interference (for example, the theft of products at a meat processing plant in the presence of other workers).

First of all, qualification of theft requires identification of the objective side of its composition.

The objective side of theft (Part 1 of Article 185 of the Criminal Code) must include the following features: 1) action (secret, illegal, free of charge, without the will of the owner of the seizure of another person's property); 2) the consequences of

seizing another person's property; 3) the causal link between action and consequence; 4) the method of committing a crime is characterized by secrecy.

Robbery (Article 186 of the Criminal Code) on the objective side is expressed in the open theft of someone else's property, which means seizure of it in the presence of the owner or other people who are aware that the crime is being committed. At the same time the perpetrator also realizes that his actions are noticed, but ignores it. If the perpetrator is making a mistake and believes that he has been spotted and in fact his actions have not been noticed, he is responsible for the robbery; but if the situation is different - the person thinks that no one sees him, but in reality they are watching him, then the act is considered a theft. A robbery will take place even if stealing, initiated secretly, develops into an open one (for example, when the perpetrator of the theft appears, a security guard suddenly appears, but the perpetrator ignores it and escapes with the stolen things).

When qualifying robbery (as an open theft of someone else's property) by the objective party (Part 1 of Article 186 of the Criminal Code), it should be remembered that its obligatory features are: 1) the act (open, illegal, free of charge, without the will of the owner of the seizure of another's property); 2) the consequences of seizing another person's property; 3) the causal link between action and consequence; 4) the method of committing a crime characterized by openness.

The researcher Samokish I.V. states: "The objective side of crimes against property under the Criminal Codes of the Republic of Belarus, the Russian Federation and Ukraine it is characterized, as a rule, by active actions that cause material harm to an individual, several persons, the state, etc. Such actions are done in a certain way. The manner of committing crimes against property is a form of manifestation of a criminal act and is closely linked to such act."

Most crimes against property are characterized by material composition, with the exception of some crimes (for example extortion). Theft is a crime of material composition. According to paragraph 1 art. 4 of the Resolution of the Plenary Meeting of the Supreme Court of Ukraine “On Judicial Practice in Crimes against Property” No. 10 of November 6, 2009, the theft is considered to have been completed from the moment when the perpetrator seized the property and had a real opportunity to dispose or use it (for example, to hide, transfer to others, to use as intended, etc.). If a person who unlawfully took possession of the property did not have such real opportunity, then his action should be considered, depending on the circumstances of the case, as a completed or unfinished attempt to commit the relevant crime. The attempted theft is completed when acts of the person who stole the property were immediately exposed.

Robbery is also a crime of material nature. It, like a theft, is considered to be finished from the moment when the perpetrator seized the property and had a real opportunity to dispose or use it.

The difference between robbery and theft is that robbery is characterized as open actions of a perpetrator, whereas in the case of theft, such acts are secret. Apart from some other nuances, this distinction is the main one.

Traditionally, the kind of stealing such as theft is recognized as secret, by which the perpetrator believes that he or she makes it invisible to the victims or other persons. Confronting the secret stealing to the open one, the criminal law proceeds from the fact that in the open, explicit seizure of someone else's property, the offender neglects others and shows more arrogance, and therefore the punishment should be more severe. The cases of secret theft of property have been listed in many scientific studies and are enshrined in the Resolution of the Plenum of the Supreme

Court of Ukraine “On Judicial Practice in Crimes against Property” No. 10 of November 6, 2009.

Based on the analysis, it is advisable to distinguish the following differences of the open method of encroachment on the property from the secret one:

a) if the attacker seizes someone else's property in the presence of the victim or third parties who are not aware of the theft of the property (for example, in the presence of a juvenile child, people who are intoxicated or sleeping), such actions are advisable to recognize as a secret assault;

b) if the attacker is stealing in the presence of people who are aware that the stealing is being done in a secret manner, but the attacker is sure of their acquiescence and non-interference (for example, stealing in the workplace in the presence of other workers who do not interfere and prevent such behavior) – these actions should be recognized a secret manner;

c) if the attacker tried to commit a theft, but after his actions being exposed, he did not abandon the crime and continued to seize the property (for example, a person tries to steal a bag at the train station and after that his actions are noticed by the owner, he still grabs the bag and escapes) - such actions should be considered to be open.

According to the Resolution of the Plenary Meeting of the Supreme Court of Ukraine “On Judicial Practice in Crimes against Property” No. 10 of November 6, 2009": "Distinguishing between theft and robbery, one must proceed from the intent of the perpetrator and whether the victim was aware of the nature of the perpetrator's actions and, in this connection, the stealing should be qualified as theft not only when it is carried out in the absence of the victim, but also in the presence of outsiders who are not aware of the fact of the theft of property and cannot evaluate it (mentally ill, underage). Theft is secret even if it occurs in the presence of the

injured person, provided that the guilty person does not know about it or believes that he does larceny unnoticed for injured person, and also when the larceny is committed in the presence of the person, who is responsible for the property, but he/she is in a state that eliminates the possibility of realizing the meaning of what is happening (sleep, fainting, intoxication). "

Based on the analysis of specialized literature, it is appropriate to note that in order to be recognized as secret, objective and subjective criteria of secrecy must normally be established. Setting them allows you to find out the content of the crime and helps distinguish theft from non-violent robbery or fraud. The objective criterion is the fact that a criminal offense was committed in the absence of a person aware of the stealing. The subjective criterion is that the perpetrator is aware that no one is observing his actions or believes that he commits an intrusion imperceptibly on those who may be aware of the fact of stealing.

Characterizing the objective and subjective criteria of openness, it is worth highlighting their physical and mental characteristics. The physical feature of the objective criterion is that the by the larceny is observed by the victim or bystanders. The psychic feature means the awareness of these people that the thief is guilty in the larceny.

The physical feature of the subjective criterion is that the perpetrator physically perceives (sees, hears comments, etc.) the fact of openness of his actions. Mental Sign means that the perpetrator is aware that his actions are being watched by other persons who are aware of their wrongdoing.

Conclusion. To sum up, it should be noted that ensuring proper qualification of robbery is necessary for the full and comprehensive study of the crime, improving the grounds of criminal responsibility for its commission, as well as the correct

interpretation of the features of the crime, the imposition of penalties, the application of incentive criminal rules.

The article presents a theoretical generalization and solution of a scientific problem, which consists in identifying and justifying the objective and subjective features of secrecy and openness; the formulation of the sign of the objective side of the crime provided for in Art. 185 of the Criminal Code of Ukraine "Theft" and Art. 186 of the Criminal Code of Ukraine "Robbery", the analysis of the positions of scientists on the problem of demarcation of such crimes, as "theft" and "robbery".

Objective and subjective signs of secrecy have been identified and proven to help to distinguish theft from non-violent robbery or fraud. Objective criterion means the fact of committing a criminal attack in the absence of persons aware of the fact of the larceny. The subjective criterion is that the perpetrator is aware that no one is observing his actions or believes that he commits theft imperceptibly on those who may be aware of the fact of the larceny. The essence of the objective criterion is that the acts involving the larceny are observed by the victim or bystanders who are aware of the acts of the perpetrator. Subjective criterion means that the perpetrator understands that his actions are observed by other people who are aware of the wrongfulness of his actions, that is, the fact of openness.

This problem in Ukrainian law is fixed in the Criminal Code, the Resolution of the Plenary Meeting of the Supreme Court of Ukraine, and partially discussed by scientists in the form of written monographs, commentaries, articles, etc., but it needs an even deeper analysis to fully develop the approach to delineate such crimes against property, such as theft and robbery.

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ФІНАНСУВАННЯ СЕПАРАТИЗМУ ЗА КРИМІНАЛЬНИМ КОДЕКСОМ УКРАЇНИ (СТАТТЯ 110-2 КРИМІНАЛЬНОГО КОДЕКСУ УКРАЇНИ)

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*У статті розглянуто злочин фінансування дій,
вчинених з метою насильницької зміни чи повалення*

конституційного ладу або захоплення державної влади, зміни меж території або державного кордону України.

Ключові слова: фінансування, сепаратизм, влада, державний кордон.

FINANCING OF SEPARATISM IN THE CRIMINAL CODE OF UKRAINE (ARTICLE 110-2 OF THE CRIMINAL CODE OF UKRAINE)

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The article discusses the crime of financing of actions taken for the purpose of violent change or overthrow of the constitutional order or seizure of state power, change of borders of the territory or state border of Ukraine.

Key words: *financing, separatism, power, state border.*

Problem statement. Problems of national security are one of the most important at any stage of the state's development: they exist in every modern state and are related to solving the whole range of problems in political, information, military, economic, social, humanitarian, legal, ideological and other spheres of society and the state.

Recent research and publications. The main researchers of this crime is V.S. Batyrgareva, D.S Zorenko, Y.V. Lutsenko, S. Pletsky, A.V. Savchenko, M.A. Rubashchenko, G.V Tatarenko, O.V Shulzhenko. At the same time, despite the problem being popular in criminal theory current, scientific developments in this field are based only on the analysis of certain provisions of the criminal legislation of Ukraine.

The purpose of the article is to discover the legislative regulation for financing of the actions committed for the purpose of the violent change or overthrow of the constitutional system or the seizure of the state power, changes of the territory's boundaries or the state border of Ukraine.

Presentation of the main material. On June, 19 2014 the Verkhovna Rada Of Ukraine adopted the Law of Ukraine "On amending the Criminal Code Of Ukraine on criminal liability for the financing of separatism. The Criminal Code of Ukraine was supplemented by Art. 110-2, which provides responsibility for financing of the actions committed for the purpose of the violent change or overthrow of the constitutional system or the seizure of the state power, changes of the territory's boundaries or the state border of Ukraine. Actions committed for the purpose of the violent change or overthrow of the constitutional system or the seizure of the state power, changes of the territory's boundaries or the state border of Ukraine, is the first offence mentioned in the Special Part of the Criminal Code. The similar crime is found in the criminal codes of other countries (for example, Article 278 of the Criminal Code of Russia, Article 357 of the Criminal Code of Belarus, etc.).

In the period of building an independent democratic and legal Ukrainian state, national security, as well as human rights and freedoms, become important as one of the areas of struggle against crime aimed at financing of the actions committed for the purpose of the violent change or overthrow of the constitutional system or the seizure of the state power, changes of the territory's boundaries or the state border of Ukraine. Today, Ukraine is going through difficult times. Analyzing the events that take place in the East of Ukraine, it can be noted that at a new stage of reconstruction, our state has faced such socially dangerous phenomenon as regional separatism (Crimea, Donetsk and Lugansk regions). The main task

for today is the implementation of a set of measures aimed at preventing financing of the actions committed for the purpose of the violent change or overthrow of the constitutional system or the seizure of the state power, changes of the territory's boundaries or the state border of Ukraine.

Analyzing the national legislation on criminal liability, it can be noted that in the Criminal Code of Ukraine the term "separatism" and "financing of separatism" are not used. However, it can be assumed that it actually encompasses the broad term "action or financing of acts committed for the purpose of violent alteration or overthrow of the constitutional order or seizure of state power, change of boundaries of the territory or state border of Ukraine", foreseeing by Art. 110-2 of the Criminal Code of Ukraine. The difficulty in identifying and preventing the sources of funding for separatist and terrorist activity in most cases is that such funding may come from legal sources, and the size of transfers may be insignificant, and financial transactions may not differ from others.

Recently, the conditions for deepening an even more dangerous tendency have emerged – an increase in separatism and organized crime. Modern separatism is a powerful structure with the corresponding scale of equipment. Modern separatist activities are characterized by wide scope, the absence of explicit state borders, the existence of links and cooperation with international terrorist centers and organizations.

The threat of separatism is also increasing due to the increasing concentration in the hands of radical elements of considerable funds, both financial and material. In this regard, the literature has already focused on the fact that the recent stereotype that separatists receive money only from drugs, weapons and other criminal sources is not true today since terrorist groups often

receive sponsorship from fully law-abiding citizens, as well as from charitable and religious organizations.

In view of the above, it is extremely important to counter the financing of actions taken to violate or overthrow the constitutional order or seize state power, change the borders of the territory or state border of Ukraine, including through the effective antiterrorism law.

Based on the analysis of the explanatory note to the Act, we can conclude that the main purpose of its development is to ensure stability of citizens' rights and freedoms, prevention of separatist activities which is aimed at forcibly altering the borders of the territory or state border of Ukraine. As correctly noted by the legislature, today there is an extensive network of legal entities and individuals providing funding for structures in Ukraine for the purpose supporting separatism such activity is a major force in igniting conflicts within the state. Obviously, the legislator's liability for those listed publicly unsafe actions is caused by necessity effective counteraction to anti-state activity, the implementation of which depends substantially on financial and material support.

Legislative construction of a socially dangerous act contained in Parts 1 and 2 Art. 110-2 of the Criminal Code of Ukraine, has a formal composition, that is, the crime is considered complete from the moment of any action taken for the purpose of financial or material provision of the offense provided for in Parts 1, 2 of Art. 110-2 of the Criminal Code of Ukraine, regardless of whether you received the funds or the material resources to the recipient and they were actually used. Criminal offence envisaged Parts 3, 4 Art. 110-2 of the Criminal Code of Ukraine is a double-ended crime because it contains a qualifying sign in Part 3 – causing significant property damage and in Part 4 – a particularly qualifying feature – the onset of others of grave consequences. The

objective side of this a socially dangerous act involves only one form is financing, which can be done in different ways. Financing actions taken for the purpose violent change or overthrow of the constitutional order or seizure of the state power, change of boundaries of territory or state border of Ukraine, is a special crime that involves a specific kind of aiding and abetting, therefore additional qualification of actions of the subject in Part 5 of Art. 27 and the relevant article of the Special part of the Criminal Code of Ukraine (for example, Articles 109, 110) is not required.

Therefore, to establish the existence of the action provided for in Art. 110-2 of the Criminal Code of Ukraine, it is necessary to establish the fact that such actions were made in one of the forms 1) financial support; 2) material support.

Financial security is a form of financing for actions whose principal means are to provide and / or collect financial assets of any kind, with an awareness of their continued use, in whole or in part, to secure the organization, preparation and commission of a violent change or overthrow the constitutional order or seize the state, power, change of boundaries of the territory or state border of Ukraine.

The content of the provision of financial assets as a method of financial security is the active actions to transfer and (or) use financial assets (cash, securities, bank deposits, etc.) intended to ensure the organization, preparation or commission of a violent change or overthrow the constitutional order or seizure of state power, change of boundaries of the territory or state border of Ukraine. The provision of financial assets takes place when the person owns them and hands it to someone, knowing that they will be used in full or in part for a specified purpose.

Asset collection as a means of financial security should be understood as an act of seeking, obtaining, accumulating or saving financial assets (cash, securities, bank deposits, etc.) intended to

secure the organization, preparation or commission of a violent change or overthrow of a constitutional order, or seizure of state power, change of boundaries of the territory or state border of Ukraine. In this case, for the collection of financial assets, 1) non-profit organizations may be established; 2) use the name of an existing non-profit organization (generally known to the general public) in the guise of its principal activity. In the first case, the establishment of a non-profit entity for the above purposes should be qualified as a preparation for a crime under Art. 110-2 of the Criminal Code of Ukraine. In the second case, the actions of a person, depending on the circumstances of a particular case, need to be qualified by the set of crimes provided for in the relevant parts of Art. 190 and Art. 110-2 of the Criminal Code of Ukraine.

Financing of actions taken for the purpose of forcible alteration or overthrow of the constitutional order or seizure of state power, change of boundaries of the territory or state border of Ukraine, takes place regardless of whether the funds actually used for committing the crimes under Art. 109 and 110 of the Criminal Code of Ukraine. The moment of termination of the crime provided by Art. 110-2 of the Criminal Code of Ukraine, depends on the method of committing a socially dangerous act. Thus, the collection of financial assets is considered a completed crime from the moment such collection begins, and the provision of financial assets is from the moment of their transfer. However, if the moment of transfer of financial assets does not coincide with the moment of their receipt by the person being financed, the crime is considered to be completed from the moment of transfer of financial assets in any way (courier, postal order, bank order, etc.).

Material security is a form of financing for actions whose principal means of committing it are to provide and /or collect tangible assets of any kind, with an awareness of their continued use in full or in part to secure the organization, preparation and

commission of a violent change or overthrow the constitutional order or seizure of the state. power, change of boundaries of the territory or state border of Ukraine.

Conclusion. Considering the social conditionality, prerequisites and grounds of both domestic and international character for criminalizing the financing of actions taken for the purpose of violent change or overthrow of the constitutional order or seizure of state power, change of borders of the territory or state border of Ukraine , it can be noted that the introduction of criminal liability under Art. 110-2 of the Criminal Code of Ukraine, was a smart response to the process of increasing proliferation of separatist and terrorist activities, encroachments on public relations that ensure state security, defense capability, independence of the country, its constitutional order. For Ukraine, establishing criminal liability for financing actions committed with a view to forcibly altering or overthrowing the constitutional order or seizing state power, changing the boundaries of the territory or state border of Ukraine is conditioned by the need for time, not just by the desire to execute requirements of international legal acts.

Thus, defining in the national legislation the grounds for criminalizing the financing of actions taken for the purpose of violent change or overthrow of the constitutional order or seizure of state power, change of borders of the territory or state border of Ukraine, requires further scientific elaboration taking into account the property of international law and the practice of its application for the development of clear criteria for the classification of individual manifestations of separatism and its financing to crimes, and the corresponding improvement of the provisions of the law on criminal liability.

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АУТСОРСИНГ ТА АУТСТАФІНГ: ПОРІВНЯЛЬНА ХАРАКТЕРИСТИКА

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Статтю присвячено дослідженню правової природи та ознак договорів аутсорсингу та аутстафінгу, а також сфери їх застосування. Також в цій статті розкривається проблема правового регулювання цих договорів. На цій підставі визначено відмінності між аутсорсингом та аутстафінгом, адже ці договори часто плутають між собою або вважають одним і тим же. Хоч ці договори є цивільно-правовими, вони тісно переплітаються із трудовим законодавством, тому важливим є дослідити де виникають цивільно-правові відносини, а де трудові.

Ключові слова: договір аутсорсингу, аутсорсер, ІТ-аутсорсинг, договір аутстафінгу, аутстафер.

OUTSOURCING AND OUTSTAFFING CONTRACTS: A COMPARATIVE CHARACTERISTIC

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The article is devoted to the study of the legal nature and features of outsourcing and outstaffing contracts, as well as their scope. This article also addresses the problem of legal regulation of these contracts. On this basis, the differences between outsourcing and outstaffing are identified, as these contracts are

often confused or considered synonymous. Although these contracts are civil-law, they are closely intertwined with labor law, so it is important to investigate where civil-law relationships, and where labor relations occur.

Key words: *outsourcing contract, outsourcer, IT outsourcing, outstaffing contract, outstaffer.*

Problem statement. Innovations borrowed from the West are increasingly appearing in Ukrainian legal practice, however, our legislation does not keep up with all the novelties, which, in turn, causes certain problems both in registration of legal relations and in their execution. Outstaffing and outsourcing are good examples, since they belong to unnamed contracts, and there is no single approach in the legal literature to their understanding and legal nature. Case law also indicates that these agreements are often confused or regarded as one and the same concept, but this position is misleading and can lead to many problems, including tax disputes.

Recent research and publications. The theoretical basis for the research of the outsourcing contract were the works of such scholars as Z Kozliyeva, I.A. Eschenko, S.V. Reznichenko. The examined materials indicate that there is no consensus on understanding these legal practices, however, they are widely used and satisfy economic interests of entrepreneurs.

The purpose of the article is to determine the content, legal nature of outsourcing and outstaffing contracts, familiarization with the foreign concept and identification of significant differences between them and the areas of their most frequent application.

Presentation of the main material. Freedom of contract is one of the basic principles of Ukrainian civil law. This principle is reflected in the ability of the parties to conclude contracts, both

envisaged and not envisaged by acts of civil law (Articles 6, 627 of the Civil Code of Ukraine). In connection with the exercise of such right and development of civil turnover, in practice, contracts, which are not expressly provided for by law but which are not contrary to its general principles, are more frequently concluded. In the doctrine of civil law, such contracts are separated into a separate group, giving them different names, such as "atypical", "anomalous", "unqualified", "contracts of unusual content", etc. However, the most common designation in the legal literature was the term "not named contracts", which stipulated appropriate classification of contracts into named and unnamed [1].

Such agreements include outsourcing and outstaffing agreements; moreover, such agreements are borrowed from abroad by Ukrainian lawyers, so before studying their legal regulation and nature in the Ukrainian law, we suggest getting familiarized with foreign terms.

Outsourcing agreement is a contract formed between a company and service provider wherein the provider promises to deliver specified services. An example would be data processing from the service provider that utilizes its own staff and equipment, typically working from their own location. The word outsourcing in English and means the use of an external source / resource.

Outstaffing, or subcontracting, means hiring an outside provider or company to perform specific services. The term itself is older than outsourcing and usually refers to the situations when the task cannot be handled internally. Outstaffing companies or employees work closely with providers until the end of the project. The word "outstaffing" means staffing activities.

On the legislative level, the concept of outsourcing is defined in section 4 of the National Classifier of Ukraine "Classification of Economic Activities DK 009: 2010" of 01.01.2012, as an agreement whereby the contracting authority

entrusts the contractor to perform certain tasks, in particular, part of the production process or complete manufacturing process, recruitment services, support functions.

The example of outsourcing is using services of call-center or using professional cleaning services instead of creating a full-time cleaning position. There is no mention of this contract at the legislative level, so it is worthwhile to refer to the works of scholars who have studied this issue.

By analyzing their positions, one can attempt to give a doctrinal definition of the outsourcing contract. Under outsourcing agreement, one party (the customer) delegates or undertakes to delegate for a certain period of time their powers to perform certain functions or activities to another party (outsourcer) who has the necessary qualified personnel for this purpose, and the outsourcer undertakes to provide appropriate services (production, service, financial, information, technological, organizational, financial and economic, marketing, etc.).

The contract is two-way, as the customer and the outsourcer have certain obligations to each other. The customer, by delegating his authority, gives the right to perform one or another activity to the outsourcer. He also undertakes to pay a certain amount, i.e, to meet the outsourcer's counter-satisfaction, which indicating the repayment of the contract.

The contract is consensual because it is sufficient for the parties to reach an agreement for considering the contract concluded. In case of non-fulfillment of the terms of the contract by one of the parties, the party will be liable.

The subject is the essential condition of the contract. The subject of the contract may be work or services. If it is work, then it must be a materialized item, and if it is a service, it must be consumed while providing the service. The contract should detail the list of outsourcer services.[2, p 5-6]

In addition to the condition of the subject of the contract, the contract may include requirements of the customer regarding the qualification of specialists, the degree of responsibility of the parties, etc. The parties to the contract are the customer (legal or natural person, who delegates part of its non-core functions to a counterparty) and the outsourcer – a contractor who specializes in the activity transferred to him and undertakes in good faith in accordance to the contract to perform the function entrusted to him for payment.

The contract shall specify the procedure for the submission of works by the executing firm. As a rule, the document confirming the execution of works by the outsourcing company and their acceptance by the customer is a signed act of acceptance. Particular attention should be paid to the date of submission of the documents that are the basis for outsourcing calculation [3, p.124].

Although the outsourcing contract does not have a clear legislative regulation, it does not prevent it from being extended in a number of areas, namely:

- IT outsourcing market. IT outsourcing is outsourcing of information technology, including software development and maintenance work.
- Outsourcing agreement is applied in the armed forces of different countries of the world. Ukraine's transition to a contract service cannot be committed without contractors who will perform functions previously performed by rear services of the Armed Forces of Ukraine. These include staff nutrition, supplies and other functions.
- Outsourcing is also done at the level of individual banking processes: customer interaction, accounting, staff payment and life insurance, mortgage lending, etc.

Outstaffing services are becoming more and more widespread in Ukraine, but at present, their legal regulation is

imperfect. In world practice, the use of outstaffing is governed by the Convention on Private Employment Agencies No. 181, adopted on 19.06.1997. This Convention has not been ratified by Ukraine today and the term "outstaffing" is not legally enshrined, but the rules set out in Art. 39 of the Law of Ukraine "On Employment of the Population" of 05.07.2012 p., apply to legal relationships arising from the activities of economic entities that hire employees to continue their work in Ukraine with another employer. The range of such entities is determined on the basis of the constituent documents of the entity and according to the types of economic activity [4].

However, there are some problems with the use of outstaffing, as there are loopholes in the legislation itself. According to Art. 39 of the Law of Ukraine "On Employment of the Population" the activity of economic entities - employers who hire employees for further performance of their work in Ukraine by another employer under the terms of employment contracts, is carried out on the basis of a permit issued by the central executive body, which implements state policy in employment and labor migration.

The procedure for granting such a permit was approved by the Resolution of the Cabinet of Ministers of Ukraine of May 35, 2013 No 359. However, it should be noted that the said Procedure has not yet entered into force, and therefore, accordingly, it is necessary to obtain a permit for hiring employees to continue their work in Ukraine with another employer. But it is impossible in the absence of the valid order for his / her issuance.

In order to legally carry out activities of outstaffing (until entry into force of the Procedure for issuing a permit for hiring employees to further perform their work in Ukraine with another employer), it is sufficient to outstaffer to enter in the list of economic entities providing services with employment mediation,

and business entities that hire employees to continue their work in Ukraine with other employers.

There is also a positive practice of obtaining individual explanations from the Ministry of Social Policy that, prior to the entry into force of the said Order the business entity providing mediation services and entered in the appropriate list does not need to obtain such a permit in the absence of appropriate procedure [5, p.2]. According to Part 4 of Art. 36 of the Law of Ukraine "On Employment of the Population" it is the duty of economic entities - employers who hire workers to continue their work in Ukraine with another employer is to enter into an agreement with the employer on the use of the employee's work [4].

The subject of an outstaffing contract (service agreement) is the service provided by outstaffing company for employees to carry out their work with the customer. Such employees may be subject to the customer's work schedule, have their jobs on the customer's territory, but outstaffing company fulfills obligations of the employer and pays monthly salary to these employees. Sometimes the customer dismisses their employees, the outsourcer recruits them into their staff, so the employees continue to perform their regular duties, but are in the staff of the outsourcing company.

Thus, it is possible to distinguish outstaffing from outsourcing the first the entity provides employees (specialists) to perform the work to another entity, for a fixed term, and during the outsourcing the work is performed or services are provided.

During outstaffing, the customer receives additional benefits in the form of reduced tax payments (since it is not necessary to retain employees in the state and pay social insurance, personal income tax, military levy, etc.); avoidance of work risks with employees (personnel documentation, leave, etc.); simplifying accounting and more.

Since employees enter into an employment contract with an outstaffer, it also fulfills all obligations of the employer to comply with labor law, etc. Thus, the parties to the contract must settle all disputes, agree on job responsibilities and check qualifications of employees, compensation for material losses of the customer, other essential conditions of employment of employees. [6]

Analyzing all of the above, you can find the key differences between outsourcing and outstaffing:

1. The subject of the contract. In outsourcing, the contract is made to provide service to perform a specific task (accounting, legal services, etc.). If talking about outstaffing, then the subject is the service of providing staff.
2. Labor management. Outsourcing usually eliminates the direct interaction of Company A with contractors assigned by agency B. The management of specialists lies with Manager B, who is dealt with by Representative A. When it comes to outstaffing, then A fully manages employees of C within the framework of the contract.
3. Remuneration. In outsourcing employment, remuneration is often paid, hourly or monthly. Between work force, it is distributed within company B. But the outstaffer sets the salary and pays it directly to A, and the payment being the same as in the case of normal hire.[5]
4. Execution of labor relations. The employment contract is concluded between the employee and the contracting company. An employer is a company that provides outsourcing or outstaffing services. Therefore, in this case, neither the outsourcer nor the person using outstaffing is a direct employer and there are no labor but civil relations between them.
5. Place of work performance. If we are talking about outsourcing, the work can be done on the territory of the

contracting company, because the main task is to provide service, to perform the task. In the case of outstaffing, the work is carried out on the territory of the customer company and, moreover, according to the rules of its internal labor schedule and other conditions.

Conclusions and prospects for further research.

Outsourcing and outstaffing contracts are widely used in Ukraine, but there is still no legislative regulation that allows us to refer them to unnamed contracts. Outsourcing is a format for long-term business relationships that involve performing certain tasks from one company to another. Outstaffing is the involvement of specific agency professionals without their inclusion in the customer's staff. Particular attention should be paid to the shortcomings in the legislation on this contract, since despite the fact that Employment Law of Ukraine establishes the obligation to obtain a permit for hiring workers to continue their work in Ukraine with another employer and prohibits such activity without permit, the relevant procedure for issuing the permit has not entered into force yet.

An outstaffing contract is, by its nature, reminds an employment relationship, when outsourcing is similar to a service contract, which regulates in detail the manner of such services provision and persons involved in the process. However, it is advantageous for many companies to attract employees through outstaffing companies, as this allows to avoid personnel issues and unnecessary tax burden and does not spend their own resources on employment contracts, other personnel issues, tax payments, etc.

When outsourcing is applied, there is usually no resemblance to the employment relationship, as employees remain the employees of the executing company in all aspects of providing services to the customer.

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ШЛЮБНИЙ ДОГОВІР ТА ІТ: ПРОБЛЕМНІ ПИТАННЯ ЗАСТОСУВАННЯ

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У запропонованій статті надається загальна характеристика застосування шлюбного договору в сфері інформаційних технологій за законодавством України. При цьому наголошується, що шлюбний договір відносно віртуального майна (речей, об'єктів інтелектуальної власності або творчості) для врегулювання відносин між подружжям в ІТ сфері, повинен складатися за аналогією складання шлюбного договору відносно реального майна подружжя та їх спільної власності. На теперішній час в Україні, правовідносини подружжя щодо

віртуальних речей, у відмінності до пілотного проекту з приводу реєстрації актів цивільного стану, законодавчо не врегульовано, у зв'язку з чим потребують подальшого дослідження.

Ключові слова: сім'я, сімейні правовідносини, шлюб, шлюбно-сімейні правовідносини, укладення шлюбу, шлюбний договір, інформаційні технології.

MARRIAGE AGREEMENT AND IT: PROBLEMS OF ITS APPLICATION

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The proposed article provides the general description of application of marriage contract in the field of the formation of technologies according to the legislation of Ukraine. It is emphasized that the marriage contract with respect to virtual property (things, objects of intellectual property or creativity) for the settlement of relations between friendship in the IT sphere, should be made by analogy with the marriage contract regarding the real property of spouses and their joint property. Currently, in Ukraine, legal relationships between spouses in relation to virtual matters, unlike the pilot project on civil registration, has not been legally regulated and therefore needs further investigation.

Key words: family, family relationships, marriage, marriage contract, information technology.

Problem statement. In today's society, in both Ukraine and the EU, many pressing questions in economic, moral, ethical, social and cultural aspects regarding the definition of family relationships and the legal regulation of these relationships arise. These questions arise in the light of the fact that women and men have interfered with IT, including the Internet with its social networks,

dating sites, etc. The lives of women and men, as well as their family relationships, have changed significantly due to the development of IT.

It is necessary to agree that the formation of information and communication technologies have significantly influenced the development of the society, became the factor of information revolution, leading to the emergence of a single world space [1, p. 6]. Even 15-20 years ago, no one could have assumed that IT would fit into our lives and relationships, including family relationships, marital property. IT is a real world of endless information, in which everyone immerses depending on their interests (communication, knowledge, work, entertainment, etc.).

Through the use of information technologies, in particular the Internet and its technical services, new forms of family legal relationships are being created in the world today in the global virtual environment, that is, the Internet, which goes far beyond the scope of law regulation information.

Recently, the legal environment has raised the issue of discussing the problems of legal regulation of global information technology – computer network the Internet. Scholars are encouraged to introduce a new line of science – Internet law or IT law. The Internet and its main services can be imagined as a medium of communication, the media, and also as a giant information archive, the library of electronic documents. In order to carry out a comprehensive study of the grounds for the emergence of family relationships in the IT sphere, it is advisable to study property relations of spouses determined by the marriage contract and their legislative regulation.

The current situation in the field of computerization testifies to the complexity of the tasks in the field of regulation of relations formed in connection with the use of information technologies and protection of the rights and interests of their participants. [2, p. 6].

It is no exception and the marriage contract, the application of which has become especially relevant in recent times. For this reason, the study of problematic issues of marriage contract application in the field of information technology is justified both from theoretical and practical points of view.

Recent research and publications. The scientific works of such jurists as: Antokolskaya, O.M. Bandurka, O.B. Bezpalko, A.M. Belyakova, V.I. Boska, D.V. Genkin, V.S. Gopanchuk, O.V. Dzer, N.M. Ershov, I.V. Zhilinkov, I.A. Zagorsky, O.M. Kalitenko, V.M. Kosak, O.M. Kalitenko, N.S. Kuznetsova, Z.V. Romovskaya, R.O. Stefanchuk, E.A. Sukhanov, V.A. Tarkhova, Yu.K. Tolstoy, E.O. Kharitonov, O.I. Kharitonova, Yu.S. Red, Ya.M. Shevchenko and others served as the theoretical basis of the research.

The purpose of the article. Scientific analysis, systematization, evaluation, development of priority areas of family law in the field of application of the marriage contract and information technologies, theoretical and practical problems that arise in the field serve as the purpose of the article.

Presentation of the main material. The study of property relations of the spouse, including the conclusion of the marriage contract, is important in the IT sphere, since the precise definition of the position on these issues will allow clarifying their legal nature, allow to determine the perspectives of the development of legislation in the relevant field.

According to Part 2 of Art. 11 of the Civil Code of Ukraine [3] main grounds for the emergence of rights and obligations are contracts and other transactions. Contracts are the basis for the emergence of relationships that mediate the dynamics of IT sphere, allowing activity of its subjects. This is a general rule, however, when it comes to marital relations and conclusion of marriage contract in particular, in this case the mentioned contract can exist

only in the presence of the registered marriage according to the law. Thus, according to Art. 95 of the Family Code of Ukraine [4], which defines the procedure of marriage contract, if marriage contract is concluded before marriage registration, it enters into force on the day of marriage registration. If marriage contract is concluded, it enters into force on the day of its notarization. Thus, it can be concluded both by persons who are getting married and by persons who are already married [4, p. 174].

The nature of the marriage contract is diverse. This finding is manifested in the fact that marriage contract is not like a standard contract, which includes certain more or less permanent conditions [5, p. 67]. The scope and content of each specific contract, the subjective focus of implementation, the order of entry into force of its individual provisions and other conditions are determined by the parties for every case.

The Family code of Ukraine does not define the marriage contract. Based on the analysis of the norms of Family code Ukraine and its general characteristics, we can conclude that marriage contract is the agreement between the persons who marry, determines their property rights and obligations in ongoing marriage and in case of its termination.

Most scholars agree that the marriage contract, the form of this contract, the conditions of its validity, grounds for invalidation, the procedure of conclusion and enforcement, many other points clearly show that in this case it is worthwhile to use common civil law constructions of the contract. Part 1 of Art. 92 of the Family code of Ukraine is devoted to determination of the parties to marriage contract, which may include: persons who have applied for marriage registration; spouses – persons who are already married. No one else can be a party to a marriage contract. Marriage contract cannot limit ability and capacity of spouse, that

is, contain provisions restricting one party's right to work, choice of profession, education, freedom of movement, etc. [6, p. 24].

Marriage contract regulates three main types of property relations: a) legal regime of property (Article 97 of the Family code of Ukraine); b) procedure of using house (Article 98 of the Family code of Ukraine); c) the right to maintenance (Article 99 of the Family code of Ukraine). Marriage contract is concluded regarding property relations of the spouses (Part 1 of Article 93 of the Family code of Ukraine).

The categorical tone of this statement is justified, because personal non-property rights of man and citizen, and spouses are inviolable, and no one, not even close people can encroach on them, which is guaranteed by the Constitution of Ukraine [7]. Art. 21 of the Constitution of Ukraine states the following: "All people are free and equal in their dignity and rights. Human rights and freedoms are inalienable and inviolable". Art. 51 of the Constitution protects the rights not only of a person but of a married person: "Each spouse has equal rights and obligations in marriage and family." Marriage contract may provide for the right to compensate non-pecuniary damage caused by the wrongful conduct of another spouse (infidelity, beatings, actions against the interests of the family, etc.).

Spouses cannot regulate their non-property rights and obligations towards children through a marriage contract. Also, the contract cannot contain conditions that put one spouse in an extremely unfavorable position (e.g. stipulation in the contract that all property acquired in marriage and income becomes the property of only one spouse). In addition, marriage contract cannot contain restrictions on such issues as voluntariness of the marriage union, equality of spouses, concern for well-being and development of children, etc.

At the same time, it should be borne in mind that the development of IT cannot but affect the contractual structures that exist in family law, and therefore need rethinking. The rapid development of IT is also expanding the scope of civil rights that apply to both civil and family law. After all, civil rights objects can definitely be attributed to IT objects, which include: business assets, websites, domain names, computer programs, databases, Internet accounts, virtual things, virtual money and more. The inclusion of these facilities will not contravene with the requirements of the current legislation of Ukraine.

In the domestic system of family law, legislation provides that property acquired by spouses in marriage is common. When concluding a marriage contract, it is necessary to take into account some features regarding the legal regime of property, and with regard to the IT sphere, it can also take into account virtual property (computer programs, websites, accounts, electronic means, virtual objects of intellectual property, creative works that are placed on Internet sites, etc.): allowed to resolve issues regarding electronic means; the parties may assume that the virtual property acquired by each of the spouses before marriage or received during the marriage as a gift will belong to both spouses and acquire the mode of joint partial or joint ownership of the spouses; the terms of the marriage contract cannot impair the financial status of either spouse, that is, the necessity of fixing the terms of the contract only with respect to both spouses in equal shares, which must comply with the general principles of common life; the parties may provide that they will own and share the virtual property owned by one of them under virtual ownership; if the certificate of marriage contract gives rise to the issue of specific virtual property, the property of which is proposed to be defined in the marriage contract, then its ownership should be established; the parties may agree on admissible order of division of their virtual

property. Parties should also keep in mind the fact that marriage contract is not a document that establishes and confirms the ownership of virtual property

Article 94 of the Family code of Ukraine provides that marriage contract is concluded in writing and notarized by both public and private notary [7, p. 258]. The procedure for notarization of the marriage contract is regulated by the Decree of the Ministry of Justice No 296/5 of 22.02.2012 “On Approving the Procedure of Notary Deeds by Notaries of Ukraine”. The Family code of Ukraine does not provide for the state registration of marriage contract, so its validity depends on the notarial certificate.

Conclusion. To sum up all the mentioned above, marriage contract with respect to virtual property (things, objects of intellectual property or creativity) for the settlement of relations between spouses in the IT sphere, must be made by analogy with the marriage contract with respect to the real property of spouses and their joint property. Currently, in Ukraine legal relationships between spouses in relation to virtual matters, unlike the pilot project on civil registration, has not been legally regulated and therefore needs further investigation.

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СВІДОЦЬКИЙ ІМУНІТЕТ У КРИМІНАЛЬНОМУ ПРОВАДЖЕННІ

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У статті розглядається проблема ролі та значення одного з інститутів кримінально-процесуального права – «імунітету свідка». У статті проаналізовано види свідочьких імунітетів відповідно до основних теорій кримінально-процесуального права та чинного кримінально-процесуального законодавства України. Крім того, висвітлено процесуальні особливості застосування такого права на практиці.

Ключові слова: кримінальне провадження, свідок, свідочький імунітет, право відмовитися давати показання.

WITNESS IMMUNITY IN CRIMINAL PROCEEDINGS

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The article deals with the problem of the role and importance of one of the institutions of the criminal procedure law – «witness immunity». Within the article, the types of witness immunities are analyzed according to the basic theories of criminal procedural law and current criminal procedural legislation of Ukraine. In addition, the procedural features of the application of such a right in practice are highlighted.

Key words: *criminal proceedings, witness, witness immunity, the right to refuse to testify.*

Problem statement. Within the issue of witness immunity, the practical application of such a theoretical category can be distinguished. It delineates in the particular features of each type of witness immunity, depending on the person in the status of witness in criminal proceedings and the subject of the testimony. Accordingly, such a distinction depends on the legal consequences, which play an important role in the process of proving and affecting the course of a criminal proceeding.

Recent research and publications. The question of witness immunity was engaged in research of V.T. Nor, S. M. Stakhivsky, L.D. Udalova, O.P. Kuchinskaya, O. V. Churikova, and L.V. Havrylyuk and others.

The purpose of the article is to analyze the features of witness immunities within criminal proceedings under the current legislation of Ukraine.

Presentation of the main material. For the proper functioning of all aspects of the life of society and the state, the

legislation of Ukraine enshrines a number of secrets that cannot be disclosed. Among them there are state secrets, information related to the professional activity of the subjects or which depends on a certain position of the person. Violation of these norms can be detrimental to both private and public interests and have significant consequences for criminal proceedings.

For this aim, the criminal procedural legislation defines norms that are aimed at securing the rights of defined categories of people and preserving the information protected by law. As a general rule, according to the Criminal Procedure Code of Ukraine, the witness is required to testify to the investigator, the prosecutor, the investigating judge, and the court. However, there are a number of exceptions to the general rule. In the theory of criminal procedural law, they are known as the general concept of witness immunity.

The legal status of a witness provides for the basic elements of our study. It includes the duty to testify, the right of certain categories of individuals to refuse to testify and the responsibility for knowingly false testifying and for refusing to testify. The categories of witnesses who are legally entitled to refuse to testify are vested with witness immunity.

The concept of witness immunity means the absolute or relative release of statutory groups of people from the duty to testify about the information of a criminal offence they are aware of. Depending on the legal status of the witness, the witness immunities are divided into absolute and relative.

The absolute witness immunity provides for the prohibition of the prosecutor to interrogate the witness during the pre-trial investigation and the court during the trial and the witness's correspondent duty not to testify. Such prohibition is related to the performance of people by their professional function, which presupposes confidentiality of information and constitutes secrecy

of the law. This information cannot be questioned by a witness. Such witnesses are the categories of individuals provided for in paragraphs 6-11, Article 65 of the Criminal Procedure Code (further - the Criminal Procedure Code) and other people who are required by law to disclose certain information that constitutes secrecy. As for the relative immunity, it gives person the right to refuse to testify, but he or she may exercise that right by his/her own consent. These are groups of people referred to in paragraphs 1-5 of Article 65 of the CPC, individuals entitled to diplomatic inviolability, and people who in a specific criminal proceeding may apply the right of self-disclosure, detection of family members and close relatives.

For breach of the duty not to disclose a secret provided by absolute immunity, the law provides the legal liability. This category includes judges, experts, individuals who are subject to security measures and individuals who have information about such individuals, journalists. Judges can be liable to disciplinary action for the disclosure of the secret of a conference room, or of information from a closed court hearing. However, there is no liability for the jury provided by law. There are three types of liability for breach of security measures – disciplinary, administrative and criminal – depending on the severity of the consequences of such disclosure. If he fails without good reason to fulfill his duties as an expert, he is criminally responsible. The journalist's responsibility for disclosing confidential information is not clearly defined by law and no direct sanction is enshrined.

In addition, the Criminal Code of Ukraine provides for criminal responsibility for the disclosure of certain types of confidential information, including state secrets, trade secrets, adoption secrets, and so on. Since the current law does not explicitly prohibit the disclosure of these secrets through the interrogation of a witness, the persons who possess them do not

have the right to refuse to give evidence regarding them. Thus, there is a certain conflict in the law when a person is responsible for either disclosing the identified waivers or refusing to disclose them.

The right to refuse to testify provides for relative immunity. Groups of persons endowed with it, at their own request (the right to self-expose, to expose family members, close relatives), or with the consent of the person who entrusted such information to them (exemption from the obligation to keep professional secrecy), choose to testify as a criminal witness or not. The Rule provides for Part 3 of Article 65 of the CPC and establishes a non-exhaustive list of categories of persons who are exempted from the obligation to keep confidential information (paragraph 1-5 Part 2 of Article 65 of the CPC). The subject matter and scope of the testimony is determined by the person who entrusted them with the information. A mandatory condition for exemption is the consent of the person who entrusted the information in writing signed by that person.

In addition to those specified in paragraphs 1 to 5 of Article 65, Article 65 of the CPC, this rule applies also for a lawyer's assistant, a lawyer's trainee, persons who have a working relationship with a lawyer; notarial assistants, persons who perform notarial acts, persons who have been notified of notarial acts in connection with the performance of their official duties or other work, persons involved in notarial acts as witnesses, other persons who have become notaries known information constituting the subject of a notarial secret. In order to disclose professional secrecy information, it may be disclosed with the consent of the person who has entrusted it with such information, to the extent determined by it. In the cases stated in legislation, healthcare providers may be questioned about this information without the consent of the individual.

In addition, the Criminal Procedure Code is not designated as a subject of relative immunity by the Ombudsman, who is not required by law to provide an explanation of the merits of the case. Therefore, he cannot be questioned as a witness to the merits of these cases, namely the circumstances of his duties.

Also the issue of clergyman having relative immunity is uncertain. As the law enshrines the secrecy of confession as absolute and non-disclosable, such immunity should be attributed to the absolute and to stipulate in Part 3 of Article 65 of the Criminal Procedure Code the exemption from the duty to keep the professional secrecy of the persons, envisaged by paragraphs 1-4 of Part 2 of Art. 65 of the CPC.

In order to ensure the effective performance of the functions of diplomatic missions, relative witness immunity is vested in two categories of persons of the person with the right of diplomatic immunity and employees of diplomatic missions. The first category cannot be questioned as witnesses without their consent. The second category of persons may be interviewed only with the consent of the representative of the diplomatic establishment. The categories of persons enjoying the right to refuse to testify are provided for in the Regulations on Diplomatic Missions and Consular Offices of Foreign States in Ukraine in 1993. In the event of obtaining the consent of the Accrediting State for questioning by diplomatic and consular staff as witnesses, they shall be questioned on a common basis.

Regardless of professional responsibilities, relative witness immunity is vested in individuals who enjoy the right of self-exposure and the right not to testify against close relatives and family members. Thus, the person is not responsible for refusing to give evidence or explanation about him, family members or close relatives, as defined by law.

Conclusion. The existence of the institution of witness immunity within the criminal process has important practical application. It guarantees the real protection of the rights of the person or promotes the duty to keep confidential information, and the violation of such rights, including not reporting them to the person, results in the inadmissibility of evidence. In addition, some categories of individuals may have legal responsibility for giving evidence and disclosing certain information.

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УДК: [340.12:35.07](477)”1918”П.Скоропадський

**УКРАЇНСЬКА ДЕРЖАВА
ЗА ГЕТЬМАНА П. СКОРОПАДСЬКОГО
(КВІТЕНЬ-ЛИСТОПАД 1918 Р.)**

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Стаття присвячена аналізу соціо-політичної, правотворчої і культурно-просвітницької діяльності уряду гетьманата у 1918 р. Розглянуто передумови формування гетьманату Павла Скоропадського, особливості внутрішньої і зовнішньої політики гетьманату. Особлива увага приділена судовій реформі та процесам українізації у сфері освіти та культури.

Ключові слова: Українська держава, переворот, гетьманат Павла Скоропадського.

**UKRAINE DURING THE RULING OF GETMAN
SKOROPADSKYI (APRIL-NOVEMBER 1918)**

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The article deals with the analysis of the socio-political, legal, and cultural work of the the Hetman's government in 1918. The preconditions of forming the Hetmanate of Pavlo Skoropadskiy are reviewed; the foreign and inner policy of the hetmanate is discussed. Special attention is given to judicial reforms and the processes of Ukrainianization in the spheres of education and culture.

Key words: *Ukrainian state, coup, hetmanate of Pavlo Skoropadskyi.*

Problem statement. During the ruling of getman Pavlo Skoropadskyi many reforms were carried out, including judicial, land, school, and military ones. All those reforms changed the lives of ordinary Ukrainians for the better. The research has shown how only one person managed to change the course of the Ukrainian history just in 7.5 months.

The relevance of the research is determined by the need to study more deeply the socio-political and legal aspects of the Ukrainian Hetmanate of 1918, because nowadays there are more opportunities for such research.

Recent research and publications. The complex and eventful period of the Ukrainian Hetmanate of 1918 is represented in all kinds of historical sources: archives, press, memoirs, epistolary, archeographic, and visual works and documents. A number of books dedicated the Ukrainian Hetmanate of 1918 were published in different states, among them: “Ukrainian Hetman State in 1918. Historical essays” by Ruslan Pyrig [14], “Pavlo Skoropadsky – the last hetman of Ukraine (to the 140th anniversary of his birth)” by O.V. Dobrzhanskyi, and others.

The purpose of the article. The purpose of the study is to define the main milestones of foreign and domestic policy of Ukraine during the hetmanate of P. Skoropadskyi. The purpose of the work is realized by implementing the following tasks: 1) to reveal the preconditions of the coup and the formation of the Hetmanate of P. Skoropadskyi; 2) to investigate the foreign policy of the Hetman’s government; 3) to analyze the domestic political processes of the Ukrainian state; 4) to reveal the struggle against the hetmanate.

Presentation of the main material. 90 years ago, on April 29, 1918, in the golden-domed capital of Kyiv, 44-year-old Pavlo Skoropadsky, a descendant of the glorious Skoropadskyi Cossacks, who became the ruler of the proclaimed Ukrainian Hetmanate. Since that moment of truth, many tragedies and accomplishments had taken place in the lives of Ukraine, Ukrainians and the Ukrainian diaspora, but the events of 1918, which, unfortunately, did not become fateful for the Ukrainian people and their country, are still controversial and discussions both among the scholars and ordinary citizens still go on.

Thus, the era of the hetmanate, which lasted 7.5 months, was filled from the very beginning by the struggle of the government at various fronts: at the external front with the Bolsheviks, and at the internal one with Russian organizations, and, mainly, with the Ukrainian opposition. The major disadvantages included the lack of its own army and complete dependence on the occupants. It is important to mention in this regard the heavy legacy of the previous era: the responsibilities assumed by Ukraine under the Brest Peace Treaty, namely: to supply Germany and Austria-Hungary with a large amount of grain, meat, and sugar.

The hetman's government inherited a heavy legacy from the previous government in the field of social relations: the peasantry was waiting for the free transfer of landed estates and the liquidation of landed estates. The Central Rada failed to resolve that issue, and it was to be solved by the Hetman's government. It resulted in another legacy: the so-called "punitive detachments", which appeared with the German occupation, but all the responsibility for them fell on the hetmanate.

But, the hetman's era is marked with a lot of positive examples. During those 7.5 months outstanding specialists in various fields of economy, culture and science worked hard. Within a very short period of time the hetman's government

established diplomatic relations with Germany, Austria, Switzerland, Bulgaria, Poland, Finland, Turkey, Crimea, the Scandinavian states, and with the weakening of the occupation it succeeded in establishing diplomatic relations with France, England, and Romania. Diplomatic relations were also with Moscow, the Don, and the Kuban.

Great achievements were made in the field of finance: the Ukrainian monetary system was established, banks were founded. After the ruin brought by the war and revolution, railways and bridges were rebuilt and regular rail traffic was restored. The Hetman's government prepared a draft of land reform, which could not be resolved by the Central Rada; prominent lawyer X. Lebid-Yurchyk considered the land law approved by the Hetman's government, "similar only to the land laws of the most democratic countries in the world, such as New Zealand, where land legislation was ahead of all other countries and evolutionarily solved the land issue for the benefit of the working people".

Judicial reforms were very important. Many new laws were worked out and adopted. The Senate was established, the court system started working under new regulations. Measures to legalize the autocephaly of the Ukrainian Orthodox Church were undertaken.

The process of Ukrainianization of schools at all levels, starting with public schools and ending with two universities began. Of great importance was the successful work on founding the Ukrainian Academy of Sciences, the National Library, the National Archives, the National Art Gallery, and the Ukrainian Historical Museum. Besides, the State Drama Theater, the National Opera, the Ukrainian State Chapel, and the State Symphony Orchestra were founded.

The Ukrainian publishing business managed to reach an exceptional scale: a number of large publishing houses were

established, according to the historian of the Hetman's era D. Doroshenko they published the Ukrainian editions "in an unprecedented number of copies; the whole region was covered with a network of the Ukrainian bookstores [7].

Such are the results of what was done in extremely difficult conditions during only 7.5 months of 1918.

Conclusion. P. Skoropadsky, of course, loved Ukraine and wanted to love it even more, but he did not know his people, did not feel them subconsciously, because being in love with the romantic past, songs, and myths of the people does not mean to be part of it, even if you are of the same blood. The Hetman was separated from his people for too long, and he had too little time to be among them when they became the People.

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СУСПІЛЬНЕ ЗНАЧЕННЯ МЕДІАОСВІТИ

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Стаття присвячена проблемам медіаосвіти. Подано аргументи важливості такого роду освіти, а саме: принципи соціалізації молодого покоління, недосконалий захист дітей, відсутність механізмів ефективної саморегуляції інформаційного ринку, необхідність протистояти зовнішній

інформаційній агресії та руйнівній зарубіжній пропаганді. Розглянуто основні положення Концепції впровадження медіаосвіти в Україні, її форми й перспективи.

Ключові слова: *медіаосвіта, медіакультура, соціалізація, інформаційне суспільство.*

SOCIAL IMPORTANCE OF MEDIA EDUCATION

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The article deals with the phenomenon of media education. Arguments supporting this kind of education are presented, namely: principles of socialization of the young generation, imperfect protection of children, lack of mechanisms to facilitate self-regulation of the information market, the need to resist external information aggression. The main provisions of the the Concept of introduction of media education in Ukraine are considered, as well as its forms and current prospects.

Key words: *media education, media culture, socialization, information society.*

Problem statement. Education is a concept without which no society exists. It has long been laid down that it is one of those foundations of humanity that contributes to the scientific progress and the continuation of flourishing of civilization. The Law of Ukraine “On Education” states that it is the basis of the intellectual, spiritual, physical and cultural development of the individual, his successful socialization, and economic well-being. The topic is quite relevant, because in the age of globalization and the predominance of technical processes, media education seems to be necessary not only for journalists, but also for everyone, and media

culture is perceived as an everyday context of life. Despite many papers and defended theses on this topic, a number of issues regarding media space remain controversial.

The purpose of the article is to study the field of media education and its origin, and the task is to find out its importance to society and identify the causes of need by analyzing the Concept of introducing media education in Ukraine.

Recent research and publications. The systematic study on media education was performed in 2009 by the scientist Gurinenko[5, p.3]. He believes that the first curriculum in media education was developed by Canadian scientist M. McLuhan in 1959, and the active use of media education in the educational process began in the 1960s in the United Kingdom, Canada, Germany, USA, France. An increasing number of studies have found that media education appears to be a serious and important area that is connected to most social structures of a democratic society. It has now been suggested that the introduction of media education in Ukrainian schools is gradual, but not very noticeable. The course of media education under different names ("media culture", "media literacy", "media education") and in different formats is taught in schools in 14 regions of Ukraine [6].

Presentation of the main material. The 21st century education is faced with numerous demands of a changing society and related problems: there is a rapid development of technology that is even faster than the change of generations, so education must be prepared for it; a person must be educated in order not only to be a citizen of his country, but also to have an understanding of the trends around the world and to be prepared to function in the conditions of globalization.

It is not surprising, that humanity is increasingly moving to the sphere of intellectual activity, which is being provided to a great extent by the media as a component of media culture, so

media culture can be considered a priority in this aspect. Namely, the majority of knowledge is gained through the media: traditional (television programs, radio broadcasts, print media) and the latest (Internet, telephone or computer communication). So the obvious fact is that it is necessary to be aware of what surrounds you. Moreover, over time, society will rely on information and communication technologies even more: web technologies, cloud computing and big data, smart phones and the Internet of "smart things", artificial intelligence and other gadgets [3]. When a person is aware of his or her belonging to the media world, it ensures better understanding of the underlying reality, stimulates the formation of value categories, meaningful positions of an individual as factors of self-creation of a personality in the modern social and cultural situation. Entering media culture appears to be a necessary condition for proper development of a human being.

Media education can also be seen as a form of purposeful development and delineation of the essential characteristics of a person as a carrier and a creator of the cultural essence and meaning. Media culture is realized through many characteristics of the individual - mental, moral, ethical, ideological, aesthetic and others. That is, a person realizes what is inherent in nature and through socializing [9, p. 95-98].

The media is having a dramatic impact on the education and life of the younger generation, who are accustomed to socializing through the latest technologies. In addition, paying attention to the current situation in the world, gadgets are the only way of distance education. At the time when all educational institutions are closed, young people have the opportunity to take various courses, to keep in touch with their teachers and not to stop studying altogether. Thus, media education will only help them in it.

One more important evidence of the importance of media education is the inadequate protection of children from media

content. Very often this causes harm to their health and development. The child is not capable of controlling the flow of information on his own, and if the parents do not have sufficient knowledge to do so, the consequences are not pleasant. Therefore, parents who are knowledgeable in the media are the key to their children's safety. In addition, it is worth studying the basics of media at school. Therefore, the task of the modern school is not only to prepare the child for life in the modern society, but also to teach to understand and realize the effects of the influence of media on the human psyche, on his or her life as a whole, to teach her to protect himself or herself from the perception of various negative information. It is the introduction of media education in the educational process that will help to solve the problem of preparing a person to communicate during socialization, which in turn will allow, firstly, to protect children from the potentially harmful effects of media, and secondly, to bring up such a media consumer who can effectively satisfy their interests using the mass media.

Let's consider such an aspect of the media as fraud [7, p. 347]. Recently, fraudulent schemes have become increasingly common in the network. This is due to the inattention of the users or their lack of knowledge about preventing behavioral negligence. Attackers are constantly improving their methods and techniques, but online scams can be avoided by following simple rules. Media education is one of the factors contributing to the safe use of the computer information technology.

On the 21st of April, 2016 the Presidium of the National Academy of Pedagogical Sciences of Ukraine approved the new version of the Concept [2] of introduction of media education in Ukraine. The concept is based on the study of the state of media culture of the population of Ukraine and the international experience of organizing media education. The main provisions of the Concept are in line with the objectives set out in the UNESCO

Paris Media Recommendation Program (dated on the 22th of June, in 2007) and the European Parliament resolution on media literacy in the digital world (on the 16th of December, in 2008) [4] . The purpose of the Concept is to promote the development of an effective media education system in Ukraine, which should provide a sound basis for humanitarian security of the state, development and consolidation of the civil society. It will help to counteract external information aggression, prepare children and young people for the safe and effective interaction with the modern media system and media culture in accordance with their age and individual characteristics.

Its tasks include promotion of: 1) media literacy – the ability to use the media safely and effectively, understand the nature of content and services, use the full range of opportunities offered by new communication technologies and media systems, and be able to protect themselves and their family from harmful information material; 2) reflection and critical thinking, because such psychological mechanisms are capable of ensuring self-regulation of interaction with the media and its conscious consumption, evaluating the content, source, form and quality of information provision, as well as the ability to withstand external information aggression and propaganda, destructive media information influences; 3) media immunity of a person, through which a person can fight against an aggressive media environment. It also helps to consume media products safely in terms of its mental and psychological impact and to filter the information flow from all sorts of “garbage”, protecting against harmful materials; 4) media creativity, which helps people learn to communicate better, realize their life goals, develop patriotism and overcome social consequences through hostilities in the Donbass, Crimea or quarantine because of the spread of COVID-19 [2].

The concept offers its forms of media education. They are:

1) preschool, that is, until 6-7 years, as soon as the child begins to know the world, he or she has the opportunity to develop intellectually and aesthetically (including various forms of intelligence, including emotional, social and practical intelligence). It can learn to differentiate information that is appropriate to its age and vice versa, which is inappropriate and thus to select and use age-appropriate media products; 2) school, mentioned above: training courses, mugs, studios, electives are already involved here, in general – an integrated media center using media didactics within existing subjects. School computer classrooms and upgraded libraries are useful. This form of media education is more serious than preschool and is aimed at developing critical thinking and communication media competence; 3) after-school, designed as a supplement to the school to enhance its effect. It is based on extracurricular institutions (for example, the Small Academy of Sciences), non-governmental organizations, libraries, volunteer settings, and covers media education of parents and family media education (psychologist consultations); 4) media education in high school – training specialists for media and media educators and media psychologists; 5) parental – it ensures the effectiveness of the media education of the family as a leading factor and social environment for early socialization of the child; that is, parents need to know how to protect their child (especially at an early age) from the negative impact of the media on their development; it will become part of a holistic media education system and will be integrated into a psychological training unit for high profile professionals, high schools of conscious paternity, libraries, social services and family centers; 6) adult media education – this form of media education is continuous and is characterized by the use of modern information and communication technologies and the latest media; it also aims to provide the older generation who are accustomed to working with the media differently; and promotes

continuous personal development and advanced training. Adult media education is a necessary component of the state's information security in conditions of external information aggression and propaganda, contributes to the resilience of the population to destructive media information influences; 7) media education by means of media (informal media education) – the leading form of spontaneous media education of children and adults, which, if appropriate, can acquire signs of purposefulness and constructiveness. It is provided with training, information-analytical, information-entertaining programs and media projects, it requires a significant improvement in the quality of educational media products, involvement in the production and examination of the quality of media products by specialist media educators and media psychologists [3].

The Concept has three main stages of its implementation: 1) experimental phase (2010-2016); 2) stage of gradual introduction of media education and standardization of its content (2017-2020); 3) stage of further development of media education and ensuring its mass introduction (2021-2025 years) [3].

Ukraine is now in the second stage, when the experimental period should be coming to an end and media education would be at the end of its rooting. It is worth noting that progress in this is indeed noticeable, but it seems that the Concept is a bit of a mess. In fact, many educational institutions, NGOs, or even libraries are not yet ready to provide the public with a quality media education. Moreover, this requires improving the legal framework, the willingness of education professionals to resolve media education problems and controversies, as well as intensifying cross-industry and international interaction.

Conclusion. Our analysis has led us to conclude that the social significance of media education is indisputable, and humanity must understand where the information comes from,

what is its composition and usefulness. This is especially concerns children who are not able to do it on their own, so their parents should be aware of the media. In addition, it is important to be able to protect yourself from Internet scams, virtual scams and all kinds of fraud. Media education is not only the way to the effectiveness of human activity in the system of labor relations, but the way to remain oneself, a whole personality, capable of self-expression and humanity. The Concept of introduction of media education in Ukraine offers ways to solve this problem by defining its principles, stages and forms of learning. At the moment, Ukraine is going though the second and moving on to the third stage - development and mass introduction of media education. However, there are many tasks ahead.

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МАНІПУЛЯТИВНИЙ ВПЛИВ ЗМІ

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У статті розглядаються основні прийоми маніпулятивного впливу засобів масової інформації на свідомість та підсвідомість людини. Проаналізовано причини та мету маніпуляційних дій. Визначено основні принципи маніпулятивних технологій у мас-медіа.

Ключові слова: маніпуляції, мас-медіа, свідомість.

MANIPULATIVE ROLE OF MASS MEDIA

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In the article the basic techniques of manipulative influence of mass media on human consciousness are analyzed. The purpose and reasons for manipulative actions are being analyzed. The fundamental principles of manipulative technologies in mass-media are determined.

Key words: manipulations, mass media, consciousness.

Problem statement. We encounter them every day, allowing them to perform the informative, entertaining and

communicative function. We start our day with them and end it with them. No wonder, they are called "the fourth power", because they have had an absolute power over the feelings and consciousness of people for a long time. We trust them while they are affecting our consciousness and subconsciousness. They are addictive, disorienting, over-optimizing, enticing, thought-provoking, or misleading. What are they? They are the media.

With the advent of globalization, as humanity began to communicate more and more, it became more difficult to trust the media, especially when it started to be beneficial for the propaganda of political leaders and oligarchy. The media is a perfect tool for power over the mass. They cover billions of people, easily accessible and understandable for everyone. The media is capable of influencing a choice of our medicines, clothes or cat food, even if we think we make our own decisions. Propaganda was born a long time ago, a striking example is the period of World War II, but with the development of information technology, its spread has increased significantly.

Nowadays, manipulations are used in the military sector to incite the repugnant people and to push for radical actions, clearly planned by the enemy. This can be observed even in these days, when Ukraine is in a state of hybrid war. Special analytical departments tracking user's preferences, select ads that will be relevant for him, while companies stealing personal information from consumers to spam and attack, and there are a whole bunch of such examples. For example, the recent leak of information from Facebook consumers that occurred at the end of December 2019. In addition, there was the most scandalous leakage of data from 87 million users of the same social network, in March 2018 that was probably used for political advertising.

Is it possible to prevent from such massive impact of the media on our daily lives? Yes, it is. However, it is important to

understand the purpose of such manipulations, the ways in which they are performed and, finally, how to avoid them. This may happen not only to those who use the Internet or TV, but also to those who read newspapers, magazines or listen to the radio, because manipulation of consciousness is everywhere, even if we are not aware of it. The topicality of the article is determined by the increasing role of the media that shapes public opinion, increased amount of manipulation of media and a need to resist to such manipulative influence [12].

Recent research and publications. Prominent psychologists, journalists, and marketers have explored this topic a lot. Scholars such as Edward L. Bernays, Lange L., Zavgorodnaya L., Varij M., Golodnikova Y. considered both the mechanisms of manipulation and the nature of manipulative messages. Varij M. worked on manipulative techniques in the political area in the paper "Specific Forms and Methods of Influencing the Electorate". Edward L. Bernays in his work "Manipulating Public Opinion: The Why and The How" noted that the public can be manipulated but in teaching the public how to ask for what it wants the manipulator is safeguarding the public against his own possible aggressiveness. In particular, the work of Gorham J. "Mass Media" described the role of social media in public manipulation and how the mass media affect the people consciousness [3;7;8].

The purpose of this article is to study the features of the manipulative influence of social media on human consciousness, broaden the horizons of media consumers and study the methods of preventing manipulative actions. We also make an attempt to find out who can manipulate us and what are their intentions.

Presentation of the main material. *Firstly*, let's find out what manipulation is. Manipulation is a distortion of information that creates a false picture of the world; a sudden necessity to "artificial needs" that is not really needed, but suddenly becomes

vital [11]. *Secondly*, what is the purpose of manipulation? It is aimed at changing the direction of audience activity, its ideas, thoughts, and views. Its main task is to perceive the consumer with a thought that do not actually belongs to him but to a manipulator. *Thirdly*, who takes on the role of a manipulator? The main means of manipulation is the media; they easily influence public consciousness, monitoring the information environment in which we exist. The media can filter the data, which they are providing to the consumers, and deliberately hide the information that is not profitable to them. They can artificially emphasize certain topics while distracting people from more serious problems. There is a phenomenon such as media consciousness. It is a type of consciousness based on false values, interpretations, double morality, and, consequently, fake reality. Instead of giving the people the truth, the media take advantage of both people and information they have. Public opinion is being strongly deformed through the media [8].

Researchers point out the basic media manipulation technologies such as distraction, differing, appealing to emotions, self-blame and sensationalism. A perfect daily tool – distraction. The media flood news with stories on trivial issues because they want to keep people’s minds occupied. The result is that people stop questioning why the media is not talking about certain issues; the people forget the real issues. Differing problem. Presenting unpopular decisions as “necessary”, “for a better future”, or “for our own good”. People get used to a lower quality of life. They start seeing it as normal. In the end of the day, the people will resign themselves to the current state of things and will stop demanding what they were demanding. Let’s remember, when did you panic last time? The media try to prevent people from thinking critically; they try to control their thoughts as they fear controls the hardest. Do you feel guilty? They also make us believe that we are

the only ones responsible for our misfortunes. They are trying to make us miserable as a person to warn the public from mobilizing. However, what about sensational events that happen all the time? This is an effective way of dividing the problematic aspects and dispersion of the information flow in order to hide the real problem and remove social tension [6]. There was a striking example of such sensation during Syria outbreak, when insurgents and government forces fought. This situation was reported swiftly by all the world's leading news agencies, while government forces were destroying civilians [9]. The purpose of these strategies is to create docile, submissive, and obedient individuals. There are also examples when the media use a fragment of message from the interview or the video sequence of the event, which changes the context, creating a completely new message. As a result, a speaker can be misunderstood and unknowingly initiate a break out, of course if the media need it to look like that.

There is an impressive array of settings that the media shaped. Furthermore, people are easily manipulated by them and do not even realize it. People encounter them literally every day mostly through the ads. They have definitely heard the settings of the type: “Do it! This is cool, it proves that you can!” or “The main thing is money” or “The goal justifies the means” and others. When the people meet the advertise “buy” they do not think whether they need this thing but start to interpret it in terms of “can, want, prove”. Making a decision a person thinks that it is his own one but this choice was perfectly directed by the same settings. The media carry out their settings through popular media leaders, actors, TV hosts, politicians and more [7].

Alice Marwick and Rebecca Lewis, in the “Media Manipulation and Disinformation Online.” cataloged who is trying to manipulate media—trolls, ideologues, hate groups, conspiracy theorists, gamergaters. Where and how they do it—via blogs, sites,

message boards, social media and even the memes. Why they do it—for money, for hate, for power, to cause polarization or to disrupt institutions [2].

However, it is wrong to assume that only the media use manipulation. It is spread in many sectors—not just news and World Wide Web but also platforms, technology companies, brands, marketing, government, politics, education [2]. In short: we are being used.

Conclusion. This article has investigated how the media can use their influence on the society for a selfish purpose. They do it through manipulation mostly. The media use a great amount of tricks and settings to make the people do what they want. The most common signs of manipulation of the media are the lack of sources of information, the excessive emotionality and understatement of a person [10]. Undoubtedly, mass media, with the help of manipulative influence, shape media consciousness, which changes public opinion. It is important to understand how we can be manipulated and to be able to detect when we are being promoted or manipulated. People become mechanistic, lose the integrity of their own nature and as a result lose their ability to have adequate relations with the changing world. It is easy to manage such society. The majority of people are not capable to analyze and adequately resist manipulative techniques because they consider benefits as their only goals and sense of life.

Manipulation is possible due to the control over information and communication that dictate affirmations, representations, rules and models of human activities. In other words, manipulation is possible in the presence of rigid censorship [4].

Moreover, the media push the process of communication in the direction, which is advantageous for them and force the reader to play the passive role of the "victim of manipulation": to accept the media's position and agree with them [1]. What can we learn

from this? Perhaps the biggest lesson could be that we must not be naïve. We must discriminately keep awake and aware. We must be hungry for truth wherever we find it. We must protect it and defend it. We need to be careful to avoid coming to hasty conclusions just because the “experts” say it. It is, very much, an individual journey. It is a great quest but filled with minefields. Be careful and beware of sensations, urgent news, keep an open mind to all that you see, buy or try [5]. In the future, it would be helpful to pursue the study into the sphere of media settings and their manipulative influence on the society.

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СТАНОВЛЕННЯ АВГУСТИНА АВРЕЛІЯ ЯК ПАТРИСТА ТА ОТЦЯ РИМО-КАТОЛИЦЬКОЇ ЦЕРКВИ

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У статті представлено історико-філософський аналіз становлення постаті святого Августина як патриста, розуміння формування основних принципів філософії мислителя з акцентом на значенні його постаті у подальшому розвитку світової філософії, особливо схоластики.

Ключові слова: *філософія, патристика, неоплатонізм,*

фiдеїзм, християнство.

FORMATION OF AURELIUS AUGUSTINE AS A PATRIST AND CATHOLIC FATHER OF THE CHURCH

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The article provides a historical-philosophical analysis of the formation of Saint Augustine as a patrist in order to understand the formation of the main principles of the philosophy of the thinker and to emphasise the significance of this author in the further development of the world philosophy, especially scholasticism.

Key words: *philosophy, patristics, neoplatonism, fideism, christianity.*

Problem statement. The culture of late antiquity is marked by its transitional nature. A time when the ideas of a thousand-year tradition of complex and often contradictory culture of anthropocentrism clash in dispute with new religious doctrines' emergence. And right in this period of time the figure of the Christian philosopher and patrist Blessed Augustine arises. Aurelius Augustine's personality is considerably interesting in historical reflexes, which actually "open the first page" of the philosophy of medieval thinking. The relevance of his ideas is immensely important in theology, as he was able to set the unbreakable pillars of dogmatics of the Catholic Church on which it still stands.

Recent research and publications. The formation of the philosophical views of Aurelius Augustine have been studied by a number of scholars – Krutiy J., Losev O., Portalié E., Gotuch M. and many others. The given article has been framed by important

historical-philosophical views of Mayorov G., Neretina S., P. Brown, Svetlova R., Selivestrova V. In the contemporary literature, the posture of Augustus has been actively studied, Augustine's predestination is described by Ivan Meendorf [4]. There are also a number of works of Russian authors on Augustine that have contributed greatly to the enlightenment of his personality, life and activity by R. Svetlova and V. Selivestrova [3]. Interesting research on this topic has been conducted by Augustine's biographer Tront Berg Eriksen [5]. In Ukrainian literature his posture has been studied by Krutiy J [1], Gotuch M. [9]. Grytzushyn V [10], and other prominent scholars.

The purpose of the article is to provide a historical-philosophical analysis of the formation of the figure of Saint Augustine as a patrist, an understanding of the formation of the main principles of the philosophy of the thinker and an emphasis on the significance of this author in the further development of world philosophy, especially scholasticism.

Presentation of the main material. Biographical ground of the philosophy of the "Father of the western church". When we think of the collapse of the ancient world of the West, and look back to the last decades of the greatness of Roman culture, we see the image of the majestic thinker Augustine Aurelius, whose creation is recognized by the apogee of the Patristic. Blessed Augustine was born on 13th November 354 in North Africa, which was part of the Roman Empire [6]. At that time, the First Council of Nicaea had already taken place, but Christianity had not yet been established as the official state religion. Part of the population of the empire converted to Christianity, but the rest adhered to the faith of their ancestors and remained pagans. The Aurelian family vividly reflected the social situation in the country: Patricius, as father, believed in the pantheon of the gods, and Monica, as mother, was a devout Christian [7].

The town of Tagast (today Souk Ahras in Algeria), from which Blessed Augustine was from, was quite provincial, and the family of the future Father of the Church was not wealthy. His father was a member of the city council and a representative of the middle section of the African suburbs of the Roman Empire. Monica tried to raise her son in a spirit of Christian values. Her efforts were flattened by the influence of her husband, but on his deathbed, Patricius, thanked his wife, and accepted Jesus into his heart. In "Confession", the patrist's most autobiographical work, he hardly describes his father, but details all the righteousness and piety of his mother's life. The parents of young Aurelius sought to provide their son with a good education, so in Tagast and neighboring Madaurus he received a primary education [6]. When Augustine was 17 years old, a family friend, Romanian, paid for his studies in Carthage. Carthage was one of the centers of secular life of the empire. This environment encouraged the young man to immerse himself in the elements of love. The Blessed himself describes this period of his life as: « For I was not only beloved but also I secretly reached the climax of enjoyment<...> I was joyfully bound with troublesome tics, so that I could be scourged with the burning iron rods of jealousy, suspicion, fear, anger, and strife».

At the same time, the philosopher became closer to the future mother of his son and remained faithful to her for 15 years. The baby was named Adeodatus. Although he only lived 17 years, his father considered him to be extremely gifted: "He was barely fifteen years old, but his intelligence excelled that of many grave and learned men. <...> I confess to thee thy gifts, O Lord my God, creator of all, who hast power to reform our deformities--for there was nothing of me in that boy but the sin." - Augustine reflected.

Since childhood, Augustine had been interested in spectacles and theatre productions, and in school was particularly enthusiastic about poetry. In Carthage the theater became his

favorite place: «...in my wretchedness, I loved to grieve; and I sought for things to grieve about. In another man's misery, even though it was feigned and impersonated on the stage, that performance of the actor pleased me best and attracted me most powerfully which moved me to tears».

During the studying process of the future patrist, for the first time in a long time he appealed to the Holy Letter by reading the dialogue of Cicero "Hortensius". The text impressed him not only with its eloquence, but also with the depth of thought and the appeal to love wisdom - to engage in philosophy. "I was delighted with Cicero's exhortation, at least enough so that I was stimulated by it, and enkindled and inflamed to love, to seek, to obtain, to hold, and to embrace, not this or that sect, but wisdom itself, wherever it might be." – recalls Augustine.

As the school had a strict course, the young man was not satisfied with the study of only a limited number of Roman authors, which led him to seek spirituality in Manichean teachings. Manichaeism was a popular cosmopolitan philosophical and religious doctrine that attempted to combine mythological irrationalism with logical explanations and evidence. To young Augustine, these ideas were intimate, as the manichaeans highly valued the mind of man and promised each novice a release from the wrong thoughts through the mind. For nine years, the future priest remained a sincere supporter of Manichaeism until his faith was shaken by acquaintance and conversations with the Manichaean Bishop Faustus [7]. He turned out to be ignorant in the free arts and philosophy, and began to learn with great enthusiasm from a resourceful opponent.

In 384 Augustine went to Rome and took the position of rhetorician in Mediolanum (today Milan in Italy). Upon his arrival, he visited the Bishop of Ambrose and began to listen to his sermons regularly. Christianity from such a pitch became for the

thinker a kind of discovery - even the crude old-testament events Ambrose interpreted allegorically, filling them with spirituality, which perfectly corresponded to the thinking of the educated man of the time. Ambrose was heavily influenced by Neoplatonism, which was common among pagans and Christians alike. The principled dualism of substance and spirit, as well as excessive spiritualism in Neoplatonism and the mythological side of Manichaeism, condemned these systems to be defeated in the struggle against Christianity. At this time, Saint Monica arrived in Mediolanum and tried once again to convert her son to Christianity.

Augustine himself was more and more inclined to the faith of Christ. He was in the inner quest of truth and spirituality and tried to apply the approach of Ambrose to biblical texts. He also read the lives of Antony and other saints. The greatest influence came from the Apostle Paul – "Messenger to the Romans", after which the future Saint left the service and temporarily moved to the villa of his friend Alypius in nearby Mediolanum. After a long reflection and mental disturbance, on 24 April 387, he, his son Adeodatus and his friend Alypius were baptized. Upon becoming a Christian, Augustine immersed himself in a true philosophy and deep spiritual life, which was marked by the saint's regular literary activities. He was an extremely productive author - by his own reckoning, until 427 he had written 93 treatises with a total volume of 232 books, as well as a huge number of letters and sermons of which 500 remain. Only 10 of the works listed by the author did not reach us.

After becoming a Christian, Aurelius returned to North Africa. On the road back his mother died. In the face of death, Saint Monica addresses Augustine: «Son, for myself I have no longer any pleasure in anything in this life. Now that my hopes in this world are satisfied, I do not know what more I want here or why I am here. There was indeed one thing for which I wished to tarry a

little in this life, and that was that I might see you a Catholic Christian before I died». After staying for some time in Rome and having written several more works there, the philosopher arrived in Tagast in autumn 388 and founded a monastic order.

Soon, the thinker became well-known in Catholic circles, and Bishop Valery of Hyppo in 391 ordained him as a priest. The 4th century in North Africa was a period of crisis for the Catholic Church, due to the rise of Donatism, a branch of Christianity that relied on impoverished Christians, who constituted the overwhelming majority, and adhered to the strict, ascetic traditions of the Church in persecution. After the establishment of Christianity as the state religion, it was also addressed by nobles who did not want to lose their material values and privileges, which contradicted the views of the Donatists. Under these conditions, the Catholic Church suffered from a severe deficiency of clerics. Augustine, as one of the most educated Catholics of the Roman Empire in 395, becomes Bishop of Hippo when Valery of Hippo declares his successor.

He spent 34 years in this position, until his death, and focused his efforts on the strengthening of the Catholic faith in the region and the development of Christian dogma, including the fight against heretics and the faithless. On August 28, 430, the Blessed died in Hippo, which was under siege by the German Vandal tribe. They completely burned the conquered city, but did not even touch the cathedral and library of the saint, due to respect for his figure.

The influence of previous thinkers on the formation of the philosophical doctrine of Aurelius Augustine. The spiritual development of the philosopher was continuous. Reading "Hortensius" by Cicero, the nineteen-year-old Augustine became obsessed with wisdom and the search for the true good. After familiarizing himself with the philosophical concept of Cicero, Augustine formed his own ideas of the state. An ancient thinker

believed that it was impossible to rule the state without inflicting injustice - a patrist agreed and in this way described the order of the City of Man. In search of the truth, the thinker resorts to Manichaeism. The proponents of this doctrine criticized Christianity, because instead of trusting the mind, it relies on faith. In the treatise "On free will", the author acknowledges that it was faith, not reason, that brought it out of Manichaeism and led to a true understanding of God. So Aurelius formulated the law: "If you don't believe it, you won't understand it".

Augustine was greatly influenced by Greek philosophers. The closest to him was Plato, as the patrist considered Platonism to be the most similar to Christianity. The teacher of Grace brought Plato's teachings about ideas to the principles of Christianity, placing ideas in the thinking of God. In this way, the Holy Father reconciles Plato with Christianity, wondering how the Greek philosopher could learn about the omnipotent God of monotheism, who created the world with virtue. At the age of twenty, Aurelius managed to comprehend the "ten categories" of Aristotle. The men of science praised the book enormously, so he also found it immensely significant. Having become a Christian theologian, he himself denies the categories of Aristotle, because he dared to represent God with a large shining body and himself with his shard. However, Augustine agrees with Aristotle's claims about the human soul. The man of Stagira considers the soul as the fifth in ascending order after the earth, water, air and sky, which the Christian thinker also confirms, considering the nature of the soul that rises above everything, because it is bodiless.

In Mediolanum, where Augustine studied, there was a Neoplatonist group, among which "Enneads" was popular. In this way, the Saint's view of bodily, intangible spirituality was formed. It was Neoplatonism that gave him a way out of the agnosticism of the skeptics, and under this impression wrote his first treatise,

which refuted the teachings of the academics. In the work "Against Academics", the author denies the possibilities of practically unlimited knowledge of the world.

The philosopher's final appeal to God was due to a mystical experience. He describes the event in detail. After talking to Alipius about self-analysis for pleasing the body's needs, Augustine fell under a fig tree and burst into tears. He cried until his sadness was interrupted by the strange words of a child's voice. The words "take up and read" he understood literally - he took the first best book and read the chapter that his vision had stumbled upon. This book turned out to be the Holy Bible, and the chapter was Paul's first message to the Romans. The words read by Augustine were: «Let us behave properly as in the day, not in carousing and drunkenness, not in sexual promiscuity and sensuality, not in strife and jealousy. But put on the Lord Jesus Christ, and make no provision for the flesh in regard to its lusts». (Rome., XII, 13-14). It was these lines in particular that formed one of the reasons that Augustine became Christian.

Tertulian in his work «De Carne Christi» stands on the position of fideism, representing his maxima «I believe because it is absurd». Aurelius continues this tradition, «For when we refuse to follow St. Augustine who, for his part, professed to be guided by faith, and prefer to follow instead the principles of some pagan philosopher or his Arabian commentators, then reason is no longer able to distinguish truth from error», claimed Étienne Gilson.

Conclusion. Augustine paid great importance to the Christian basis of his philosophy, since God is the center of philosophical thinking. God is the highest essence. He is the only one whose existence is independent, the rest exists only through his divine will. God is the reason for the existence of all things [1, p. 79-82]. Augustine discovered a new vision of an individual and his connection with the God. Augustine did not deny the existence of

freedom, but at the same time the infinite power of the deity manifests itself in the course of historical events. Thus, he theoretically substantiated the possibility of a miracle, a belief in which became a feature of the medieval worldview. Therefore, the Christian philosophy of Augustine made a huge impact to the religious tenets of the church, to the ideological world of the Middle Ages, and to culture and philosophical science in general. Thus, we conclude that the views of Augustine passed the long period starting from the pagan upbringing of his father, going through an independent disposition to Manichaeism and later to Neoplatonism, and finally were confirmed by a deeply Christian position.

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МОВА НЕНАВИСТІ ТА КІБЕРБУЛІНГ: ПСИХОЛОГІЧНИЙ ВПЛИВ НА ЛЮДЕЙ

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У статті аналізуються психологічний аспект здоров'я та можливі реакції людей, які стали жертвами знущань та мови ненависті. Зроблена спроба окреслити можливі наслідки боротьби з таким типом тиску. Встановлено, що хоча багато випадків використання мови ненависті граничать із незаконністю, багато людей все ще не звертаються по допомогу.

Ключові слова: мова ненависті, кібербулінг, психологічний вплив, психічне здоров'я.

HATE SPEECH & CYBERBULLYING: PSYCHOLOGICAL EFFECT ON PEOPLE

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The article deals with the analysis of the psychological aspect of mental health and possible responses of people, who are victims of bullying and hate speech. An attempt has been made to outline the possible consequences of dealing with this type of pressure. It has been established that although many cases of using hate speech are borderline illegal, many people still don't reach for help.

Key words: hate speech, cyberbullying, psychological

effect, mental health.

Problem statement. The topicality of this article lies in the fact that modern society is prone to the negative effects of hate speech because the majority of people access the Internet daily. Comparing to previous generations, it has become much easier to say bad things to and about other people, and get away with it. Therefore, the study deals with the psychological effect of hate speech on people.

Recent research and publications. There is a vast amount of literature on hate speech and its effects on people, as well as many studies and surveys concerning said topic. What we know about hate speech and cyberbullying is largely based on experiences of people who spoke up and research of numerous psychologists, who decided to publish their studies. For example, the book “Cyberbullying: Causes, Consequences, and Coping Strategies” by Nicole L. Weber and William V. Pelfrey Jr. provides valuable insight from school staff regarding policies, protocols, and approaches on how to at least minimize if not make cyberbullying extinct in school. The authors examine data collected from middle and high school students in a large urban area and further explore the correlation between the online and face-to-face environments created by advancements in technology.

The aim of this study is to analyze the reasons for usage of hate speech, the ways it affects people, and consequences it can lead to. The tasks of the article are to define meanings of “hate speech”, “cyberbullying”, to research its psychological effects on mental health, as well as list the possible outcomes of bullying.

Presentation of the main material. There is no uniformity in the definition of hate speech throughout the world. Each of the documents concerning hate speech has its own definitions and classifications. For example, Cambridge Dictionary defines hate

speech as "public speech that expresses hate or encourages violence towards a person or group based on something such as race, religion, sex, or sexual orientation» [1]. In other words, it is when people say something that is aimed at hurting somebody's feelings and often hate speech is used to provoke a reaction. Why do people need to self-validate by trying to put others down is a rhetorical question and to be fair, everyone could have their reasons. Does this mean, if somebody's words are justified by something that had happened before it is acceptable to use hate speech? The answer is no. In this article, we will be trying to understand the concept of hate speech, what induces people to say such things and which consequences it can lead to.

Hate Speech and Law. Laws against hate speech are either intended to preserve public order or protect human dignity. First require a higher threshold, so they are not enforced frequently, contrary to second type which has a much lower threshold for violation. They vary from country to country, but mostly are similar. What is common though is that statements that express aggression against others should be punished by law.

But there is another problem when trying to prosecute somebody for hate speech is that we live in a world(most of us at least) where we have this thing called "liberty of speech" so sometimes a line between that concept and hate speech becomes a little blurry. So the most difficult thing in international law is not necessarily how to punish for hate speech, but rather how to define it correctly.

Article 19 of the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) protect freedom of expression under international law. However, the international community has also agreed to certain limitations – such as on speech which advocates "national, racial or religious hatred" and "constitutes incitement to

discrimination, hostility or violence.” Therefore, it is extremely important for governments to establish sound legal frameworks on hate speech which hold perpetrators accountable, uphold human dignity, protect marginalized groups, while still balancing the right to freedom of expression [2].

The most important law in Ukraine, the Constitution of Ukraine, guarantees protection against hate crime in Articles 24 and 37[3]. In Criminal Codex of Ukraine, there are also separate articles on punishing hate crime, like Article 161(maximum criminal sentence of up to 8 years in prison) and 300 (maximum criminal sentence of up to 5 years in prison)[4].

Cyberbullying. Another concept which has not been considered here yet is cyberbullying. It is a form of bullying or harassment using electronic means, also known as online bullying. A frequently used definition of cyberbullying is "an aggressive, intentional act or behavior that is carried out by a group or an individual, using electronic forms of contact, repeatedly and over time against a victim who cannot easily defend him or herself" [5].

Cyberbullying can occur either via SMS or online in social medias/forums/sites– so basically everywhere, where people can view or share content. Content which is mean, harmful, false or negative is considered as an act of cyberbullying. It can also include sharing personal or private information about someone else causing embarrassment or humiliation, which is a total violation of privacy.

This is a serious issue, because about 37% of young people between the ages of 12 and 17 have admitted that they had been bullied online, and 30% have had it happen more than once. And many more aren't confident enough to speak up about their experience so they just continue to hide how much it really affects them from the rest of the world. Also, surveys have shown that only 1 in 10 teen victims will inform a parent or trusted adult of

their abuse. And in some cases, only adults can fix the situation or take appropriate measures, for example if the person who is being bullied is too young to file reports.

Psychological Aspects Of Cyberbullies And Cybervictims. Mentioned above one's inability to defend themselves, brings us to important part of why cyberbullies post potentially harmful things – almost always it is simply because they want to feel better about themselves by downgrading others. Also, a huge share of why hate speech online is so common nowadays is that if you do a few simple things (not even super-hard-to-take precautions), your true identity will not be discovered by ordinary people because they just simply will not have high enough level of access to your personal information. It's relatively easy (technically) to hide behind a screen and say whatever you want because, let's face it, even if you are breaking a law on hate crimes, you are most likely to get away with it simply because most people won't do anything to stop you legally.

When talking about psychological effects of cyberbullying, we are most likely to firstly think about victims, and then later (if at all) at the cyberbullies themselves, which is not completely right because you can't spread hate without getting caught up in it. It affects you, scars you mentally even and even if you are not feeling guilty at the moment, be sure to know: reckoning is coming. Honestly, most people (if not all), who use hate speech online are deeply miserable inside and they just try to make others feel worse than they are feeling about themselves of other things which concern them. It could even be some sort of escape from a real world for them, an action which is not that uncommon for people nowadays. The fact that modern society, compared to previous generations is more vulnerable in mental health aspects of life also needs to be pointed out.

Surely, victims suffer psychologically a lot more. Typical and immediate responses to being victimized by a cyberbully

include anger, frustration, and sadness. Usually, the degree of problems offline is directly proportional to how much bullying behavior is experienced online. Victims of cyberbullying are often stressed. [6] If a person is being bullied, he or she can behave in an unpredictable way that may lead to awful things, which we are going to discuss a little bit further in the article.

One longitudinal study led by a group of scientists in Norway investigated the long-term psychological effects of adolescents. Results of the study indicated that all groups involved in bullying during adolescence, both bullies and victims, experienced adverse mental health outcomes in adulthood. While the victims showed a high level of depressive symptoms in adulthood, both groups experienced an increased risk of psychiatric hospitalization due to mental health disorders.[7]

Possible Consequences Of Hate Speech. Being bullied can result in some very serious consequences, the less harmful(subjectively) being isolation and withdrawal. Cybervictims often close themselves to the world, withdrawing from family members, relatives and friends. They may spend a lot of time alone and may also believe that being around other people only makes things worse for them.

Some of the victims turn to alcohol, cigarettes or drugs to numb their feelings, which can also cause physical problems, apart from already existing mental ones. And let's not forget about addictions, which are most likely to be developed in the process.

Others use different coping mechanisms, such as developing an eating disorder. There are a lot of different kinds of ED from anorexia and bulimia nervosa to binge eating. The variety can be explained – some people simply don't feel hunger when going through an emotional stage, others turn to food for comfort. And cyberbullies rarely cease to miss an opportunity to comment on somebody's appearance which leads to overthinking and as a

result, ruining your relationship with food.

More vulnerable and desperate people tend to self-harm. Or they could turn from prey to predators and harass others (either mentally or even physically). And lastly, suicide – the worst thing that can happen because of bullying. The loss of human life, missed opportunities, grieving of close people – all of that can happen just because someone wasn't careful with their words.

Conclusion. This topic is not to be taken lightly because mental health is a crucial part of a person and damaging it can lead to truly terrible things. Some things just simply cannot be undone, no matter how hard you might try to. Apart from ruining lives, hate speech also ruins modern society as a community, because we often tend to treat it lightly or even normalize it. But to bully and to be bullied is not normal, but it is kind of in our DNA, because even from the beginning of times, when faced with unknown, our ancestors mostly used violence as a response. Which hate speech, after all, is – violence. We need to raise awareness and bring more attention to this topic because if we don't, countless lives will be lost, not only victims' and bullies', but those close to them too.

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СОЦІАЛЬНІ МЕДІА ЯК ОСНОВНИЙ АСПЕКТ ГЛОБАЛІЗАЦІЇ СУЧАСНОГО ІНФОРМАЦІЙНОГО СУСПІЛЬСТВА

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У статті аналізується роль соціальних мереж в умовах трансформації сучасного суспільства. З'ясовано, що соціальні платформи впливають не лише на поведінку людей, але й на політику, економіку та саму журналістику. У статті аналізується вплив соціальних мереж на світову інформаційну глобалізацію та всі процеси, пов'язані з нею.

Ключові слова: глобалізація, інтеграція, соціальні мережі, політика, економіка.

SOCIAL MEDIA AS THE MAIN ASPECT OF MODERN INFORMATION SOCIETY AND ITS GLOBALIZATION

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The article deals with the role of social media in the age of transformation of the society. It has been demonstrated that social

platforms are beginning to have an increasing influence not only upon people's behavior, but also politics, economy, and journalism. The article examines the impact of social networks on information globalization and all its processes.

Key words: *globalization, integration, social media, politics, economy.*

Problem statement. Globalization is an important part of humankind development. It started centuries ago with the first economic bonds between different parts of the globe and continues to evolve through various spheres of our lives due to the new sophisticated technologies.

Foundation of the United Nations, for example, marked the political globalization, and the activity of the International Monetary Fund distinguishes connection of economic links between developing states. But none of those would be possible without probably the most notable integration – ***the informational globalization***. This type emerged thanks to the different inventions such as radio and television. With these instruments we have been able to know virtually all the information we need or at least information we are allowed to know, depending on the country and their authority. But it is social media that have probably the biggest impact on the unification of whole informative system.

Recent research and publications. The impact of social networks on information globalization has been studied relatively recently. They became especially noticeable after the presidential elections in different countries. Some preliminary work was carried out in the early 2000s with the beginning of the Arab Spring by Waheed Ahmed Alhindi, Muhammad Talha Ghazali Sulong, etc. Their systematic study showed that social media were among the most usable tool of protesters and even foreign journalists.

In their book “Likewar. The Weaponization of Social

Media” the authors P. W. Singer Emerson, T. Brooking analyzed the use of social networks in various situations and outlined the threats of our networked world. Informational targeted attacks were among issues under investigation.

The purpose of the article. Social media have become not only a convenient way to communicate online, but a powerful tool for the rapid dissemination of information around the world, as well. The aim of the research is to outline the role of social media in spreading the information and globalization of the whole society and to determine its benefits and treats for the people.

Presentation of the main material. On the way to informational globalization. Initial purpose of the first social networks was to unite people from different countries of different views to create a new and entirely unique environment where common users would be able to share their ideas. Such sites as classmates.com, SixDegrees.com or Friendster were the pioneers in this business [1], but nevertheless remained small and not so massive resources, the same cannot be said for their successor that become a global phenomenon.

TheFacebook.com was born on 11 January 2004 and almost immediately caused the flow of nearly 460 million users online [2, p.57] Two years later a Twitter entered the arena and the era of social media begun. Those and other “newcomers” swiftly became the most popular environments for interpersonal and mass communication, but their role as informative outlets was yet to come. Death of the superstar was one of the first triggers.

Michael Jackson’s passing shattered the Internet, but Twitter got a real benefit at that time, cause hundreds of thousands fans wanted to share their grief by short and sensitive tweets. Twitter’s traffic soared to record 100,000 tweets per hour. [2, p. 8] That meant that social media could be something bigger than just platforms for friends and new acquaintance. Almost every user then

got to know about the death of icon and was able to monitor this sad event in real time. And that indicated that social media could be effective media outlets, which could unite society better than the most famous broadcasting companies.

News resources. Mark Zuckerberg foresaw such opportunity two years before Michael Jackson's death. He wanted to improve his creation and make it more useful and unique. Therefore Facebook got a news feed and "share" system. In 2007 Zuckerberg explained this innovation. "You can make real stories of real events. As we approach that, we become the mass publisher. 20-30 pieces of information or stories per day is a total of 300 million stories. It all goes to the fact that we publish more every day than most other publishers throughout our work" [2, p. 59].

Twitter also got similar feature and in 2010 let its users to watch videos and photos, which later would be common for WhatsApp, Instagram, Reddit and others. Such changes transformed social media into new phenomenon that became an indispensable part of the informational globalization process.

At first many were skeptical about the mounting role of the social media, believing Facebook, Twitter etc. would remain lighthearted platforms for those addicted to likes and the number of friends. For instance, Malcolm Gladwell, the writer for *The New Yorker* and the *Washington Post*, in his essay "Small Change" questions the significance of new platforms in the media coverage and believes that it cannot make a revolutionary change [3].

Eric Schmidt, the executive chairman of Google and Jared Cohen, the director of Google think otherwise. In their book "The New Digital Age" they assume that social media as technology would become a resource worldwide. [4, ст. 20-25] Thus the global connections will expand. At some point social media became so developed that it would have been senseless not to notice their influence on the work of the media.

One of the notable proofs was the story of James Buck. UC Berkeley graduate student of journalism on April 10 was arrested by Egyptian law enforcement agencies for photographing a demonstration. To save himself James used his mobile phone and Twitter. Student just tweeted to his followers one word “Arrested” and that was enough to draw attention of the whole world. First UC Berkeley learnt about the arrest and soon the US Embassy and a lot of various law organizations proposed their help. As a result, James Buck was set free [5].

Another example is an activity on Twitter during the Arab Spring in the early 2010s. It began as a protest against oppressive regime in Tunisia and then spread to Libya, Egypt, Yemen, Syria and other Arabic countries. Since these countries lacked some independent and influential professional media and western journalists were not able to get all information correctly and timely, people learnt about the main events from the Twitter. Social media also helped the protesters to promote their goals and demands.

“These websites allowed protesters to spread their message of revolution at a rate which would have been unbelievable without these websites and further allowed for direct reporting, intelligence sharing and coordination on behalf of protesters” [6].

But the decisive moment for social media was on January 2010. Destructive and catastrophic magnitude 7M earthquake hit Haiti islands. An estimated three million people were affected by the quake. Death toll estimates range from 100,000 to about 160,000. The main communication channels were down and to learn something about the situation in almost destroyed cities was hardly possible. Twitter users began covering all that was happening in the cities and thus were providing all much-needed information to the media.

News outlets also did not fear to use social media in their work. The Guardian's live blog on the rescue mission used social

media as well as information from other news agencies. The BBC also covered the event combining tweets from the area with the work of its reporter Matthew Price in Port-au-Prince. And CNN had seven reporters on the ground, ready to cover the disaster, using their smartphones and Twitter accounts. «Social media partly made up for the lack of information from the affected area on what had happened and what was most needed» [7]. Twitter was no longer just a social platform. More importantly it became an alternative news feed. According to a 2010 report from Barracuda Networks, a Web security company, most of 50 million accounts follow other users rather than posting their own messages. Basically, Twitter transformed into some kind of “handy” television, radio and newspaper altogether. “It seems that Twitter is becoming more of news feed than a social network”, said P. Judge, author of the report and chief research officer at Barracuda [8].

In such conditions it is largely impossible to agree with Malcolm Gladwell’s opinion about insignificance of social media. After release of first iPhones the process of globalization gathered momentum. Practically each person with a smartphone and registered account anywhere could easily inform about some events in the feed and therefore to tell the whole world about what he/she had seen. And even in the countries with despotic or authoritarian governments citizens were able to tell the truth about the protests or crimes and human rights violations. The online-communications has been expanding since then and now represent a sort of invisible web with hundreds of millions of users.

Ukraine itself has an example of how social media can play a decisive role in dissemination of important information globally. It is about tragic events of February 2014, when the Revolution of Dignity began. With lack of qualified and credible information from the government structures journalists began using Twitter and Facebook, and their colleagues abroad had no other option but to

cover situation in Ukraine not just by direct reporting from the scene but by using the video and photos from Twitter too.

Olga Onuch, who writes for the Washington Post, in 2014 gathered basic information in the article “Social networks and social media in Ukrainian “Euromaidan” protests”. According to her, lots of data were gathered thanks to the activity of Euromaidan participants on Twitter. Protesters saw no reason to trust oligarchic media, so they also were relying on the bloggers online. “Social networks also played a key role: 47 percent received valuable information from their friends, 18 percent from work colleagues and 15 percent from family members. When we interviewed protesters, they explained that they found Facebook and Internet news sites more reliable sources of information than television” [10]. However, this tendency is harmful to traditional journalism. The USAID-Internews survey last year found that 68% of respondents use social platforms as the main source of news [11].

Impact on the politics and economics. Informational globalization boosted by social media development has influence not only on the traditional journalism, but also on the politics. One of the simplest examples is the communication between the government and citizens. Officials now can inform about the politicians’ decisions online, and people can engage in the direct dialogue. “Social media isn’t just a good way to share memes and keep up with what’s trending. It can also be a very powerful way for government organizations to interact with the public” [12]. The communication between different countries changed too. With the simple tweets presidents congratulate each other with anniversaries, affirming the good relationship or opposite.

In terms of economics, the impact of social networks is also hard to overlook. In the interview for the Forbes V.V. Vaitheeswaran, an award-winning global correspondent for the Economist, shared his opinion on how social media have

changed corporate innovation. “Initially, most corporations were caught out by the explosion of social media. However, through trial and error many are now doing better. They must, as the future belongs to firms that can best harness the global trend toward open, networked and user driven approaches to innovation” [13].

Conclusion. It took centuries for the informational globalization to take some real shape and become probably the most influential process in our modern world, full of technologies, biases and disinformation. Since the invention of radio and television, social media have made probably the biggest contribution in the connection of the whole society on the globe, uniting different states and making possible for common users not just to consume the information but to create it. However, that does not mean that social platforms brought only benefits. In the modern age humankind must fight against disinformation, hybrid conflicts and various weaknesses. And all these aspects of our life are caused by informational globalization.

Thus, we see that social network influence many important processes mentioned above. They affect politics, economics, society, etc. Thus, there are a lot of opportunities to conduct further studies and to examine their impact on the developing informational global area.

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НОВІ ВИПРОБУВАННЯ ДЛЯ ЖУРНАЛІСТИКИ В УМОВАХ ПОШИРЕННЯ КОРОНАВІРУСУ

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У статті проведено аналіз останніх досліджень новинної політики українських інтернет ЗМІ. Здійснено спробу визначити проблеми та завдання журналістики пов'язані з темою пандемії. Встановлено, що тема коронавірусу як інформаційний привід займає все більше мас-медійного простору, нівелюючи інші суспільно значущі теми, спотворюючи реальність і деструктивно впливаючи на масову свідомість.

Ключові слова: *коронавірус, журналістика, випробування.*

NEW CHALLENGES FOR JOURNALISM IN THE CONTEXT OF THE CORONAVIRUS OUTBREAK

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In the article recent studies of the news policy of the Ukrainian Internet media are considered. An attempt has been made to identify the problems and tasks of journalism related to the topic of the pandemic. It has been established that the theme of the

coronavirus as a newsworthy event is occupying more and more media space, eliminating other socially important topics, distorting reality and destructively affecting the mass consciousness.

Key words: *coronavirus, journalism, testing.*

Problem statement. Today the world is in a state of emergency. On March 11, 2020, WHO declared COVID-19 a pandemic [1], and on April 3, the number of confirmed cases of this infection exceeded 1 million [2]. The rapid spread of the coronavirus, its destructive impact on the economy and social life makes it a global challenge that is seen as the worst since World War II [3] and a real test for the health care system of all countries. In this case, the role of media is vitally important. Frank Webster, referring to Daniel Bell, who came up with “sophisticated sociological portrait of an embryonic future” back in 1973, claims that the humanity has grown up to a new stage of existence from post-industrial to the information society [4, p.38]. Our era includes knowledge as the greatest value and, understandably, the media are considered as a fourth estate next to the legislative, executive, and judicial branches. Having such a significant indirect social influence the media play considerable role in fighting the pandemic of COVID-19.

The questions arise: how should the mass-media collect and disseminate information, affect the public’s mental health and what new issues for the Ukrainian journalism have emerged in the context of the global threat.

Recent research and publications. Although in Ukraine the topic under study has not been investigated in depth yet, some research in the related areas of study has been conducted. The problem of psycho-emotional impact of social media on the mass consciousness and the danger of spreading fakes during an emergency has been researched by the doctor of psychological

sciences N. Potapchuk [5], the researchers S. Pogorelov [6] and N. Onishchenko [8]. The value orientation of the news journalism is analyzed by the female journalist and psychologist O. Kvasnytsya [8].

The aim of the article is to evaluate the main challenges for Ukrainian journalism, including the role of mass-media in context of the pandemic, as well as define the place that the theme of coronavirus occupies in the information space.

Presentation of the main material. First of all, the theme of pandemic occupies the vast part of the info space. According to the Institute of Mass Information's (IMI) research, the average fraction of information on this topic is more than a half (58.5%) [10]. Thus, problems covered are, in fact, reduced to one, distorting the information map of the day. The topic of the Russian-Ukrainian war and its aftermath remains unnoticed by the audience. For example, as of March 16-18, 2020 the percent share of news on the coronavirus theme in "UkrInform" was 87%. Thus, the theme of the war received much less resonance. Despite such a distribution of priorities, Russian armed aggression against Ukraine remains no less important and urgent topic, in particular: "Despite the ceasefire regime, the occupiers continue to fire at Ukrainian positions in the Donbass. Since the beginning of 2020 (meaning the period between January 1 and April 23, 2020), pro-Russian militants have fired hundreds of times. As a result of the shelling, 47 soldiers were killed ", according to the "24 Channel" website [11]. Putting the topic of the pandemic to the forefront makes it the only event worth attention, while offsetting other socially relevant topics and issues, such as the war, unemployment, and the like. In particular, the Ukrainian female researcher O. Kvasnytsya believes that "... there is a considerable imbalance in the Ukrainian media space when the public relevance, the significance of the information is inferior to

the attractiveness of the news”, which as a result model “not quite adequate reality” [9, p.36].

Quantity does not always mean quality. According to the IMI’s monitoring results, about 5% of the total amount of coronavirus material in the media had an excessive level of emotionality and another 5% contained evaluative judgments [10]. It should be noted that such news are harmful in the context of increasing social tension triggered by the pandemic. Considering a similar problem - determining the role of the media as a factor of social management in an emergency situation, S. Pogorelov rises the issue of psycho-emotional impact of the emergency situation on the society, “the lack of an equal relation between the real level of the emergency and the nature of its display in the info space leads to the fact that citizens fall under the double psychological press: the situation itself and its reflection in the mass media. The media, being essential social regulator, do not contribute to the public’s psychological stability during the emergency situation and do not fulfill one of their main purposes - psycho-correction of the mass consciousness” [6]. Another researcher, Nariman Darvishov, the Master of Psychology from the Taras Shevchenko National University of Kyiv, referring to the coronavirus theme, things that regular reading news creates a sense of controlling the danger, however this feeling is deceptive and a person is more likely to feel panic, and exhaustion instead [7]. Obviously, the mass-media are not interested in spreading the panic, but, unfortunately, there is a great desire to create a sensation and catch the audience’s attention.

Another grave problem is that the theme of pandemic opens new opportunities for Russian propaganda and adds an extra lever of influence to the hybrid war. Analyzing the coronavirus-related disinformation cases aimed at Ukraine published in pro-Kremlin media, the flagship project of the European External Action Service’s “EUvsDisinfo” brought to light 215 samples of fakes in

between January 22 and April 1, 2020. Their main narratives were concerned with the origin of virus, its danger, the role of China, conspiracy theories and included anti-American, anti-Ukrainian and anti-European messages [12]. It has become clear that the aim of manipulating such sensitive and popular theme is to destabilize the situation and undermine people's confidence in the authorities. Unfortunately, having been involved in the war for six years, we have lost numerous lives of our soldiers and citizens and continue losing them every day. According to the latest data provided by the Office of the United Nations High Commissioner for Human Rights as many as 13 000 persons have perished and 30 000 persons have got injuries in the war since 2014 [13]. Thus, we have no moral right to forget or reject this reality of our nation's everyday life. Can we combat the fakes and raise the world's awareness if there are not any everyday updates of that statistics in our media?

Conclusion. In the article we have tried to determine the main topics and issues for Ukrainian journalism, their role in hybrid Russian-Ukrainian war and their impact on the public's mental health in the context of coronavirus outbreak. In addition, we have made an attempt to analyze some most recent studies dealing with the transmission of topical information in the media.

Some further research should focus on the emotional state of the society during the coronavirus outbreak, deeper analyses of the Ukrainian information space, changes taking place and comparison of its structure before, during and after the pandemic.

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