ISSN 2519-4216
E-ISSN 2519-4313
DOI: 10.33270/0421210

Співзасновники:
Національна академія внутрішніх справ,
ТОВ «Наукові журнали»

Рік заснування: 2011

Рекомендовано до друку та поширення
через мережу Інтернет Вченою радою
Національної академії внутрішніх справ
(протокол №14 від 24 червня 2021 р.)

Свідоцтво про державну реєстрацію
друкованого засобу масової інформації
серії КВ 25016-14956 ПР від 19 жовтня 2021 р.

Журнал входить до переліку фахових видань України
Категорія «Б». Галузь наук – юридичні, спеціальність – 081 «Право»
(наказ Міністерства освіти і науки України від 28 грудня 2019 р. № 1643)

Журнал представлено у міжнародних наукометричних базах даних, репозитаріях та пошукових системах: CrossRef, ISSN International Centre, ORCID, Open Ukrainian Citation Index (Ukraine), Index Copernicus International, Academic Resource Index ResearchBib, Polska Bibliografia Naukowa, Google Scholar, Центр досліджень соціальних комунікацій, Національна бібліотека України імені В. І. Вернадського, Електронний репозитарій НАВС

Юридичний часопис Національної академії внутрішніх справ : наук. журн. / [редкол.: С. С. Чернявський (голов. ред.) та ін.]. – Київ : Нац. акад. внутр. справ, 2021. – Т. 11, № 1. – 116 с.

Адреса редакції:
Національна академія внутрішніх справ
пл. Солом'янська, 1, м. Київ, Україна, 03035
Тел.: +38 (044) 520-08-47
E-mail: info@lawjournal.com.ua
www: https://lawjournal.com.ua/uk

ISSN 2519-4216
E-ISSN 2519-4313
DOI: 10.33270/0421210

Co-founders:
National Academy of Internal Affairs,
LLC "Scientific Journals"

Year of foundation: 2011

Recommended for printing and distribution
via the Internet by the Academic Council
of National Academy of Internal Affairs
(Minutes No14. of June 24, 2021)

Certificate of state registration
of the print media
Series KB No. 25016-14956 ПР of October 19, 2021

The journal is included in the list of professional publications of Ukraine
Category "B". Branch of sciences – legal, specialty – 081 "Law"
(order of the Ministry of Education and Science of Ukraine of December 28, 2019 No. 1643)

The journal is presented international scientometric databases, repositories and scientific systems: CrossRef, ISSN International Centre, ORCID, Open Ukrainian Citation Index (Ukraine), Index Copernicus International, Academic Resource Index ResearchBib, Polska Bibliografia Naukowa, Google Scholar, Center for Social Communications Research, Vernadsky National Library of Ukraine, Electronic repository NAIA

Law Journal of the National Academy of Internal Affairs / Ed. by S. Cherniavskyi (Editor-in-Chief) et al. Kyiv: National Academy of Internal Affairs, 2021. Vol. 11, No. 1. 116 p.

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National Academy of Internal Affairs
03035, 1 Solomianska Sq., Kyiv, Ukraine
Tel.: +38 (044) 520-08-47
E-mail: info@lawjournal.com.ua
www: https://lawjournal.com.ua/en

ЮРИДИЧНИЙ ЧАСОПИС
НАЦІОНАЛЬНОЇ АКАДЕМІЇ ВНУТРІШНІХ СПРАВ
Том 11, № 1

Редакційна колегія

LAW JOURNAL
OF THE NATIONAL ACADEMY OF INTERNAL AFFAIRS
Volume 11, No. 1

Editorial Board

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ЗМІСТ

LAW JOURNAL
OF THE NATIONAL ACADEMY OF INTERNAL AFFAIRS
Volume 11, No. 1

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UDC 343 (045)
DOI: 10.33270/04212101.7

Moral-Ethical Principles in the Activity of a Polygraph Specialist

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Abstract

The purpose of the study is to examine the issue of introducing moral-ethical principles in the professional activity of a polygraph specialist. The methodological tools were chosen considering the set goal, the specific features of the object and the subject of research. In particular, it is a general dialectical method of scientific cognition of real phenomena and their connection with the theory and practice of introducing moral-ethical principles in the professional activity of a polygraph specialist, and special research methods, namely: system analysis, comparative-legal, system-structural, and forecasting method. Considering the new trends in the establishment and development of the interdisciplinary science of polygraphology, for the first time, the need to raise the issue of introducing moral-ethical principles in the activities of a polygraph specialist is justified and ways to streamline the existing gaps associated with them are proposed, and the content of the key components of this science is highlighted. The scientific position on the importance of moral-ethical principles in the activities of a polygraph specialist is justified since they perform both educational and control functions, without which the activity using a polygraph is not completely ordered. The specific features of this field of scientific knowledge require polygraphologists to treat individuals who, due to certain life circumstances, turn to this process of activity and specialists who provide it, to obtain additional information data on specific issues that are relevant to them. Disordered moral-ethical principles in the activities of a polygraphologist leaves this process out of control, which can negatively affect both the reputation of the specialist who provides it and leads to a negative attitude to polygraph activity and its specific features

Keywords:
polygraph; polygraphology; polygraphologist; moral-ethical principles of activity; communication

Article's History
Received: 04.07.2021
Revised: 05.19.2021
Accepted: 06.10.2021

Suggest Citation:
Motliakh, O.I. (2021). Moral-ethical principles in the activity of a polygraph specialist. *Law Journal of the National Academy of Internal Affairs*, 11(1), 7-14

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Introduction

The development of polygraphology in Ukraine as a new interdisciplinary science and related practical activities for conducting research using a polygraph prompted the question of introducing moral-ethical principles into this specific process to be raised. This is due to the fact that polygraph activity has a number of inherent features associated with obtaining confidential information by a polygraph specialist from the person in the process of research using a polygraph. An important component of such activities is communication as a process of exchanging information by persons of different categories and statuses involved in this field, interacting with each other to solve specific issues within certain tasks. It is not always well-coordinated, especially in communication between the polygraphologist and the person under study, who is trying to outsmart and circumvent the procedure using a polygraph. This often irritates specialists, who react in a peculiar way to insincere people, even somewhat biased. Conversely, the subjects apply elements of psychological pressure on polygraphologists for the sake of a condescending attitude towards them, showing off their status or connections with high-ranking officials. The ordering of the above issues forms the basis for the relevance of the topic of this study.

Unfortunately, the problem of moral-ethical foundations in the activity of a polygraph specialist is not sufficiently investigated and has not received proper discussion and presentation in the scientific achievements of polygraph researchers. There are substantial scientific findings in the field of polygraphology with an emphasis on the moral-ethical foundations of the activities of polygraph specialists and foreign researchers [1-3]. However, even now there are a number of unresolved important issues in this area of research that require scientific reconsideration.

The purpose of the study is a systematic analysis and presentation of material related to the introduction of moral-ethical principles in the activities of a polygraph specialist [4]. The justification of the key positions of the problem of this issue is conducted based on the proposed scientific positions of Ukrainian researchers in the field of psychology and polygraphology. The following tasks were set to achieve this goal:

– highlight the fundamental scientific and theoretical foundations of morality and ethics, their content and start practice;

– identify the importance of introducing moral-ethical principles in practical polygraphology and related activities;

– outline the specific features of the process of activity of a polygraph specialist in relation to moral-ethical principles;

– justify the need to introduce a code of ethics in the activities of a polygraph specialist.

Results and Discussion

Each field of activity aimed at performing a certain type of tasks or providing relevant services, in addition to its main purpose, should be regulated by the rules of conduct developed and established for working personnel, which are focused on ensuring moral-ethical principles in working with clients. According to official interpretations, the term "morality" comes from the Latin words "moralities" (moral) and "mores" – "custom", "will", "law", "property", and is a system of views, ideas, norms, and assessments that regulate the behaviour of people in society and is one of the forms of public consciousness [5]. Morality is evidence of a certain level of development, spiritual maturity of a person, and the nature of their relations with other people and the world. This is a system of views, ideas, norms, and assessments that regulates people's behaviour, and also covers all fields of social existence: those that are regulated by the state (politics, production, social field, family, etc.), and those that are not subject to the state (love, friendship, friendship, everyday life, preferences, etc.). According to N. Kuprina and S. Masliennikova, morality regulates the behaviour of the individual, sets boundaries that cannot be crossed, warns against unacceptable and dangerous behaviour [6].

Thus, morality serves as a regulator of a person's moral behaviour. The basis of its establishment is "psychological reflexes" developed as a result of prolonged exposure to the fear of social judgment and unconscious mechanisms of psychological protection. Morality has its own structure and forms two areas: moral consciousness and moral practice (morality). The first (moral consciousness) is guided by a certain system of moral norms, assessments, principles and fixes moral relations in society, which is a dynamic process, and also has an internal division into social (group) and individual (personal) moral consciousness. Social (group) moral consciousness is expressed through such elements as moral requirements and moral values. In turn, the elements of individual (personal) morality are presented as moral duty and moral values. The second area (moral practice) or morality demonstrates moral activity and moral relations. The first one has a subject-content certainty and internal peculiarity and is also the unity of moral consciousness and practical activity. The second one represents the totality of moral connections between people in the process of their moral activity. In general, morality is based on a fundamental principle that defines and professes the highest values of a person, honour, and dignity. The appeal to morality occurs mainly if there is a need to make a competent choice, when one's own priorities, desires, and the inner voice of conscience come into conflict. It is clear that an individual faces such difficulties in every field of their being, including their professional

activity [7]. Morality is implemented through the following key functions: regulatory, communicative, cognitive, and educational [8]. Each of them is endowed with meaningful content and its own area. The system of moral principles is represented by ethics (Latin ethica, from the Greek ethos – luck, habit, custom), which indicates the kinship of these categories [9]. It reproduces the philosophical vision, discipline about the origin and essence of morality, and norms of behaviour, a set of moral rules of the social community. At one time, the polygraphologist V.O. Varlamov emphasised that ethics is a branch of knowledge, that is, the science of morality, which is based on the fact that morality objectively exists independently of subjective ideas [10]. Ethics as a science not only investigates and systematises the moral principles and norms common in society but also contributes to the development of such moral principles that best meet modern needs and improve people and society [11]. Although these are not identical concepts, since morality is the object of the study of ethics. Morality and ethics are interrelated concepts, because they reflect the motives of a person's activity and the content of their life values, with a difference in the evaluative nature of the former and the normativity of the latter. That is, ethics is normative in nature, and morality is a manifestation of subtle human relationships. Ethics as a science, in addition to examining, analysing, and generalising the norms and principles of morality that exist in a civilised society, provides the development of moral ideas that contribute to the further development of society and the activities of conscious individuals in it, the establishment of the fundamental principles of integrity, justice, and humanism. According to N.Ya. Zabolotna, along with the development of general ethics, the subject of regulation of which is the moral behaviour of a person, regardless of their profession and under any circumstances, appears the concept of "professional ethics", which as a theory investigates professional morality and is the practice of applying moral values in the process of professional activity [12]. N.I. Holovina is also inclined to this opinion, notes that the content of professional ethics is, first of all, the requirements of the profession, the establishment of a kind of internal standard, an epitome of professional behaviour [13]. No matter what profession a person has, no matter what specialist they are, their activity becomes more useful if it is based on moral principles. A particular professional group, in accordance with social and specifically professional values and norms, establishes certain types of moral relationships in its joint activities and relationships, which constitute the essence of professional ethics [12]. Professional ethics represents the theory of professional morality, which determines a person's attitude to their professional duty. That is, professional morality reproduces the features of moral consciousness, relationships, and behaviour of people that are determined by the specific features of professional activity. In turn, professional ethics defines a set of rules of behaviour, due to which it is possible to evaluate activities considering such values as: justice, honesty, conscience, dignity, humanity, responsiveness, etc. Each profession has its own morality. Therewith, the profession forms among its carriers not only professional skills but also certain personality traits and attitudes to the content of their activities [14].

However, there are some professions in which the fate or even life of people depends on moral choice (medicine, education, legal field). Awareness of the role of morality in human professional activity led to the introduction of professional moral norms represented by professional moral codes [15]. Such, for example, is the profession of a polygraph specialist, which involves conducting research of various categories of persons using a polygraph, and in which the moral-ethical foundations of this activity become important. The specificity of polygraphology as a newly formed interdisciplinary science lies in the features of the polygraphological process, which is an instrumental detection of information traces. Thus, this is a separate method of psychodiagnostics of ideal traces of human memory, which allows, due to special technical equipment, appropriate methods, and sufficient knowledge and skills of a polygraph specialist through questions-incentives, tracking the physiological reactions of the investigated persons, decipher the results obtained and, in accordance with them, justify their conclusions.

Until recently, the polygraph was considered the only instrumental method of the so-called "Lie detection" of a person. Currently, an alternative to this scientific and technical device is EyeDetect, a scientific and technical device for detecting lies using human eye-motor behaviour (ODT). This device was preceded in 2003 by a conceptual development of two psychologists from the University of Utah (USA), Dr. John Kircher, a psychophysiologist in the field of detecting lies (deception) and Dr. Doug Hacker, a teacher psychologist in the field of reading psychology. Subsequently, three other researchers joined this development: Dr. Dan Woltz & Dr. Ann Cook – researchers in the field of cognitive load, and Dr. David Ruskin – an expert in the field of polygraph. They have spent over a decade conducting studies aimed at testing this concept. The result of their hard work was the creation of a test for cognitive functions, which was based on the eye-motor indicators of cognitive effort, in particular, using the study of human behaviour when reading the test on a monitor of special computer equipment. Researchers came to the conclusion that a person, reading the text on the monitor screen, and realising that the content of a

particular question for them is disturbing to the point of exposure, begins to experience difficulties (tension) in reading, and at this time it is possible to observe a special reaction of the eyes, which correlates with the effectiveness of cognitive actions (tasks). This entire process is recorded by the EyeDetect software and automatically processed to produce the results of such studies. Since 2014, such findings have been popularised through the EyeDetect® trademark. Currently, several tests are used to work on this device, and the reliability of their results varies between 86-92%, depending on the test and the area of its application. The development and further implementation of EyeDetect in no way means that the polygraph has already outlived its usefulness and needs a logical replacement. Each of these devices in its own way provides an opportunity to check the information trace of the reflection that has formed in the investigated person regarding a specific fact, event, circumstance, or phenomenon, and based on the results of the application, provide them with an assessment. Unlike the EyeDetect procedure, the polygraph-logical process is much more complex in organisation and conduct, longer in time, and a considerable share is taken over by the communication of the polygraphologist with the person under study, which allows for the polygraph specialist to know the individual under study better. Such communication is not always open and transparent – there are also difficulties that need to be solved, such as the aggravation of problematic issues caused by both the studied person and the polygraphologist.

The above encourages the need to streamline the ethical aspects of the Ukrainian polygraph process. Now they are on the list of urgent ones and require urgent solutions, in particular by creating a separate code of ethics or the code of honor or decency of a polygraphologist. The purpose of such documents is to avoid situations in which a particular decision focused on a certain consciousness of the public is imposed by society or a certain group of it [16]. The need to consolidate the basics of polygraph activity in such a document is dictated by the absence of a separate Ukrainian legislative act that would normalise the polygraph and everything related to it. The current laws of Ukraine "On the National Police", "On the state Bureau of Investigation", "On Intelligence" contain separate norms regulating the use of the polygraph in targeted areas, while departmental orders and instructions developed on their basis, which allow introducing the polygraph in the activities of a particular law enforcement agency, the Armed Forces of Ukraine, the tax or border service, etc., do not reflect the ethical issues of the polygraph process. Now there are a number of problematic aspects in this industry that undermine citizens' trust in the polygraph and everything related to it. For example, opponents of this scientific and technical device post a specially selected negative on social networks, hoping on insufficient awareness of citizens, to compromise the instrumental method of detecting information traces of reflections. Hence the rumors about:

– weak scientific basis that would convincingly justify the appearance of physiological reactions of a person during research using a polygraph;

– objective interpretation of the research results by the polygraphologist;

– negative impact of the polygraph on human health;

– provoking the appearance of stress in the persons being examined on the polygraph;

– biased attitude of the polygraphologist to a certain category of individuals undergoing research using a polygraph;

– early preparation of research results to please its initiator;

–low level of relations between the theory of polygraph activity and the practice of its application, etc.

In fact, these questions are mostly artificial, which, in addition to negativity, do not contain any threats to either the person under study or the stable development of the polygraph process in Ukraine. However, among them, there are also those that require proper attention, for example, moral-ethical issues of the polygraphologist's activity. This important component of the polygraph process is investigated by both Ukrainian polygraphologists and foreign specialists. For the sake of the decency among those who provide services using this device and compliance of such specialists with the criteria of righteousness, a number of important documents of theoretical and practical importance were developed and implemented. In particular, the American Polygraph Association (APA), as one of the leading international public organisations, developed the code of honour of the polygraphologist, which outlined and consolidated the main components of the ethics. In addition, the International American organisation ASTMInternational, which develops standards (SDO) around the world and in various fields of knowledge, including polygraph, among the current fifteen standards on the use of the polygraph, has prepared and implemented a standard guide on ethical requirements for experts in the field of psychophysiological lie detection ASTM E2065:201 (ASTM E2065-11, IDT). Such documentary ordering of this process creates the effect of protecting both the polygraphologist and persons who voluntarily expressed a desire to undergo research using a polygraph. What exactly causes such a need for Ukrainian polygraphology and what should be involved in the moral-ethical issues of a polygraphologist is one of the priority issues of modern polygraphology. Justifying the answer to its first part, the current state of development of polygraphology in Ukraine is at the stage of polishing and streamlining of all its processes.

Now, due to the enthusiasm of Ukrainian polygraphologists, favourable conditions have been created for further implementation of polygraph activities in key areas and areas of public legal relations. Highlighting and covering problematic issues of polygraphology in the framework of numerous scientific and practical events ensure the creation of new approaches in the development of the polygraph and its application activities. The study of advanced foreign experience of polygraph activity provided the development and publication of a substantial number of scientific and practical materials (monographs, textbooks, manuals, methodological recommendations, studies), outlining topical and problematic issues of polygraph science, which is important for the theory and practice of its application.

Modern Ukrainian polygraphology has reached the level of fundamental knowledge that brings it as a science to a qualitatively new level of defining urgent tasks, including:

– establishing proper state educational activities for the training of polygraphologists;

– ensuring the timely and effective professional development of persons among polygraphologists who practice;

– legislative regulation of the use of the polygraph in Ukraine and the results obtained, which can play an important role in the adoption of relevant decisions by officials, etc.

It is necessary to join the efforts of relevant organisations, researchers and practitioners, statesmen, the public, and all those who seek to join the process of approving polygraph testing in Ukraine to implement these and other plans, which should assist law enforcement agencies and departments, other state institutions, human rights organisations, businesses, public organisations, individual business entities, ordinary citizens in directing its capabilities to clarify urgent and complex issues where their solution is difficult or impossible without the help of a polygraph. Therewith, to ensure all components of this specific activity, in which the rights and guarantees of its participants must be respected, it is necessary to develop and implement a code of ethics for a polygraphologist. Thus, departmental instructional documents of state institutions that use the polygraph in their activities contain information about the procedure and conditions for conducting psychophysiological research using the specified equipment, the procedure for processing the results obtained, preserving confidential information of polygraph research, etc., but they do not have requirements for the moral-ethical components of this process of activity. At best, they are nominally designated or have a reference to them without a mechanism for applying them. Undoubtedly, this is not provided for by the requirements for this type of document, but it is designed for the fact that every polygraphologist must necessarily adhere to ethical and moral standards in their work, in particular with the persons being examined on the polygraph. It should be recognised that little attention is paid to moral-ethical issues in the process of training as a polygraphologist and during the improvement of the professional skill of such specialists. This is a substantial disadvantage of organising educational activities for polygraphologists [17]. Ethical standards for these specialists and those who are involved in providing assistance in conducting research (translator, sign language interpreter, psychologist, investigator, lawyer, etc.) should be the postulate of their relationship with the person under study. A prominent place in this process should be given to the ethics of communication of the polygraphologist as a component of verbal communication. The effectiveness of the research conducted by the specialist will depend on their polite attitude to the person under study, clarity of speech diction, correctness of focusing attention in questions, providing explanations of words, concepts, and categories that are not clear to the person. It is clear that it is difficult to demonstrate respect for a person who is suspected or accused of a crime. Best human and professional qualities are not demanded, yet tolerance, restraint, and tact may well serve as the key to success. It is not for nothing that polygraphologists who have been in this profession for a long time and have conducted hundreds or even thousands of psychophysiological studies using a polygraph note that high-quality communication, especially during a pre-test conversation, substantially shortens the way to solving the issue. Properly organised, prepared, and conducted by a polygraphologist, the pre-test conversation performs a double function: first, it familiarises a person with the basics of the polygraph process, the conditions, procedure, and specific features of its conduct; secondly, it is a kind of time for learning and compiling a psychological portrait of a candidate for polygraph research. Establishing psychological contact will endear such a person to the polygraphologist and ensure that the study planned by the initiator is conducted smoothly. Compliance with tact requirements is required in both Inter-test and post-test conversations. The investigated persons due to insufficient level of knowledge cannot always understand the content of individual concepts, categories, so the polygraphologist without ridicule, grimaces, and surprise should explain and explain incomprehensible words, statements, and meanings, demonstrate their content and practical importance, make sure that the person correctly perceived and understood them. They should not provoke the person under study to be rude, use profanity and indecent gestures with their questions, but show diplomacy so that their communication does not go beyond the limits of what is allowed and concerns only the subject of research, and

not issues of intimate or private content (if they do not form the subject of research).

Diction, accents, and pauses between words and phrases during the research planned by the initiator become important in the ethics of a polygraphologist. They can be viewed from different perspectives: focusing on something, for something, or as a hint or warning against something. Thus:

– indistinct diction of the polygraphologist can cause irritation in the subject, which will lead to additional physiological reactions, which will prevent the polygraph specialist from evaluating the reactions received by them;

– incorrectly emphasised words for a certain category of subjects will also serve as an additional irritant;

– the pauses used by the polygraphologist between words and phrases will disorganise the attention of the investigated person, who can focus on them as a sign to action.

It is unacceptable in the activity of a polygraph specialist to raise the tone or voice. It is necessary to understand and profess a simple truth: what is easy and understandable for one person may not be possible for another. For a polygraphologist, a polygraph test is a common job, and for the person under study, it is an exam, the result of which can be unpredictable. However, its unsuccessful compilation should not be unambiguously interpreted as a person's desire to bypass the testing procedure, since this may be caused by the specific features of the physiology of an individual who, due to their excessive excitement, is quite capable of demonstrating absent-mindedness, confusion, fear, which can confuse even an experienced polygraphologist, and due to raising their voice or shouting at the person under study, there may be tension in the muscles of body parts – additional physiological reactions.

Unacceptable in the work of a polygraphologist is a violation of the ethical norms of nonverbal communication, which can manifest itself through facial expressions, gestures, etc. Often, specialists are not aware of such actions, and execute them without any intentions, attaching much importance to them. Nonverbal language is a part of communication not only for polygraphologists, but also for representatives of other professions, in general, for the entire society. Due to it, the individual expresses their attitude to something, shows both positive and negative emotions, explains certain facts, phenomena, etc. Therewith, nonverbal communication can serve as an irritant to the emotional state of other people, incite and provoke them to certain actions, even rude and inadequate. This is especially unacceptable in the profession of a polygraph specialist, which represents a calm, balanced, well-thought-out, and clearly organised process of activity. Hand gestures, tapping fingers on a table or other surface, stomping or shuffling feet, and facial expressions that reproduce the mood, surprise, mockery, anger, arrogance, and other physiological manifestations of a polygraphologist during a psychophysiological study using a polygraph is a gross violation of the ethical standards of the polygraph process. From the standpoint of the person under study, such actions can be interpreted as bad manners. They may also have the opinion that the polygraphologist intentionally distracts them from focusing on important research issues or provokes additional physiological reactions, that is, applies peculiar techniques of emotional influence or pressure to distort physiological reactions and enable the polygraphologist to make a decision in favour of the initiator of the study, or to make a decision before interrupting, stopping, postponing, or further abandoning such a research procedure. The polygraphologist's code of ethics should aim to balance professionalism with moral qualities. When a polygraph specialist goes beyond the limits of what is allowed, the authorities that control their activities, defined by the code of ethics, or the competent law enforcement agencies should properly respond. All polygraphologists, without exception, should clearly understand and realise that this specific profession requires individuals to have high moral principles, non-compliance with which should be regarded as a betrayal of the interests of this profession. This is not pathos, but the harsh realities of life. Everyone should be sure that their interests will be protected at the right time. The competent approach of a polygraph specialist to the performance of professional duties makes their activity no less important than the help of a lawyer. This will allow increasing the prestige of this profession and raise the level of trust in such specialists, the vast majority of whom honestly perform their work aimed at helping those who need it.

Moral-ethical issues form the basis for all processes of human life and associated industrial relations. The relationships between people that occur in these processes require certain, established, and fixed rules of behaviour, the range of which should be aimed at ordering, regulating, and controlling interacting entities. Moral-ethical principles are particularly important in polygraph activity, especially in the profession of a polygraph specialist.

Considering new trends in the establishment and development of the national interdisciplinary science of polygraphology, it is justified and proposed for the first time to:

– consider the introduction of moral-ethical principles in the activities of a polygraph specialist;

– identify the content of the key components of this process of activity and the existing gaps related to the moral-ethical foundations in the activities of a polygraph specialist;

– propose ways to streamline this process of activity, in particular, through the introduction of moral-ethical norms in the code of ethics of a polygraph specialist.

Conclusions

Thus, summarising the above, the following conclusions can be drawn:

1. Morality and ethics are integral components of any process of activity, since they perform an important function aimed at harmonising and polishing the relationships that arise between different subjects of public legal relations.

2. Moral-ethical principles in the activity of a polygraph specialist are an important part of the entire polygraph process. They simultaneously perform educational and controlling functions, without which activities using a polygraph are disordered and unprotected.

3. The specificity of polygraphology as a newly formed interdisciplinary science lies in the features of the polygraphological process, which is an instrumental detection of information traces. Working with such traces requires special treatment of polygraph specialists for persons who, due to certain life circumstances, turn to the polygraph process to obtain additional information on specific urgent issues that require their solution.

4. Introduction of moral-ethical norms in the form of the code of ethics of a polygraphologist into activities using a polygraph, will ensure the avoidance of errors and misunderstandings that arise in practice in the relationship between a polygraph specialist and the person being investigated.

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Морально-етичні засади в діяльності спеціаліста-поліграфолога

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Анотація
Метою статті є дослідження питання запровадження морально-етичних засад у професійній діяльності спеціаліста-поліграфолога. Методологія. Методологічний інструментарій обрано з огляду на поставлену мету, специфіку об'єкта та предмета дослідження. Зокрема, це загальний діалектичний метод наукового пізнання реальних явищ і їхній зв'язок з теорією та практикою щодо запровадження морально-етичних засад у професійній діяльності спеціаліста-поліграфолога, а також спеціальні методи дослідження, а саме: метод системного аналізу, порівняльно-правовий, системно-структурний і метод прогнозування. Наукова новизна. З огляду на нові тенденції в становленні й розвитку міждисциплінарної науки поліграфології, уперше обґрунтовано потребу в порушенні питання щодо запровадження морально-етичних засад у діяльності спеціаліста-поліграфолога та запропоновано шляхи впорядкування наявних прогалин, що пов'язані з ними, а також висвітлено зміст ключових складових зазначеної науки. Висновки. Обґрунтовано наукову позицію щодо важливості морально-етичних засад у діяльності спеціаліста-поліграфолога, оскільки вони виконують як виховну, так і контрольну функції, без яких діяльність із застосуванням поліграфа є не цілком упорядкованою. Специфіка зазначеної галузі наукових знань потребує від поліграфологів особливого ставлення до осіб, які через певні життєві обставини звертаються до цього процесу діяльності та спеціалістів, що його забезпечують, з метою отримання додаткових інформаційних даних у конкретних нагальних для них питаннях. Невпорядкованість морально-етичних засад у діяльності поліграфолога залишає цей процес поза контролем, що може негативно позначитися як на репутації самого спеціаліста, який його забезпечує, так і призвести до негативного ставлення до поліграфологічної діяльності та її специфіки

Ключові слова:
поліграф; поліграфологія; поліграфолог; морально-етичні засади діяльності; комунікація

UDC 34:001.891]: 378.6: 351.74
DOI: 10.33270/04212101.15

Reformation problems in the studies of teachers of the Department of Theory of State and Law of the National Academy of Internal Affairs

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Article's History
Received: 09.04.2021
Revised: 23.05.2021
Accepted 12.06.2021

Abstract
The purpose of the study is to examine, generalise, and systematise reformation issues in the studies of teachers of the Department of Theory of State and Law of the National Academy of Internal Affairs as a priority area of research activities of this division and an important component of the historiography of legal reform. The methodological basis of the study is a set of ideological, philosophical, and scientific foundations, principles of scientific knowledge, methodological approaches, general methods of thinking, philosophical, general, and special scientific techniques, the use of which ensured the validity and reliability of the results of the study of the state and perspective vectors of development of the problems of reformation shifts, their various manifestations, measurements, and aspects in the scientific legacy of the staff of the Department of Theory of State and Law of the National Academy of Internal Affairs. The scientific originality of the study lies in the fact that for the first time the reformation problems in the studies of teachers of the Department of Theory of State and Law of the National Academy of Internal Affairs of different generations were processed, generalised, and systematised, it was also proved that it is a priority vector of research of this division and an important component of the historiography of legal reform; the characteristics of the content and features of the research activities of the Department of higher education and its importance in the implementation of the tasks of modern higher education were improved; scientific ideas about the state and main areas of research activities of the Department of Theory of State and Law through the prism of centennial progress of National Academy of Internal Affairs were further developed. The conclusions of the study are reduced to the following provisions: the research activities of the Department of higher education are one of the key areas of its operation since the department is not just a team of scientific and pedagogical workers, but first of all the style of teaching, the atmosphere of knowledge of the world, the motivational field of scientific understanding of reality, the space of scientific pursuit. Research activities of the department are one of the leading functions of scientific and pedagogical workers of higher education institutions, which is aimed at learning and transforming the surrounding reality through scientific tools. The establishment of the research potential of the Department of Theory of State and Law is directly and inextricably linked with the establishment and centennial progress of the National Academy of Internal Affairs. The main vectors of the studies of the Department of Theory of State and Law of the National Academy of Internal Affairs of recent years include: relevant issues of the emergence, development, and functioning of the state and law, and other related phenomena and processes of social reality; problems of human rights and the mechanism of their provision; theoretical and methodological foundations of legal activity and prospects for its development; issues of legal comparativistics as a modern stage of the genesis of comparative law; problems of national, civil, and information security of Ukraine, etc. Therewith, life actualises a number of new problems that require doctrinal understanding, in particular fundamental and applied issues related to substantial transformations, progressive changes in public relations, and covered by reformation issues. The latter occupies a prominent place in the scientific legacy of employees of the Department of Theory of State and Law of the National Academy of Internal Affairs of various historical generations and their subject, mainly state-legal, orientation is due to the branches of knowledge and specialities in which educational activities are conducted, the departmental affiliation of the institution of higher education, scientific traditions, and schools that have developed and are developing in the Academy. Studies of teachers of the Department of Theory of State and Law of the National Academy of Internal Affairs, devoted to the reform of state-legal phenomena and processes, are an important component of the historiography of legal reform

Keywords: reform; reformation problems; legal reform; historiography; National Academy of Internal Affairs; Department of Theory of State and Law

Suggest Citation:
Kryvytskyi, Yu.V. (2021). Reformation problems in the studies of teachers of the department of theory of state and law of the national academy of internal affairs. *Law Journal of the National Academy of Internal Affairs,* 11(1), 7-14

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Introduction

Every country faces from time to time the need to implement reforms in a certain area of public life. Such stages of society's development are mandatory when there is a need for systemic reforms aimed at a radical restructuring of all aspects of social life. This need can be caused by various factors, in particular, such as the spiritual and intellectual development of humanity, changes in natural conditions, scientific and technological progress, the influence of global processes and international actors, external threats, etc. During the twentieth century, reforms, not natural selection and revolutions, ensured institutional and structural changes in most countries of the world. They are recognised as the optimal vector of the progressive development of society [1]. Even radical transformations are conducted through a set of reforms in all major fields of public reality within the framework of the "revolution – war/reaction – reforms" algorithm [2]. Israeli historian Yu.N. Harari rightly states that any attempt to describe the characteristics of modern society is akin to defining the colour of a chameleon. The only characteristic that can always be continuous is constant change. People are already used to it. Most people consider the social system to be something flexible that can be easily changed and improved at will. The main promise of pre-modern rulers to their subjects was to protect the traditional system or even return to some lost golden age. Over the past two centuries, statesmen and politicians have mostly promised voters to destroy the old world and build a better one in its place. Even the most conservative political parties don't call for just leaving everything unchanged. All of them promise social, educational, and economic reforms, and often fulfil these promises [3].

Considering this and in the context of developing the theory of legal reform, it is important to process the problems of reformation shifts in the studies of employees of the Department of Theory of State and Law of the National Academy of Internal Affairs. This year's celebration of the 100th anniversary of the National Academy of Internal Affairs (hereinafter referred to as the Academy, NAIA) adds importance to this subject. Ultimately, the celebration of the anniversary date is not only a great opportunity to receive sincere congratulations and wishes but also an opportunity to summarise the results of the centenary progress, determine the areas for further development of both the academy in general and its individual divisions, in particular the Department of Theory of State and Law.

The purpose of this study is to examine, generalise, and systematise reformation issues in the studies of teachers of the Department of Theory of State and Law of the NAIA as a priority area of research activities of this division and an important component of the historiography of legal reform. The following tasks are formulated to achieve it: firstly, to highlight the essence of the research activities of the Department of Higher Education and its importance in the implementation of the tasks of modern higher education; secondly, to characterise the state and main vectors of research activities of the Department of Theory of State and Law of the Academy; third, to analyse the studies of teachers of the Department of the Theory of State and Law of the NAIA, devoted to reformation processes in various fields of public reality, determine their place in the historiography of the problems of legal reform. Notably, the reflection of phenomena and processes of nature and society in the opinion of each person (and in this aspect, admittedly, the scientific and pedagogical staff of the Department of Theory of State and Law of the Academy is no exception) should be understood not "abstractly", not without evolution and internal contradictions, but in the eternal process of movement, the emergence of contradictions and their resolution [4].

Results and Discussion

In the context of encyclopedic [5] and regulatory [6] approaches, the department is the main, basic structural element of a higher education institution, a means of implementing various tasks of higher education. The polyfunctionality of the department is evident since it provides qualitative and quantitative levels of human resources and the effectiveness of performing organisational and educational functions. The department is the main tool for solving all the tasks that society sets for higher education. An important aspect of the department's activity is its research work. This type of activity is aimed at acquiring new knowledge in its various forms using the apparatus and methods of science. It is a tool for the realisation and development of the creative potential of the individual, creates conditions for creative activity, and encourages the desire to learn new facts. Its result is an intelligent product. This interpretation of research activities determines the system of conditions necessary for its successful implementation at the department of higher education institutions: firstly, it should be focused on the cognition of the unknown, the boundaries of which vary for scientific and pedagogical workers and applicants for higher education; secondly, the department should ensure the minimum proficiency of applicants for higher education in the methodology of scientific knowledge and its terminology; thirdly, the system of research activities at the department should be based on considering various needs and interests of applicants for higher education, scientific and pedagogical workers; fourthly, the system of motivation for scientific research activities should ensure constant interest in various forms of such activities, contribute to the acquisition of appropriate competencies of the individual.

At its core, research activity combines, "cements" learning, knowledge, practice, and communication: training – because it is aimed at mastering new experiences in specially created conditions; due to cognition, new knowledge about the world appears; practice forms the experience of professional activity; communication (business, collective, and personal). In this regard, the successful implementation of the department's research activities implies a comprehensive approach to its planning, organisation, and implementation. In particular, this area should be guided by the following requirements: 1) continuous involvement of all categories of participants in the educational process in research activity; 2) close interrelation of various forms of research; 3) compliance and proportionality of scientific activity to the levels and degrees of the educational process; 4) sequence of mastering the methods and techniques of performing research; 5) gradual complication and increase in the volume of the studies; 6) mandatory involvement of the majority of participants in the educational process in the implementation of a comprehensive system of scientific activities; 7) implementation of the results of research; 8) stimulation and encouragement of active participants in studies etc.

In modern leading institutions of higher education around the world, there is a clear trend towards an organic combination of the reasearch and the teaching process. Since the fusion of science and education is stronger, the higher the potential for successful development of an institution of higher education has, and where this connection weakens, there is a threat of a decrease in the level of both scientific and pedagogical activity. According to the apt statement of the German researcher-teacher of the 19th century F.A. Disterweg, without the desire for the investigation, the teacher inevitably falls into the power of three pedagogical demons: routine, banality, and automatism [7].

During the period of its functioning, the Department of Theory of State and Law of the NAIA has accumulated substantial findings in the implementation of fundamental studies, and practical and educational methods and technologies. Its authority is recognised in the Ukrainian community. Employees of the department have established close cooperation with national and foreign scientific institutions and educational institutions. In modern conditions, the Department of Theory of State and Law is a system of organising various educational, scientific, and methodological activities, and official tasks, conducting research activities and monitoring the quality of education, etc. Issues of departmental higher education, implementation of new educational standards, structure and content of academic disciplines, search for ways to improve teaching methods, modern approaches to postgraduate education remain relevant for the department. Employees of the Department of Theory of State and Law of different years and generations did not ignore the issues of substantial transformations, progressive changes in diverse fields of public reality. Every year, teaching staff of the department perform a substantial amount of research work. The key area is to process the scientific basis for reforming state-legal institutions, implementing an effective national policy during the transition period, and developing proposals and recommendations for improving the current legislation and mechanisms for its implementation, increasing the real humanitarian orientation of state and law-making processes in Ukraine. The main vectors of the studies of the Department of Theory of State and Law of recent years include: problems of legal status of the individual, human and civil rights and freedoms, mechanisms for their provision, in particular, in the activities of law enforcement agencies; relevant issues of establishment and development of civil society and the rule of law in Ukraine; problems of the rule of law, democracy, legality, and legal order; legal regulation of the activities of public authorities, in particular, law enforcement; issues of departmental rulemaking and systematisation of normative regulations; theoretical and methodological foundations of legal activity and prospects for its development; issues of legal comparativistics as a modern stage of the genesis of comparative law in the context post-non-classical science; problems of national, civil, and information security of Ukraine [8].

Doctrinal understanding is required, for example, the problems of interaction between public and private law, mechanisms for balancing public and private interests in the context of the requirements of the rule of law, features of the national legal mentality and style of legal thinking in general, and regional differences, models and rules of legal argumentation, their national specific features, etc. [9]. Therewith, the global reformation trend of restructuring the main fields of social reality, the long and complex process of transition of Ukrainian society from the post-socialist type to the model (concept) of sustainable development, and practical needs, challenges of the latest stage of state and legal development in Ukraine determine the relevance of the study of the theoretical and methodological foundations of legal reform. Potential areas of development of the theoretical image of legal reform are the analysis of its essence, content, features, philosophy, ideology, tasks, principles, types, functions, subjects, object, stages, technology, implementation efficiency, foreign experience, correlation with other concepts and categories of general theoretical jurisprudence.

The multidimensional nature of legal reform requires a comprehensive examination. On this occasion, important issues have now arisen, regarding

the effective solution on which the success of the implementation of legal reform in the state depends. It is important to determine the place of legal reform in the system of legal knowledge, outline the theoretical image, and highlight the importance of state-legal phenomena and processes in the general process of knowledge to characterise it The task of national legal science in the field of understanding legal reform is to generalise the array of solid knowledge, in which the most constructive ideas and concepts that explain the innovations and changes that are taking place in Ukraine should find their place. It is necessary to examine legal reform not only within the framework of the recent past and future, but also from the standpoint of a certain historical view of the multidimensional processes occurring in the legal system, and from the standpoint of how this phenomenon was interpreted in other transitional periods of statehood development and how it is perceived now. Through such comparisons, it is possible to reevaluate existing concepts, and this can help to get closer to the truth. There is a prospect of wider use in the study of legal reform of general theoretical works prepared by researchers of different historical eras, and representatives of various branches of scientific knowledge, the number of which substantially increased during the transition periods of the progress of statehood [1].

The initial stage of development of the theoretical and methodological foundations of legal reform is the development, generalisation, and systematisation of historiography on this issue, that is, the clarification of the state and prospects of research of substantial, progressive legal changes, the reorganisation of law as a unique and multidimensional, complex, and multifaceted socio-cultural phenomenon. An important component of the historiography of the subject of legal reform is the studies of teachers of the Department of Theory of State and Law of the NAIA of different historical generations, devoted to reform processes in various fields of public reality. It should be emphasised that the specific features of social cognition are determined primarily by the object, which is a dynamic social reality with a variety of phenomena, complexly intertwined random and natural connections and contradictory relationships, in which the needs and interests of people – representatives of different social groups are ultimately identified. That is, in the object of social cognition, the human essence is objectified; in this aspect, it is incomparably more "humanised" compared to natural objects, which cannot but affect the development of the cognitive process and its results. Adding to this that the subject of social scientific knowledge – a researcher-humanist – is not only a part of this "humanised" object, that is, it is located inside it, but also as a person is the carrier of a certain worldview, personal and professional experience mediated by their own beliefs and the corresponding civil position, then it is possible to come to the following conclusion: they substantially bring more properties of the subject of knowledge to the image of the object than a researcher of natural phenomena and processes. Despite all the attempts of humanist researchers to get rid of or at least soften their subjectivity, in particular through a multidimensional, polysystem approach to object analysis inherent in social and humanitarian sciences, they will never be able to achieve complete "sterility". A pronounced personal attitude to social reality, which is examined as one of the specific properties of social cognition, is now not questioned by the vast majority of researchers. Taking this into account, the unconditional transfer of scientific criteria (standards) formed mainly based on natural (exact) sciences to the social and humanitarian sciences is methodologically too vulnerable. This applies, in particular, to such criteria as objectivity, truth, possibility of verification, stability of the acquired knowledge, etc. They do not fully correspond to the features of the criteria of scientific knowledge of social reality that have developed within the framework of post-non-classical scientific rationality [10].

In Particular, V.V. Kopeichikov & V.S. Shilingov understand the humanistic foundations of legal reform since one of its main tasks is to establish the principle of humanism in all areas of legal regulation of public relations. No less important is the correct understanding of humanism, which has nothing to do with either permissiveness or all-forgiveness, with the position "what I want, I do". An effective correction for ensuring truly humane behaviour of a citizen and official was and remains the fundamental ethical principle: "do so that the rule of your actions can become the rule of everyone's actions", or, in fact, the same thing, "treat others as you want to be treated". The humanism of legal reform is directly related to the humanism of legislation, which should be adopted in the process of reform and is one of its most important components. Researchers summarise that the humanistic foundations of legal reform are also manifested in ensuring the correct correlation of the law with the system of bylaws and the inadmissibility of its substitution by these acts, in particular, departmental instructions [11].

V.V. Kopeichikov's critically objective judgments do not lose their relevance. The researcher mentioned that Ukraine is increasingly referred to as the "basis of stagnation", where transformations are only declared, but any substantial reforms are not conducted. The Law of Ukraine "On the establishment of local authorities and self-government" of February 3, 1994, only confirms this conclusion. Every reform should have a scientific basis, and even more so, the reform of public administration. It cannot be focused on the interests of individuals and groups, regardless

of their social status. Farsightedness of V.V. Kopeychikov impresses with progressiveness. Ultimately, even at the stage of drafting the current Constitution of Ukraine, the researcher insisted on the idea of creating local self-government not as a symbiosis of state bodies with the population, but as a full-fledged social unit – a community that legally, through its self-governing bodies, solves urgent needs, and satisfies the interests of local residents. Identifying self-governing and state principles in one organisational structure will not be able to change the essence of things, and will not allow the decentralisation reforms to fully work. In addition to aspects of legal reform, V.V. Kopeychikov investigated the legal issues of reform shifts in other institutions of social reality, in particular, the transformation in the field of secondary and higher education, economic activity, etc. [12].

In turn, S.D. Husariev, along with others, investigates relevant issues of reforming Ukrainian legal education [13], legal activity [14], and medical legislation [15]. The new stage of development of the national legal system of Ukraine provides for the implementation of a set of reform measures that would be consistent with modern democratic standards in the areas of public administration, legislative, law enforcement, etc. Among the tasks that stand in this way, attention should be paid to raising the functioning of the legal education system to a qualitatively new level. Analysing the problems of the state of development of legal education in Ukraine at the beginning of the 21st century, the researcher claims that in its content the most relevant problems are those that can be conditionally differentiated into the following groups: 1) problems of ensuring the proper level of professionalism of scientific and pedagogical personnel and the optimal number of higher educational institutions of the legal profile; 2) introduction of new forms and methods of training, evaluation criteria in the training of specialists, the content and quality of legal education; 3) further humanisation, democratisation, and practical orientation of training, and accessibility of legal education. Using a systematic approach to overcoming the above problems, the methodological requirement should be based on the provision according to which the reform of legal education should be considered as an element of legal reform in Ukraine [13].

S.D. Husariev's reasoning deserves attention, stating that one of the distinctive features of the current state of the legal system of Ukraine is that it continues to be updated, experience complex processes and conditions of democratic transformation. With the change in political orientations and prospects of state and political life, legal prospects and values changed accordingly, which forced the authorities and society to embark on the path of reforms, creative searches, and hopes. Therewith, along with the trends of renewal, elements of conservatism remain, and those assessments, ideas and negative practices that matured at the previous historical stage over the years, turning into a way of life, a type of thinking, remain. One of the determining reasons for the slow reform of society is a certain lag of the legal system and legislation from its interests, the discrepancy between the legal reform and the need for legal influence on economic and social reforms. The root cause of this inconsistency is the presence of substantial ideological contradictions between the old and new types of the legal system, the lack of a single strategic area in conducting legal transformations [14]. This is reflected in the reform of medical legislation. The adoption of the Law of Ukraine "On state financial guarantees of medical care for the population" of October 19, 2017, No. 2168-VIII, which defines the procedure for state support of medical care for the population, received both positive and negative assessments in society, in particular among representatives of legal science who study the problems of medical law. The researcher explains this ambiguity of attitude to legislative changes by various factors, including: the excessive duration of reforms (political, economic, legal) in Ukraine; the low level of public confidence in the reform course of the authorities who proclaimed the medical reform; the radical nature of transformations proposed in the reform, the internal rejection of which at the psychological level can be explained by the lack of adequate situations of legal and economic guarantees [15].

In the context of determining the impact and importance of innovations in the reform of legal education, A.M. Zavalniy notes that to create an effective model of legal education, it is necessary to consider the innovative processes that are taking place in the world. Through the prism of legal education, innovation can be analysed as a system of changes, as a process and ultimately a result, that is, an indicator of the quality of legal education. Innovations accompany humanity throughout the entire history of its existence, so the direct focus on this approach when building an effective model of legal education is relevant. Understanding the vectors of reforming legal education in Ukraine provides for the recognition of the educational process as one that should focus not on the transfer of static knowledge, but primarily on the establishment of technology for working with legal information, based on which future lawyers receive competencies to solve practical problems in the field of professional legal activity. This innovation process should be based on the establishment of competencies necessary to achieve success in a changing and technologically oriented society [16].

A separate place in the reformation scientific legacy of teachers of the Department of Theory of State and Law of the Academy is the historical prerequisites for the introduction, goals and models of implementation of constitutional and legal reform in

Ukraine, its correlation with legal policy [17]. Summarising the results of the analysis of possible models for the implementation of constitutional and legal reform in Ukraine, O.Ya. Lapka claims that almost the only, most effective way to implement it is to approve the new version of the Constitution of Ukraine by the representative constituent authority. It can be a Constitutional or Legislative meetings (Assembly). In the Constitution of Ukraine, there is not a single mention of the constituent authority and the possibility of its approval of amendments to the Constitution, in particular the approval of a new version of the Basic Law [18]. Within the framework of the constitutional reform, N.P. Kharchenko suggests unifying the main "information concepts", criteria for distinguishing the right to access information, the right to information, the right to freedom of information, etc., and identifying cases of restriction of these rights as guarantees for their provision [19].

Valuable scientific achievements of the scientific and pedagogical staff of the Department of Theory of State and Law of the NAIA are works devoted to the reform of law enforcement agencies, in particular the National Police of Ukraine. The position of N.I. Mozol on the main factor in reforming Ukrainian law enforcement agencies should be the observance of human and civil rights and freedoms, since the state of their provision is the most important problem of Ukrainian and foreign policy of the vast majority of states in the modern world, is inspiring [20]. However, according to M.M. Pendiura, the reform of the National Police of Ukraine as a central executive authority and the internal security sector of the state must comply with European standards [21].

According to the results of the research, the reformation problems in the studies of teachers of the Department of Theory of State and Law of the Academy of different historical generations were processed, generalised, and systematised for the first time, and it was proved that it is a priority vector of research activities of this division and an important component of the historiography of legal reform; the characteristics of the content and features of the research activities of the Department and its importance in the implementation of the tasks of modern higher education were improved; scientific ideas about the state and main areas of research activities of the Department of Theory of State and Law through the prism of the centennial progress of the NAIA were further developed.

Conclusions

Based on the above, the following conclusions were made:

1. Research activities of the Department are one of the key areas of its activity, along with educational, methodological, educational etc. Research activities of the department are one of the leading activities of scientific and pedagogical workers of higher education institutions, which is aimed at learning and transforming the surrounding reality through scientific tools. It covers, first of all, the provision of highly effective, high-quality research and innovation activities of the department through its research and teaching staff and applicants for higher education research in the areas of science and technology development approved in accordance with the established procedure.

2. The establishment of the research potential of the Department of Theory of State and Law is directly and inextricably linked with the establishment and centennial progress of the NAIA. For over thirty years of functioning, the Department of the Theory of State and Law of the Academy is permanently in the process of development, self-improvement, and solving diverse issues of educational, methodological, scientific, personnel, and organisational areas. It includes not only the latest achievements of general theoretical legal science, constant changes in the current legislation, but also the development of socio-political life, legal policy of the state, modern public requests and priorities, the latest standards of education, and other factors of the general public and departmental levels. The main vectors of the studies of the Department of Theory of State and Law of the NAIA of recent years include: relevant issues of the emergence, development, and functioning of the state and law, and other related phenomena and processes of social reality; problems of human rights and the mechanism of their provision; theoretical and methodological foundations of legal activity and prospects for its development; issues of legal comparativistics as a modern stage of the genesis of comparative law; problems of national, civil, and information security of Ukraine, etc. The increased scientific interest in the theory and practice of implementing reforms is due to attempts at rational management of social dynamics.

3. Reformation issues occupy a prominent place in the scientific legacy of employees of the Department of Theory of State and Law of NAIA of various historical generations, and their subject, mainly state-legal, orientation is due to the branches of knowledge and specialities in which educational activities are conducted, the departmental affiliation of the institution of higher education, scientific traditions and schools that have formed and are developing in the Academy. Studies (monographs, papers, these) of teachers of the Department of Theory of State and Law of the Academy, which are devoted to the reform of state-legal phenomena and processes, are an important component of the historiography of legal reform, that is, the state and prospects for the development of this research subject, the creative legacy of individual specialists on this issue. Therewith, the level of research on a particular phenomenon, in particular

legal reform, should be determined not only by the number of publications devoted to it, although this indicator is also substantial. The attention of the scientific community to a certain state-legal phenomenon is transformed into a certain result through the "transition of quantity to quality". No less important is the ability of Ukrainian legal science to convincingly answer questions about the essence of the phenomenon under study, its place and role, structure, and functions in a certain coordinate system.

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Реформаційна проблематика в наукових працях викладачів кафедри теорії держави та права Національної академії внутрішніх справ

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Анотація
Метою наукової статті є опрацювання, узагальнення та систематизація реформаційної проблематики в наукових працях викладачів кафедри теорії держави та права Національної академії внутрішніх справ як пріоритетного напряму науково-дослідної роботи цього підрозділу й важливого компонента історіографії правової реформи. Методологічну основу наукового пошуку становить сукупність світоглядних, філософських і наукознавчих засад, принципів наукового пізнання, методологічних підходів, загальних методів мислення, філософських, загальнонаукових та конкретно-наукових методів, використання яких забезпечило обґрунтованість і достовірність результатів дослідження стану й перспективних векторів розвитку проблематики реформаційних зрушень, їх різноманітних виявів, вимірів та аспектів у науковому доробку працівників кафедри теорії держави та права Національної академії внутрішніх справ. Наукова новизна публікації полягає в тому, що вперше опрацьовано, узагальнено та систематизовано реформаційну проблематику в наукових працях викладачів кафедри теорії держави та права Національної академії внутрішніх справ різних поколінь, а також обґрунтовано, що вона є пріоритетним вектором науково-дослідної роботи цього підрозділу й важливою складовою історіографії правової реформи; удосконалено характеристику змісту й особливостей науково-дослідної роботи кафедри закладу вищої освіти та її значення в реалізації завдань сучасної вищої школи; набули подальшого розвитку наукові уявлення про стан й основні напрями науково-дослідної роботи кафедри теорії держави та права крізь призму сторічного поступу Національної академії внутрішніх справ. Висновки наукової статті зводяться до таких положень: науково-дослідна робота кафедри закладу вищої освіти є однією з ключових сфер її діяльності, оскільки кафедра – не просто колектив науково-педагогічних працівників, а насамперед стиль навчання, атмосфера пізнання світу, мотиваційне поле наукового осмислення реальності, простір наукового пошуку. Науково-дослідна робота кафедри – це один із провідних видів діяльності науково-педагогічних працівників закладу вищої освіти, що спрямована на пізнання і перетворення навколишньої дійсності за допомогою наукового інструментарію. Формування науково-дослідного потенціалу кафедри теорії держави та права безпосередньо і нерозривно пов'язано із становленням і сторічним поступом Національної академії внутрішніх справ. До основних векторів наукових досліджень кафедри теорії держави та права Національної академії внутрішніх справ останніх років належать: актуальні питання виникнення, розвитку та функціонування держави та права, а також інших пов'язаних з ними явищ і процесів суспільної дійсності; проблеми прав людини та механізму їх забезпечення; теоретико-методологічні засади юридичної діяльності та перспективи її розвитку; питання юридичної компаративістики як сучасного етапу генезису порівняльного правознавства; проблеми національної, цивільної та інформаційної безпеки України тощо. Водночас життя актуалізує низку нових проблем, які потребують доктринального осмислення, зокрема фундаментальні та прикладні питання, що пов'язані з істотними перетвореннями, прогресивними змінами суспільних відносин й охоплені реформаційною проблематикою. Остання посідає чільне місце в науковому доробку працівників кафедри теорії держави та права Національної академії внутрішніх справ різних історичних генерацій, а їх предметна, переважно державно-правова, спрямованість обумовлена галузями знань і спеціальностями, за якими провадиться освітня діяльність, відомчою приналежністю закладу вищої освіти, науковими традиціями та школами, що склалися та розвиваються в академії. Наукові праці викладачів кафедри теорії держави та права Національної академії внутрішніх справ, що присвячені реформуванню державно-правових явищ і процесів, становлять важливий компонент історіографії правової реформи

Ключові слова:
реформа; реформаційна проблематика; правова реформа; історіографія; Національна академія внутрішніх справ; кафедра теорії держави та права

UDC 340.12
DOI: 10.33270/04212101.24

Historical-Legal Analysis of Criminal-Legal Counteraction to Domestic Violence in Ukraine

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Abstract

The purpose of the study is to examine the historical aspects of the development of legislation defining criminal law measures of influence for committing domestic violence. The following methods were used to achieve this goal: empirical (observation, description) and theoretical (analysis, system approach, deduction). The use of the historical method allowed for outlining the process of forming legislation in the field of countering domestic violence in accordance with the chronology of past events; the use of logic and dialectics methods enabled the analysis of normative sources on the research subject. The scientific originality of the study consists in highlighting the historical-legal aspects of criminal law measures in the context of limiting domestic violence. It is established that countering domestic violence through the use of criminal law measures of influence is the result of the historical development of Ukrainian statehood and the legal system, ratification of international documents, and bringing the norms of Ukrainian legislation in line with international legal provisions. The Ukrainian model of countering domestic violence was gradually improved by adopting relevant legal regulations. Therewith, the issue of formal consolidation of the system of criminal law measures to prevent domestic violence remained unresolved for a long time. The amendments made to the Criminal Code of Ukraine are the result of adapting the best international practices designed to lay a solid foundation for the application of adequate criminal law measures to overcome domestic violence. The study allowed for tracing and clearly determining the main historical steps in the establishment of a system of criminal law measures for regulating domestic violence and identifying which regulatory sources have become an integral part of national legislation on these issues

Keywords:
domestic violence; criminal law measures; ensuring equality; historical-legal aspects; legislation

Article's History
Received: 05.04.2021
Revised: 17.05.2021
Accepted: 07.06.2021

Suggest Citation:
Vysotska, N. (2021). Historical-legal analysis of criminal-legal counteraction to domestic violence in Ukraine. *Law Journal of the National Academy of Internal Affairs*, 11(1), 24-31

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Introduction

Ensuring gender equality and countering gender discrimination are historically established areas of guaranteeing the rights, freedoms, and interests of citizens. The development of legislation on the application of criminal law measures for committing violence has contributed to the introduction of fundamentally important innovations aimed at preventing and suppressing these crimes. It is necessary to thoroughly investigate and summarise the historical experience and practice of developing legislation on this issue to apply effective mechanisms for preventing and countering domestic violence.

The examination of historical-legal aspects of the establishment of the legislative framework, which details criminal-legal instruments for regulating domestic violence, contributes to the determination of the prerequisites, features of the development of legislation on the chosen subject, the establishment of the main features and ways of development of criminal-legal measures for regulating domestic violence.

However, it still remains insufficiently covered, and the need to improve criminal law mechanisms for regulating domestic violence requires further research and generalisation. It is necessary to emphasise the historical-legal aspect of the establishment of criminal-legal measures to counteract violence, which remains relevant given the changes made to the Criminal Code of Ukraine.

The purpose of the study is to examine the historical aspects of the development of legislation defining criminal law measures of influence for committing domestic violence. Achieving this goal involves performing the following tasks:

– perform an overview of historical events and documents on the establishment of a system of measures to counteract domestic violence;

– analyse the main international and national sources of law that substantially influenced the establishment of a Ukrainian model for regulating domestic violence;

– investigate the historical-legal component in the process of developing criminal law measures to prevent violence.

Results and Discussion

Domestic violence is one of the most massive violations of human rights and freedoms, the characteristic features of which are cruelty, systematic, necessarily – the presence of intent, and it also leaves incorrigible emotional suffering throughout life [1].

The problem of domestic violence has a deep historical background. Some of its aspects were somehow condemned at different stages of society's development. The ideas of equality, harmony, and non-discrimination were and remain important postulates of the relationship between men and women and were fundamental even in the early stages of establishing Ukrainian statehood.

The ecclesiastical and secular law of Kievan Rus began a centuries-old tradition of honoring marriage, preventing violence, disrespect, and discrimination. Mutual respect of spouses, coordination of desires to start a family were considered the norm of sexual behaviour. Violence was severely condemned by the institute of the church of Kievan Rus [2].

Studies of S.S. Kosenko [3] prove that the legislative regulation of violence begins in the time of ancient Russia (Russkaya Pravda of the 11th-12th centuries, the Charter of Vladimir, Knyaz charters, and charters of the 11th-14th centuries, Sudebnik 1497). Notably, Yaroslav the Wise's Russkaya Pravda is one of the most important legal documents of that time, which contains measures of criminal-legal influence on illegal actions and punishment for their commission. According to the Charter of Knyaz Vladimir, a brawl between a man and a woman was considered a crime.

The provisions of the statutes of the Grand Duchy of Lithuania of 1529, 1566, and 1588 also outlied the issue of conviction and punishment for committing violent acts in the family: strict sanctions were provided for crimes committed against family members (for the murder of one of the family members, the death penalty was provided). It was forbidden to enter into a marriage against the will of a woman. However, domestic violence against women was mostly punished only for committing extremely grievous crimes. Thus, in the times of Kievan Rus and in the era of the Grand Duchy of Lithuania, the first fixed provisions appeared aimed at applying punishment for committing certain actions containing signs of domestic violence.

Recalling the history of the Ukrainian Cossacks, the issue of respect for the opposite sex and ensuring protection from violence was an unwritten rule for the Cossack Army. The Ukrainian family of this period was built in accordance with the proportional development of the two sexes. In the system of spiritual values of the Cossacks, the traditions of honouring the woman acquired ideological significance [2].

Various punishments were imposed for violating the idea of equality and respect, using force against women and children, and committing violence. In particular, when a Cossack "defames a woman not out of decency", he was supposed to be beaten with whips, sticks, since it was believed that such a crime dishonours the entire Zaporizhzhia Army. However, the legal documents of that time did not provide for a mechanism of legal protection and adequate punishment for committing domestic violence. For a long time, this subject remained outside the field of legal regulation and was considered the prerogative of established customs and traditions.

During the years of Ukraine in the USSR, the legislation did not provide for a separate penalty for domestic violence. The issue of domestic violence and violence against women, in general, began to be investigated in detail only in the middle of the 20th century, especially after the emergence of feminist movements and after the declaration of 1975 by the UN General Assembly – the year of women.

Thus, for a long time, the problem of domestic violence was outside the field of legal regulation. Any interference of the state and society in family relations was considered a gross violation of the secrecy of private life and was justified by established customs and traditions [4].

The first real steps to counter violence were taken after the end of World War II. The regulatory documents adopted during this period had a positive effect on ensuring parity of women's and men's rights. The provisions of the UN Charter of 1945 and the Convention on the elimination of all forms of discrimination against women, adopted by the UN General Assembly in 1979, marked the beginning of legal equality, prevention of discrimination and violent actions in the system of marriage and family relations. In the context of overcoming the problem of domestic violence, according to Art. 16 of the convention, state parties are obliged to take appropriate measures to eliminate discrimination against women in all matters related to marriage and family relations based on equality between men and women [5].

Given that the problem of domestic violence also concerns children, during this period a number of documents were adopted that defined and consolidated the rights of children, in particular, their right to protection from physical and psychological pressure. First of all, the Universal Declaration of Human Rights, adopted by the UN General Assembly resolution of December 10, 1948, should be mentioned. This international document established fundamental provisions for the protection of the rights of spouses and children, defined fundamental positions necessary for the development of national legislation. Therewith, the ratification of this document by the republics of the former USSR took place much later – in 1980 [6]. Ukraine ratified the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) in 1981, and the Convention Against Torture (CAT) in 1987 [7]. The 1989 Convention on the Rights of the Child contained an obligation for countries involved to take the necessary legislative, administrative, social, and educational measures to protect the child from all forms of physical and psychological violence, abuse [8]. In other words, for committing violence against children, the state is obliged to apply various mechanisms of influence on the violator, depending on the severity of the act committed. Notably, the problems of domestic violence began to be investigated and analysed in depth only at the end of the 20th century Thus, a number of important documents were adopted to prevent the spread of violence. On December 20, 1993, the UN General Assembly adopted the "Declaration on the Eradication of Violence Against Women" [9], which defines the content and cases that cover the concept of "violence". The document is aimed at protecting women's rights, ensuring equal rights for men and women, and preventing their violation.

Undoubtedly, the adoption of the Declaration on the Eradication of Violence Against Women is due to the large number of violations committed by men through the use of violent acts. Achieving equality in the rights and responsibilities of family members required an international solution to this issue.

It is important that at the beginning of the 21st century, Ukraine became one of the first countries in Eastern Europe to recognise domestic violence as an important public problem, depriving abusers of the opportunity to hide behind a screen of non-interference in private life [10]. Protection from violence documents are mainly aimed at women and children who are victims of male violence.

Domestic violence mainly affects children, women who are in a state of economic, psychological, or other dependence on men, intimate partners, or parents, the elderly, persons with disabilities, and other vulnerable categories of persons.

The Verkhovna Rada adopted the Law of Ukraine of November 15, 2001 "On prevention of domestic violence", which recognised both the existence of this phenomenon in society and the readiness to resist it (now the Law is no longer valid). In accordance with its requirements, authorised units (in particular, police units) took measures to prevent violence based on the results of receiving a report or message about the facts of a real threat of domestic violence or about the facts of committing such violence [11]. Recognition of the problem of domestic violence at the legislative level led to the establishment of a regulatory framework and effective practice for taking measures to define the basis for countering and punishing this act.

Despite the fact that this law specified the legal and organisational basis for prevention and legal responsibility for committing domestic violence, it did not contain effective measures to stop such violence, influence the abuser, and help affected persons [10].

Shortcomings in the legislative justification of the phenomenon of domestic violence substantially affect the criminal legal qualification, which is important for determining an adequate measure of criminal legal influence for the committed offence. However, given the existence of a substantial number of unresolved issues and contradictory provisions, this document needed substantial additions.

Measures in the field of preventing domestic and gender-based violence are provided for in section 5 of the Law of Ukraine "On ensuring equal rights and opportunities for women and men". According to it, the abused person or their representative has the right to apply to the court with an application for issuing a restrictive order, which establishes one or more measures to temporarily restrict the rights of the offender or impose obligations on them [12].

A new stage in the fight against this negative phenomenon was the adoption of the Law of Ukraine "On preventing and countering domestic violence", which introduced a comprehensive approach to combating domestic violence, considering the European experience. The law contains key concepts and foundations for preventing domestic violence, and the priority is to properly investigate cases of domestic violence, bring abusers to justice, and change their behaviour. Divisions of the National Police of Ukraine have acquired a wide range of powers to detect, stop, and prevent domestic violence. It provides for the right of the abused person to appeal to law enforcement agencies and the court to bring abusers to justice, apply special measures to them to counteract domestic violence [13].

Therewith, the terms gender", "gender violence", "gender stereotypes" and other derived terms used in the Istanbul Convention were removed from the final version of the Law. Instead, the term "gender-based violence" is used, which does not fully correspond to the concept of gender-based violence, and therefore, Ukrainian legislation cannot fulfil its international obligations if the definitions derived from the term "gender" are not applied [14].

In addition, the main goals of the Istanbul Convention are to protect women from all forms of violence; prevent, prosecute, and eliminate violence against women and domestic violence, and promote the elimination of all forms of discrimination against women, achieve equality between women and men [15]. The Istanbul Convention covers all forms of violence against women, including domestic violence, and defines it as a violation of human rights and a type of discrimination.

The adoption of the regulations discussed above has formed a proper legal framework for improving the existing mechanisms and measures of influence for committing domestic violence. Therewith, the application of criminal legal measures to influence violators of the foundations of gender policy and equality, marriage, family norms, and other legal relations is possible based on specialised regulatory documents.

As a result of the implementation of the provisions of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention), the Criminal Code of Ukraine defines a list of criminal law measures.

The Law of Ukraine "On amendments to the Criminal and Criminal Procedure Codes of Ukraine to implement the provisions of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence" was adopted to implement measures to consolidate the provisions of the Istanbul Convention, on December 6, 2017.

According to the Law, the Criminal Code of Ukraine is supplemented with the following articles: "domestic violence" (Art. 126-1); "restrictive measures applied to persons who have committed domestic violence" (Art. 91); "forced marriage" (Art. 151-2); "non-compliance with restrictive measures, restrictive regulations, or the programme for abusers" (Art. 390-1), etc. Section 4 "Criminal offences against sexual freedom and sexual integrity" was completely updated [16]. The document entered into final force in early 2019. Until now, domestic violence in Ukraine was not considered a criminal offence, and the corresponding actions were qualified as administrative offences.

The changes consist of a qualitatively new approach to resolving the issue of domestic violence. The use of European experience allowed legally consolidating the fundamental aspects of overcoming domestic violence, clearly defining the levers for solving the problem. Domestic violence ceased to be a purely family, private matter, as the state introduced an effective mechanism for countering and preventing it [17].

According to Art. 126-1 of the Criminal Code of Ukraine, domestic violence is the deliberate systematic commission of physical, psychological, or economic violence against spouses or former spouses, or another person with whom the abuser is (was) in a family or close relationship, which leads to physical or psychological suffering, health disorders, disability, emotional dependence, or deterioration of the quality of life of the victim [18].

This type of violence is a complex and historically persistent phenomenon that affects individuals, society, and the state in general. [19]. Domestic violence is not only the result of the abuser's potential impunity but also the victim's perception of normal circumstances in the family. Since childhood, the subconscious mind of most people has not clearly formulated the idea of what normal relationships in the family should be [20].

Using Demographic and Health Survey (DHS) data from 32 different developing countries (including Ukraine), Rawlings S. & Siddique Z. investigated the impact of domestic violence on the mortality of children born by female victims. According to the results of the study, it was discovered that children of mothers who were victims of domestic violence are 0.4 per cent more likely to die during the first month of life, 0.7 per cent – during the year, and 1.1 per cent – during the first five years after birth. The

authors also found that the use of domestic violence and marital rape laws in different countries that criminalise violence against women and/or family rape reduces the frequency of such violence [21].

Thus, according to the Criminal Code of Ukraine, it is clearly and unambiguously established that domestic violence is a crime, even if it occurs "in the family circle" and concerns only husband and wife. Committing domestic violence is punishable by 150-200 hours of community service or arrest for up to 6 months, restraint for up to 5 years, or imprisonment for 2 years [18].

Thus, A.A. Vozniuk [22] proposes to distinguish between the concepts of "domestic violence" and "a crime related to domestic violence" in the Criminal Code of Ukraine. The author suggests interpreting domestic violence as a crime, provided for in Art. 126-1, and a crime related to domestic violence should be interpreted as any socially dangerous act provided for in a Special part of the Criminal Code of Ukraine, which consists in the use of physical, mental, economic, or sexual violence against spouses or former spouses, or another person with whom the abuser is (was) in a family or close relationship. The author suggests that this concept, and an exhaustive list of such crimes, should be fixed in a note to Art. 91-1 of the Criminal Code of Ukraine.

According to Art. 91-1 of the Criminal Code of Ukraine, the following restrictive measures may be applied to persons who have committed domestic violence: 1) prohibition to stay in a place of cohabitation with a person who has suffered from domestic violence; 2) restriction of communication with a child if domestic violence is committed against a child or in their presence; 3) prohibition to approach a certain distance to a place where a person who has suffered from domestic violence can permanently or temporarily reside, temporarily or systematically stay in connection with work, study, treatment, or for other reasons; 4) prohibition of correspondence, telephone negotiations with a victim of domestic violence, other contacts through means of electronic communications in person or through third parties; 5) referral for a programme for abusers or probation programme [18].

Disclosure of the list of measures applied for committing domestic violence within the framework of the main criminal law initiated the process of an effective response to it.

As the review of the historical process of forming the basis for the application of criminal measures shows, the official consolidation of a clear list of means to restrict and stop an illegal act is a logical continuation of precise rule-making work on regulating the issue of countering violence and ensuring gender equality.

Criminal-legal measures of influence on the results of domestic violence were formed in accordance with the norms, customs, and traditions in force in the state. Today, Ukraine has created a powerful mechanism for preventing and countering domestic violence. The Criminal Code of Ukraine and the Law of Ukraine "On preventing and countering domestic violence" provide for tougher penalties for abusers and provide an opportunity for employees of the National Police of Ukraine to control the behaviour of the violator to avoid repeated violence. Therewith, the issue of ratification of the Istanbul Convention remains open [17].

Ukraine needs to ratify this convention as soon as possible to maintain its international reputation for several reasons. First, Ukraine must demonstrate that it is a civilised and progressive country that is ready to become part of the European community. Secondly, Ukrainian women should be protected from domestic violence in their own country, using the convention as an international method of protection.

The effect in countering domestic violence can only be achieved by implementing alternative, other criminal-legal measures combined with punishment or instead of it [23].

One of the challenges of today is the need to adopt a law that would generally provide for the responsibility of military personnel and other persons covered by disciplinary regulations (in particular, police officers) for committing domestic and gender-based violence since in today's conditions they avoid such responsibility. The need for the adoption of such a law is enshrined in the National Action Plan for the implementation of the recommendations outlined in the concluding observations of the UN Committee on the Elimination of Discrimination Against Women [24].

Admittedly, the issue of the effective use of criminal law tools should develop with a clear understanding of the possibility and expediency of using certain tools of influence.

The study outlined the historical-legal aspects of the establishment of criminal law measures to limit domestic violence. Within the framework of the analysis of the problem, it was established that countering domestic violence through the use of criminal law measures of influence is the result of the historical development of Ukrainian statehood, the legal system, and the ratification of international documents.

Conclusions

The analysis of historical-legal features of the establishment of criminal-legal measures to respond to domestic violence demonstrated that the process of forming a Ukrainian system of regulation of legal relations in this area is based on the use of international documents and national legislative initiatives. Since ancient times, the issue of countering domestic violence has been under the control of state institutions, but for a long period, there was no system of legally defined ways to prevent

domestic violence. Ratification by Ukraine of the most important international conventions, the introduction of amendments and additions to the current legislation, and the development of legal regulations allowed to build of an effective system of criminal law measures to counteract domestic violence and fix it in the Criminal Code of Ukraine.

Future investigations in this area concern the analysis of the effectiveness and expediency of applying certain measures of influence on violators of legislation in this area. It is important to identify problematic and unresolved aspects in the process of solving the problem of domestic violence and search for effective ways to resolve them.

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Історико-правовий аналіз кримінально-правової протидії домашньому насильству в Україні

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Анотація
Метою статті є дослідження історичних аспектів розвитку законодавства, що визначає кримінально-правові заходи впливу за вчинення домашнього насильства. Для досягнення поставленої мети використано такі методи дослідження: емпіричні (спостереження, опис) і теоретичні (аналіз, системний підхід, дедукція). Використання історичного методу надало можливість окреслити процес формування законодавства у сфері протидії домашньому насильству відповідно до хронології подій минулого; використання методів логіки та діалектики – проаналізувати нормативні джерела за темою дослідження. Наукова новизна дослідження полягає у висвітленні історико-правових аспектів кримінально-правових заходів у контексті обмеження домашнього насильства. Встановлено, що протидія домашньому насильству шляхом використання кримінально-правових заходів впливу є результатом історичного розвитку української державності та правової системи, ратифікації міжнародних документів, приведення норм вітчизняного законодавства у відповідність до міжнародних правових норм. Висновки. Українська модель протидії домашньому насильству вдосконалювалася поступово шляхом прийняття відповідних нормативно-правових актів. Водночас питання офіційного закріплення системи кримінально-правових заходів запобігання домашньому насильству протягом тривалого часу залишалося невирішеним. Доповнення, внесені до Кримінального кодексу України, є результатом адаптації кращих міжнародних практик, покликаних закласти міцний фундамент щодо застосування адекватних кримінально-правових заходів подолання домашнього насильства. Дослідження дало змогу простежити й чітко визначити основні історичні кроки у формуванні системи кримінально-правових заходів регулювання домашнього насильства та з'ясувати, які нормативно-правові джерела стали невід'ємною частиною національного законодавства з окресленої проблематики

Ключові слова:
домашнє насильство; кримінально-правові заходи; забезпечення рівності; історико-правові аспекти; законодавство

UDC 343.13(477)
DOI: 10.33270/04212101.32

Historical Development of Administrative-Legal Support for the Activities of Inquiry Units of the National Police of Ukraine

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Abstract

The purpose of the study is to conduct a thorough analysis of the historical development of administrative and legal support for the activities of the National Police investigation units of Ukraine. The methodological tools were chosen considering the set goal, the characteristic feature of the object, and the subject of research. they are based on the general dialectical method of scientific knowledge of specific phenomena, and their connections with the practical activities of the bodies of inquiry of the National Police of Ukraine. These methods are comprehensively used in the systematic processing of statistical materials on the results of practical activities of inquiry units of the National Police of Ukraine and materials of operational search cases and criminal proceedings, etc. The historical method is used in a thorough analysis of the establishment and development of inquiry units of the National Police of Ukraine, the specific features of their activities, administrative, and legal regulations in different historical periods. Based on the analysis of the achievements of the investigation units, the sources covering the aspects of using the term "inquiry" in law enforcement practice, and the content of the concept of "inquiry" as one of the forms of pre-trial investigation at various stages of social development. It is established that at the legislative level and in literary sources for a long time this term has undergone a transformation in accordance with its functional area. The study describes the inquiry at an early stage of development and compares it with the modern form of pre-trial investigation. It is established that inquiry at all stages of its development is characterised by such a feature as the presence of a simplified order. It is proved that the modern model of pre-trial investigation quite successfully reproduces positive historical experience and legal opinion, and a balanced approach to differentiating the forms of pre-trial investigation is applied. The study states that the inquiry was perceived as identifying signs of a crime and conducting initial measures to search for the perpetrators, and investigating all the circumstances of committing crimes, and then as a separate type of Investigation. Researchers in the administrative and legal field outlined the history of the emergence, establishment and development of the units of inquiry of the National Police of Ukraine, which had three fundamental stages: pre-trial inquiry of the second half of the 19th–early 20th centuries (1864-1917); the period of the Soviet era (1917-1991); pre-trial inquiry of independent Ukraine (from 1991 to the present). It is proved that the modern model of inquiry quite successfully reproduces positive historical experience and legal opinion. The key differences between the inquiry of the modern form of pre-trial investigation and the early stage of its occurrence are highlighted: firstly, now the inquiry lasts from the moment of detection of the fact of an illegal act until the end of the pre-trial investigation; secondly, in the 18th-19th centuries the inquiry did not have a clearly defined procedural form and was not limited to specific terms, and also almost entirely depended on the internal conviction of the person who conducted it; thirdly, in the legislation of the pre-revolutionary period, the inquiry had the right to conduct a wide range of authorised persons (police ranks, military and civilian authorities, clergy, officials, village elders), and now the inquiry is conducted by inquirers, that is, officials of the inquiry unit of the National Police of Ukraine, the security body, the body that monitors compliance with tax legislation, the state Bureau of Investigation, in cases established by the Criminal Procedure Code of Ukraine (hereinafter referred to as the CPC), authorised persons of another division of these bodies, which, according to the CPC of Ukraine, conduct pre-trial investigation of criminal misdemeanours; fourthly, the inquiry in that time was conducted in relation to all crimes without exception. In the current conditions, inquiries are conducted exclusively for criminal misdemeanours, that is, minor crimes. However, all these differences have a common feature inherent in learning at all stages of its development – the presence of a simplified order

Keywords: police; National Police; police inquiry; investigator interaction; typical investigative situations; patterns of investigation organisation and planning; investigative versions

Article's History
Received: 11.04.2021
Revised: 13.05.2021
Accepted: 05.06.2021

Suggest Citation:
Mieshkovoi, K. (2021). Historical development of administrative-legal support for the activities of inquiry units of the national police of Ukraine. *Law Journal of the National Academy of Internal Affairs*, 11(1), 32-38

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Introduction

At the present stage of development, Ukraine, completing another historical round, found itself on the threshold of serious improvement of the national legal system, considering international legal standards and modern conditions. Globalisation has led to the emergence of new types and forms of illegal activities, their transformation and spread through the territory of Ukraine. Therewith, the impact of corruption, organised crime, and the shadow economy on public processes is growing. These trends and the political and economic situation require rapid and effective reform of pre-trial investigation, transition to a qualitatively new level of functioning.

The study attempts to conduct a thorough analysis of the historical establishment and development of inquiry units of the National Police of Ukraine, which will allow outlining of their historical periods. A scientific approach is proposed both to the reform of the legal system in general and to the definition of ways to improve the pre-trial investigation procedure, in particular, involving the study of the historical past in the context of analysing the main stages of the establishment and development of this legal institution.

The purpose and objectives of the study are to comprehensively examine the establishment and development of administrative and legal support for the activities of inquiry units of the National Police of Ukraine, analyse the historical prerequisites for structural and functional differentiation of inquiry as a procedural form of pre-trial investigation.

Results and Discussion

It is reasonable to start the examination of the Institute of inquiry at the present stage of development of Ukrainian administrative and legal science from its sources. The prerequisite for its establishment, as noted by K.A. Volkov, were a need to ensure the search for guilty persons who violated the norms of customary law. According to the researcher, certain features of the inquiry can be traced already in the "Russkaya Pravda" ("Yaroslav's Court"), which mentions such forms of search as "code" and "persecution of the trace" [1-3]. However, on the territory of Ukraine in legal monuments, the term "inquiry" has been widespread since the beginning of the 18th century, in particular, on the lands that were part of the Russian Empire. The sources indicate that such a function of the police as inquiry appeared from the moment of its creation by Peter I in 1718, but in the procedural sense, this form of the proceeding was combined with the investigation [4]. It can be agreed with such testimony since during this period an extensive police apparatus was created, in which the criminal search function was not specifically allocated, and the police were simultaneously engaged in search and inquiry together with other institutions.

Therewith, the judicial search system of the Russian Empire was increasingly spreading throughout the territory of what was then Ukraine, along with the Hetman's forms of ensuring the investigation. Notably, the police were authorised to conduct both an inquiry and a preliminary investigation into the overwhelming number of crimes and misdemeanours. There were city and county police. The city was divided into parts (200-700 yards), headed by a private bailiff with their own office, who was entrusted with the duties of solving criminal offences and conducting inquiry [5-7]. Notably, such actions were effective, since the private bailiff was obliged to personally collect and record information about the person against whom the crime was committed, the event of the committed illegal act, the method and instrument of the crime, the time and place when and where the crime was committed, the witnesses of the event, who could explain the intentions of the offence and attest to the involvement of the criminal or even expose them. As Yu.A. Kholod rightly noted, the police reform of the 60s of the 19th century affected not only the structure of the general police but also had a substantial impact on its competence: according to the specified decree of the emperor, the preliminary investigation of criminal cases was transferred to judicial investigators, cases of minor criminal and civil cases – to magistrates, economic functions and issues of good management – to zemstvo and city self-government bodies [8]. The study supports the author's opinion that these measures contributed to more effective activities of the police in fulfilling their main duty – to protect the safety of society and the state.

The institute under study had a difficult and inconsistent path after the October Revolution of 1917. Thus, as a result of these political transformations, the police as a law enforcement agency was abolished and a number of state bodies were created, among which the police occupied a substantial place. According to O.V. Grinenko, at that time, the police, as an investigative body, were given the right to conduct only separate investigative actions with the subsequent transfer of the collected materials to the preliminary investigation bodies [9]. It can be argued that the actions of the police were somewhat limited in this area. The subsequent CPC of the Ukrainian SSR of 1927, in the provisions of Art. 94, somewhat expanded the range of bodies of inquiry. In addition, the legislator for the first time provided for two types of it: a) Inquiry in cases in which the preliminary investigation is not mandatory (Art. 95 of the CPC of the Ukrainian SSR); b) inquiry in cases in which the preliminary investigation is mandatory (Art. 97 of the CPC of the Ukrainian SSR), the procedure for which was conducted according to all the rules established for the preliminary investigation [10]. Analysing the

legislation of this period, it can be noted that the range of cases in which inquirers conducted investigations was expanded, and the difference between investigation and inquiry was gradually levelled. Subsequently, the order of the Ministry of Public Order Protection of July 31, 1963 "On conducting an inquiry in the police" established the procedure according to which the conduct of an inquiry in criminal cases should be entrusted to the most experienced, legally trained, operational employees of the Criminal Investigation Department, the service for combating theft of socialist property, other services, and district inspectors [11].

Consequently, it can be argued that there were positive changes in the legislation, in particular in the fact that the function of inquiry was distributed among individual police services. Until 1993, the CPC of Ukraine defined two types of inquiry: in cases in which preliminary investigation is mandatory, and in cases in which it is not mandatory, and where the inquiry was used as the main and final form of preliminary investigation of certain categories of criminal cases. Even then, experts clearly distinguished between inquiry and investigation [12]. Fully agreeing with the possibility of distinguishing two of these types of inquiry based on the current legal regulation, it is impossible to recognise the grounds that are used in this case as correct. Conducting an inquiry on grievous and non-grievous crimes cannot be considered as independent types of inquiry, since the latter are used as criteria for applying specific forms of inquiry that exist, and therefore should be considered as independent types of inquiry. Thus, O.O. Popov believed that the inquiry differs from the pre-trial investigation in that: a) the inquiry precedes the pre-trial investigation; b) in the process of the inquiry, information is obtained regarding a particular event and persons involved in it, while the investigation checks the data obtained during the inquiry and collects new evidence, providing them with the established form; c) the inquiry about the crime receives only data that gives rise to assumptions, guesses, and suspicions, and the investigation aims to find such evidence that, having destroyed the doubts that arose based on the inquiry, would bring them to the state of truth; d) the inquiry requires efficiency to identify traces of a crime and evidence of the suspect's guilt, and is usually conducted secretly, and the activity of an investigator, on the contrary, requires attention and balance, since their orders must be based on irrefutable evidence and therefore cannot be taken hastily; e) the activity of inquiry consists in secret observation, questioning, and protection of traces of a crime [13]. Considering the opinion of the researcher, it can be agreed that investigative actions are conducted by an investigator and require formalities and are accompanied by compliance with clearly defined rules, and inquiries are usually conducted by police officers and generally persons who do not belong to the Judicial Department. According to T.V. Omelchenko, the characteristic features of the inquiry, according to the Statute of criminal proceedings, were that it: had a public character; did not include the involvement of the parties; was the activity not of the prosecutor but of government bodies that were entrusted with the duty to stop and prevent crimes; was terminated at the moment when the case went to the stage of preliminary investigation [14]. Therefore, it is necessary to outline the positive features of the inquiry, since it provided for the implementation of actions that fell within the competence of the investigator, and was conducted immediately after the start of the investigation by the police of a crime that had just been committed in the "hot pursuit". In the absence of a judicial investigator or prosecutor, the police, informing them about an event that contained signs of a crime, had to independently start and conduct an inquiry. After that, the collected materials were transferred to the judicial investigator, who was supposed to conduct a pre-trial investigation in the future, carefully checking the information established during the inquiry. The police had the right to investigate minor crimes and misdemeanours. In accordance with the statute of criminal proceedings, the police were required to conduct certain tasks of the investigator, including those related to the search for criminals. In a situation where the judicial investigator could not arrive at the scene of a criminal event in a timely manner and there was a threat of damage, loss or destruction of traces, the police replaced the judicial investigator in all investigative actions that could not be postponed, in particular during inspections, investigations, searches, seizures (Art. 258 of the Statute of criminal proceedings, hereinafter referred to as the SCP) [15]. Therefore, positive aspects should be noted, since the judicial investigator could check and supplement the inquiry conducted by the police, cancel decisions taken during the inquiry, and all actions conducted both during the inquiry and the implementation of urgent investigative actions in the absence of the judicial investigator without exception.

Comparing the inquiry and the preliminary investigation, O.P. Boyko came to the following conclusions: 1) in the SCP, for the first time at the legislative level, independent forms of interaction between the investigator and the police were formed during the preliminary investigation; 2) in the process of creating the institute of investigators itself, the investigator's right to organise the interaction with the bodies of inquiry during the investigation of criminal cases was legally established [16]. This opinion can be agreed with since the interaction between investigators and the police was conducted functionally,

that is, the investigator assessed the sufficiency and quality of the materials of the police inquiry and the beginning of criminal proceedings (provision and acceptance, verification and, possibly, non-acceptance of the materials of the police inquiry), performed separate urgent investigative actions. The persons who conducted the inquiry and investigation were not able to finish the case until the fact that the established event was a crime was clarified and the person involved was found. However, the inquiry was distinguished by the fact that it was limited to collecting key factual information about the traces of the crime and who was responsible for its commission. But during the preliminary investigation, the work was conducted by collecting an exhaustive amount of evidence, which also had to be obtained in strict compliance with legal rules. The investigation of crimes and misdemeanours consisted in collecting information that came from assumptions, guesses, and suspicions. Under these conditions, no searches or seizures were conducted in the houses, except in extreme and extraordinary cases. Therewith, on November 23, 2018, the second reading adopted the Law of Ukraine No. 7279-d "On amendments to certain legislative acts of Ukraine on simplification of pre-trial investigation of certain categories of criminal offences" [17], which introduces the Institute of criminal misdemeanours and entered into force on January 1, 2020.

The introduction of the institute will help to ensure the rapid investigation of minor criminal offences and reduce the burden on the investigative bodies of pre-trial investigation, since employees of other divisions would be able to exercise their powers in the process of pre-trial investigation of criminal misdemeanours, according to the provisions of part 3 of Art. 38 of the CPC of Ukraine [18]. In comparison with a pre-trial investigation, an investigation in the form of an inquiry provides for a somewhat simplified procedure, in particular, reduced investigation time, restrictions on the use of preventive measures and secret investigative (search) actions, etc.

Given the above, questions about the experience of some countries regarding alternative forms of investigation, including inquiry, are becoming particularly relevant. Therefore, a comparative legal examination of the legal regulation of the form of pre-trial investigation under study will help to increase the effectiveness of the application of this institution in the country in the future.

According to paragraph 4 of part 1 of Art. 3 of the CPC of Ukraine, an inquiry is a form of pre-trial investigation in which criminal offences are investigated. After the entry into force of the Law of Ukraine "On amendments to Section II "Final and transitional provisions" of the Law of Ukraine "On amendments to certain legislative acts of Ukraine on simplification of pre-trial investigation of certain categories of criminal offences" dated December 3, 2019, No. 321-IX from July 1, 2020, the work of the investigation unit began. considering this, a comprehensive scientific understanding of the historical prerequisites for differentiating the forms of pre-trial investigation and its impact on the functional structure of inquiry and the pre-trial investigation becomes particularly relevant. Examining the experience of the establishment and development of inquiry at various stages of social development, considering the influence of conceptual, socio-economic, ideological, political, and other factors, allows generally predicting the effectiveness of the implemented criminal justice reforms.

Conclusions

Thus, in administrative and legal science, the history of the emergence, establishment, and development of the units of inquiry of the National Police of Ukraine was outlined, which had three fundamental stages: pre-trial inquiry of the second half of the 19th-early 20th centuries (1964-1917); the period of the Soviet era (1917-1991); pre-trial inquiry of independent Ukraine (from 1991 to the present). The modern model of inquiry quite successfully reproduces positive historical experiences and legal opinions.

Summarising the above, the key differences between the inquiry at an early stage of its occurrence and the modern form of pre-trial investigation:

– firstly, now the inquiry continues from the moment of detection of the fact of an illegal act and until the end of the pre-trial investigation;

– secondly, in the 18th-19th centuries the inquiry did not have a clearly defined procedural form and was not limited to specific terms, it almost completely depended on the internal conviction of the person who conducted it;

– thirdly, in the legislation of the pre-revolutionary period, a wide range of authorised persons (police ranks, military and civil leadership, clergy, officials, village elders, etc.) had the right to conduct the inquiry, while now the inquiry is conducted by inquirers, that is, officials of the inquiry unit of the National Police of Ukraine, the security body, the body that monitors compliance with tax legislation, the State Bureau of Investigation, in cases established by the CPC of Ukraine, persons of other divisions of these bodies authorised within the competence provided for by the CPC of Ukraine to conduct pre-trial investigation of criminal misdemeanours;

– fourthly, at that time the inquiry was conducted in respect of all crimes without exception, without considering the degree of their severity. In the current conditions, inquiries are conducted exclusively for criminal misdemeanours, that is, minor crimes. However, all these differences have a common feature inherent in learning at all stages of its development –

the presence of a simplified order. Both now and in the past, inquiries are conducted much faster, with less effort and resources involved. As part of the implementation of this approach, § 1 of Chapter 30 of the CPC of Ukraine defines a special procedure for simplified proceedings on criminal misdemeanours.

The modern model of inquiry quite successfully reproduces positive historical experiences and legal opinions. In today's conditions, it can be observed, that a clear procedural order for conducting an inquiry, a well-defined circle of authorised persons and a balanced approach to differentiating the forms of pre-trial investigation are present. At first, the inquiry was perceived as identifying signs of a crime and conducting initial measures to search for the perpetrators, and investigating all the circumstances of committing crimes, and later the inquiry in some cases was cited as a separate type of Investigation. Therefore, despite all the difficulties of theoretical, legal, law enforcement and social nature, the introduction of the institution of criminal misdemeanours in the Ukrainian reality should be another step towards building a European criminal justice system and a new important stage in the creation of civil society, the main foundations of which are social justice and humanistic principles.

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Історичний розвиток адміністративно-правового забезпечення діяльності підрозділів дізнання Національної поліції України

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Анотація
Мета дослідження полягає в тому, щоб здійснити ґрунтовне дослідження історичного розвитку адміністративно-правового забезпечення діяльності підрозділів дізнання Національної поліції України. Методологія. Методологічний інструментарій обрано з огляду на поставлену мету, характерологічну особливість об'єкта й предмета дослідження. Він ґрунтується на загальному діалектичному методі наукового пізнання конкретних явищ, а також їхніх зв'язків із практичною діяльністю органів дізнання Національної поліції України. Ці методи комплексно використано під час системного опрацювання статистичних матеріалів щодо результатів практичної діяльності підрозділів дізнання Національної поліції України та матеріалів оперативно-розшукових справ і кримінальних проваджень тощо. Історичний метод використано під час ґрунтовного аналізу становлення та розвитку підрозділів дізнання Національної поліції України, специфіки їхньої діяльності й особливостей адміністративно-правового регулювання в різні історичні періоди. Наукова новизна. На підставі вивчення досягнень підрозділів дізнання досліджено джерела, у яких ґрунтовно висвітлено аспекти щодо оперування терміном "дізнання" в правозастосовній практиці, і зміст поняття "дізнання" як однієї з форм досудового розслідування на різних етапах суспільного розвитку. Встановлено, що на законодавчому рівні та в літературних джерелах протягом тривалого часу цей термін зазнавав трансформації відповідно до його функціонального спрямування. Надано характеристику дізнання на ранньому етапі розвитку та здійснено порівняння із сучасною формою досудового розслідування. Встановлено, що дізнанню на всіх етапах його розвитку притаманна така риса, як наявність спрощеного порядку. Доведено, що сучасна модель досудового розслідування досить вдало відтворює позитивний історичний досвід і правову думку, застосовано збалансований підхід до диференціації форм досудового розслідування. У статті констатовано, що дізнання сприймалося як виявлення ознак злочину та проведення первинних заходів щодо розшуку винних осіб, а також дослідження всіх обставин вчинення злочинів, згодом – як окремий вид розслідування. Висновки. Науковці в адміністративно-правовій галузі окреслили історію виникнення, становлення та розвитку підрозділів дізнання Національної поліції України, що мала три основоположних етапи: досудове дізнання ІІ половини XIX – початку XX ст. (1864-1917 рр.); період радянської доби (1917-1991 рр.); досудове дізнання незалежної України (з 1991 року – дотепер). Обґрунтовано, що сучасна модель дізнання досить вдало відтворює позитивний історичний досвід і правову думку. Виокремлено ключові відмінності дізнання сучасної форми досудового розслідування від раннього етапу його виникнення: по-перше, нині дізнання триває від моменту виявлення факту протиправного діяння до моменту закінчення досудового розслідування; по-друге, у XVIII–XIX ст. дізнання не мало чітко визначеної процесуальної форми й не обмежувалося конкретними строками, а також майже цілком залежало від внутрішнього переконання особи, яка його проводила; по-третє, у законодавстві дореволюційного періоду дізнання мало право проводити широке коло уповноважених осіб (поліцейські чини, військове та цивільне начальство, духовенство, урядники, сільські старости), а нині дізнання проводять дізнавачі, тобто службові особи підрозділу дізнання органу Національної поліції України, органу безпеки, органу, що здійснює контроль за дотриманням податкового законодавства, органу Державного бюро розслідувань, у випадках, установлених Кримінальним процесуальним кодексом України (далі – КПК), уповноважені особи іншого підрозділу зазначених органів, які, відповідно до КПК України, здійснюють досудове розслідування кримінальних проступків; по-четверте, тогочасне дізнання проводилося щодо всіх без винятку злочинів. В умовах сьогодення дізнання провадять виключно за кримінальними проступками, тобто нетяжкими злочинами. Однак усі ці відмінності мають спільну рису, притаманну дізнанню на всіх етапах його розвитку, – наявність спрощеного порядку

Ключові слова:
поліція; національна поліція; поліцейське дізнання; взаємодія слідчого; типові слідчі ситуації; закономірності організації та планування розслідування; слідчі версії

UDC 342.70;351.74
DOI: 10.33270/04212101.39

Institutional Guarantees of Constitutional Political Rights and Freedoms of Person and Citizen in Ukraine

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Abstract

Based on the generalisation and systematisation of the theory and practice of constitutional law, the study highlights relevant issues of the mechanism for implementing constitutional political rights and freedoms. The purpose of the study is to analyse the mechanism for ensuring the implementation of constitutional political rights and freedoms to determine the role and importance of institutional guarantees in this process. In the course of the research, a set of methods and methodological approaches was used. In particular, formal-legal and structural-functional, systemic and comparative-legal methods, analysis, synthesis, and forecasting became decisive. In a generalised form, institutional guarantees can be defined as a system of national, central, and local bodies and officials, ones of local self-government, and public associations that are authorised to create favourable conditions, resort to effective means and measures to ensure the implementation of constitutional political rights and freedoms of person and citizen. Based on the material presented in the study, it can be argued that institutional guarantees for ensuring constitutional rights and freedoms of person and citizen are considered not as statically available conditions and means of ensuring human and civil rights and freedoms, but as dynamic duties of the state, its bodies and officials to constantly create favourable conditions and provide effective means of their implementation. The dynamics of the development of the legislative framework demonstrates trends in modernising the system of institutional guarantees for ensuring the political rights and freedoms of person and citizen in Ukraine, expanding the system of bodies and organisations authorised to conduct such an honourable mission for the benefit of a person as the highest social value, meeting their needs and interests

Keywords:

Constitution of Ukraine; mechanism for ensuring; constitutional political rights and freedoms; institutional guarantees

Article's History

Received: 14.04.2021
Revised: 16.05.2021
Accepted: 09.06.2021

Suggest Citation:

Bukach, V., Kaminska, N., & Medvid, L. (2021). Institutional guarantees of constitutional political rights and freedoms of person and citizen in Ukraine. *Law Journal of the National Academy of Internal Affairs*, 11(1), 39-46

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Introduction

The approval and provision of human rights and freedoms is the main duty of the state, as stated in part 2 of Art. 3 of the Constitution of Ukraine. Among the state bodies that should ensure constitutional political rights and freedoms, the Verkhovna Rada of Ukraine, the President of Ukraine, the executive and judicial authorities, and the prosecutor's office of Ukraine occupy a prominent place. The outlined issues are not thoroughly developed in scientific papers.

The problems of ensuring constitutional political rights and freedoms were analysed by the following researchers: G. Andreieva, O. Batanov, A. Budagova, L. Voievodin, B. Ebzieiev, A. Kolodii, V. Kopeychikov, V. Kravchenko, I. Kushnir, O. Kushnirenko, O. Marceliak, M. Matuzov, A. Mordovets, M. Malein, V. Nesterovych, A. Oliiynyk, V. Patiulin, P. Rabinovych, T. Siniukova, T. Slinko, K. Tolkachov, V. Fedorenko, A. Khabibulin, and others.

A series of scientific works by professor A. Oliiynyk is devoted to a comprehensive study of the mechanism of ensuring human and civil rights and freedoms in Ukraine. First of all, this refers to the monograph "Constitutional and legal mechanism for ensuring fundamental freedoms of person and citizen in Ukraine" (2008); "Constitutional freedoms of person and citizen and their provision in Ukraine" (2018). In these works, the theoretical and methodological foundations of rights and freedoms, their content, and the general mechanism of ensuring [1] were investigated. Therewith, it is important to note that in recent years, constitutionalist researchers have been actively resorting to examining certain political rights and freedoms of person and citizen, the specific features of their regulation and implementation.

The purpose of the study is to analyse the mechanism for ensuring the implementation of constitutional political rights and freedoms to clarify the role and importance of institutional guarantees in the process under study. Completing the following tasks is necessary to do this:

– highlight the content and concept of an integral element of this mechanism – institutional guarantees of constitutional political rights and freedoms;

– describe the institutional guarantees of constitutional political rights and freedoms of person and citizen in Ukraine;

– review the scientific papers of constitutional researchers who have investigated the mechanism of ensuring human and civil rights and freedoms;

– generalise theoretical approaches to the problems of ensuring constitutional rights and freedoms and suggest ways to improve them.

Results and Discussion

Individual rights and freedoms are one of the greatest achievements of modern civilisation. Back in the early 20th century B. Kistiakovsky argued that in a state governed by the rule of law, the basis of a legal order is the freedom of the individual and their inviolability. He justified the ideal of a "legal person", that is, a person, on the one hand, disciplined through law and stable order, and on the other – endowed with all the rights that they can freely use.

A priori, the essence of the state is highlighted through its human rights policy. However, the implementation of rights depends not only on the state but also on the level of the general legal culture of society and the individual. Ukraine, which gained independence, declared that a person, their life and health, honour, dignity, inviolability, and security are recognised as the highest social value. It is the situation in the field of ensuring human and civil rights and freedoms, their practical implementation, that is the criterion by which the level of democratic development of the state and society is assessed.

Political rights and freedoms of person and citizen are an element of the constitutional system of fundamental rights, freedoms, and duties of a person in Ukraine. Political rights and freedoms of citizens embody the individual's ability to take part in political life and the exercise of state power. This category of rights includes: the right to freedom of association in political parties and public organisations, the right to take part in the management of state affairs, in all-Ukrainian and local referendums, the right to elect and be elected to state authorities and local self-government bodies, the right to appeal to state authorities, local self-government bodies and officials of these bodies.

One of the elements of the mechanism for ensuring the implementation of constitutional political rights and freedoms of person and citizen is their guarantees. The etymological meaning of the term "guarantees" in French means "to provide" or "to vouch". Guarantees of rights and freedoms in the theory of constitutional law are considered differently, namely as:

– one of the basic principles of the constitutional and legal status of a person [2] or an element of the legal status of a person [3];

– a system of norms, principles, conditions, and requirements that ensure in their totality the exercise of constitutional rights, freedoms, and legitimate interests of a person and citizen [4-5];

– the obligations of the state to protect a person, create legal, social and cultural conditions for the realisation of their rights and freedoms, and the activities of international and state organisations for the protection of human rights [6];

– the conditions and means that the state creates for citizens to exercise their fundamental rights [7];

– a system of conditions, methods, and means that provide each level with legal opportunities for identifying, acquiring, and exercising rights and freedoms [8];

– a set of objective and subjective factors aimed at the practical implementation of rights and freedoms, eliminating possible obstacles to their full or improper implementation [9];

– phenomena that contribute to the exercise of human rights and freedoms, ensure their protection and protection [10];

– an integral system of legal and social measures of various functional orientations, which is characterised by the property of translating the normative attitudes of the legislator into the practice of social relations [11];

– the essence of expressing the social responsibility of the state, the duties of its bodies and officials to create all the necessary conditions for citizens to exercise their rights and freedoms and provide a person with reliable tools for their protection [12];

– the creation of such legal institutions that by legal means would ensure the possibility of exercising rights and fulfilling obligations, and consolidate and protect the rights of citizens from violations by individual officials, state bodies, and citizens [13].

Based on the above, guarantees are considered not as statically available conditions and means of ensuring human and civil rights and freedoms but as dynamic duties of the state, its bodies, and officials to constantly create favourable conditions and provide effective means of their implementation.

Modern coverage of guarantees occurs mainly in two ways. The first way – guarantees are considered as a condition or means of implementing a legal provision. In this direction, the legal mechanism, the existing legal provision and the content of which need to be implemented are mainly investigated. The second way provides an opportunity to explore guarantees as a mechanism for the realisation of natural human rights and freedoms. Implementation is based on the moral and legal category of human rights, which exists independently of the state, has a universal character, and therefore its consolidation in the normative regulation of the state is one of the types of guaranteeing rights. Researchers identify guarantee levels. The lower one is the actual consolidation, the middle one is the legislative establishment of the security mechanism, and the higher one is the trouble-free process of implementing a legal claim.

Thus, guarantees can be considered as a structural element of the mechanism for ensuring the implementation of both rights and freedoms in general, and constitutional political rights and freedoms of person and citizen in particular. It is a system of norms of principles, conditions, and means that ensure in their entirety the exercise of constitutional political rights, freedoms, and legitimate interests of a person and citizen.

Constitutional political rights and freedoms of person and citizen are part of the general system of all types of constitutional subjective rights and freedoms. The action of constitutional norms, principles, and means mediated in the constitutional and legal regulation of status legal relations, the creation of conditions for the unhindered exercise of political rights and freedoms is a system of structural elements, each of which performs its own role and occupies its own place in the mechanism for ensuring the implementation of opportunities [5; 14].

In the specialised literature, ensuring political rights and freedoms is considered as a system for guaranteeing them in the form of a set of positive conditions and special means that ensure their rightful implementation [15]. According to K. Tolkachova, A. Khabibulina, this approach to defining the concept of ensuring rights and freedoms can be used for constitutional personal rights and freedoms [16].

This approach is acceptable for personal rights, and with regard to ensuring constitutional political rights and freedoms, it is advisable to examine the legal (special) and organisational (general) guarantees of these rights.

The system of guarantees of political rights and freedoms of person and citizen covers the conditions and means of political, economic, social, ideological, legal directions necessary for their implementation, in particular, the mechanism of their protection.

Among political, economic, social, ideological, and legal guarantees, an important place is occupied by institutional guarantees that provide for the activities of state and non-state organisations that create favourable conditions, protect constitutional political rights and freedoms from offences, and take part in the reproduction of violated rights.

The Constitution of Ukraine (Art. 3) establishes the main duty of the state to establish and ensure human rights and freedoms. According to Art. 92 of the Basic Law, the Parliament of Ukraine should determine exclusively by laws the subjective rights and freedoms of a person and citizen, guarantees for their implementation and basic duties. According to the Constitution of Ukraine (Art. 6), state power operates on the principle of dividing power into legislative, executive, and judicial. Legislative power in Ukraine is exercised by the parliament, executive power is exercised by the Cabinet of Ministers of Ukraine and other executive authorities, and judicial power is exercised by the Constitutional Court of Ukraine and courts of general jurisdiction. An important place in this system is occupied by the President of Ukraine and other control and supervisory bodies of state power.

In the system of state authorities, the guarantee of human rights and freedoms in general and constitutional political rights belongs to the Verkhovna Rada of Ukraine. The priority function of the Verkhovna Rada of Ukraine is legislative. According to

the Constitution of Ukraine, the Verkhovna Rada has the right to adopt laws, resolutions, and other acts. Only the laws of Ukraine should regulate the issue of human and civil rights and freedoms, guarantees of these rights and freedoms, and the basic duties of citizens (paragraph 1 of Art. 92 of the Constitution of Ukraine). An example is the laws of Ukraine "On the Verkhovna Rada Commissioner for Human Rights", "On political parties in Ukraine", "On public associations", etc. Any law adopted by the Verkhovna Rada of Ukraine contributes to the protection of human and civil rights and freedoms by reducing the number of gaps in legislation regarding the activities of a certain state authority, enterprise or institution, other state organisation, person, group of persons, and other possible subjects of the rule of law and civil society. In this case, the principle applies, according to which the state authority (local self-government) is allowed what is directly defined in the law, and the person (person, citizen, and their association) – everything that is not prohibited by law. Resolutions of the Verkhovna Rada of Ukraine also contribute to this implementation.

Of interest is the resolution of the Verkhovna Rada of Ukraine of June 17, 1999, "On the basics of the national policy of Ukraine in the field of human rights". This normative document established the principles and directions of national policy in the field of human rights. It is a kind of foundation on which the activities of the system of state bodies in the field of guaranteeing human rights are based. In the resolution, among other areas of improvement in ensuring the implementation of human and civil rights, attention is focused on the problem of improving legislation on financing the activities of the most popular political parties and developing the legal basis for using and strengthening legal guarantees for the protection of the constitutional right of citizens to hold peaceful assemblies, rallies, marches, and other demonstrations by adopting the relevant law [17].

In this context, it should be noted about the national strategy in the field of human rights, approved by Presidential Decree No. 119/2021 of March 24, 2021. Its purpose is to ensure the priority of human rights and freedoms as a determining factor in the process of forming and implementing national policy, exercising the powers of state authorities and local self-government bodies, and conducting economic activities. The result of the strategy implementation should be the introduction of a systematic approach to ensuring human rights and freedoms, coordination of actions of state authorities, local self-government bodies, civil society institutions, business entities, the creation of an effective mechanism for the implementation and protection of human rights and freedoms in Ukraine, the elimination of systemic shortcomings that underlie violations identified by the European Court [18].

The next area of activity of the Verkhovna Rada of Ukraine to guarantee human and civil rights and freedoms (including political rights) is the function of parliamentary control, which is conducted through the Commissioner for human rights of the Verkhovna Rada of Ukraine. In more detail, the features of the organisation and activity of this institution are highlighted in the research of modern Ukrainian researchers [19]. Further publications should focus on the problems and prospects of improving its status, considering numerous appeals from citizens, broad competence, and role in the system of guaranteeing the protection of constitutional human rights and freedoms.

The President of Ukraine is recognised as the guarantor of human and civil rights and freedoms (including political ones) (Art. 102 of the Constitution of Ukraine). It is the President of Ukraine, as the head of the Ukrainian state acting on its behalf, who guarantees the observance of constitutional human and civil rights and freedoms in Ukraine. By providing them, the president creates conditions for their implementation, protects, and restores constitutional rights and freedoms. The President of Ukraine can create conditions that guarantee political rights and freedoms by implementing rule-making, executive, constituent, controlling, coordinating, educational, and international functions. Ensuring the constitutional political rights of a person and citizen is entrusted to the executive authorities. The highest body in this system is the Cabinet of Ministers of Ukraine. It is responsible for taking measures to ensure human and civil rights and freedoms (Art. 116). As the highest collegial body, it should ensure political human rights both directly and through central and local executive authorities, direct and control their activities in this direction. The role of executive authorities in ensuring political rights and freedoms of person and citizen is to execute such measures:

– implementing the Constitution and laws of Ukraine, decisions of the Constitutional Court of Ukraine, acts of the President of Ukraine, programmes of relevant executive authorities;

– implementing of constant monitoring of the implementation of the Constitution and legislative acts of Ukraine, taking measures to eliminate the shortcomings of the work of these bodies;

– ensuring consideration of appeals of citizens and their associations;

– implementing measures to organise information and education of the population.

Ensuring political rights and freedoms and exercising duties is entrusted to the judicial authorities (the Constitutional Court of Ukraine and courts of general jurisdiction), the prosecutor's office (Art. 121,

124, 147), and other law enforcement agencies. The Verkhovna Rada and the Council of Ministers of the Autonomous Republic of Crimea are obliged to take part in ensuring the rights and freedoms of citizens (paragraph 7 of Art. 138). Recent reforms in Ukraine demonstrate the need to change the forms and methods of work of judicial and law enforcement agencies, overcome corruption, and increase their transparency and efficiency. Therefore, the conclusions and recommendations provided in a number of scientific papers on this issue are valuable [20-29].

Issues of ensuring rights and freedoms are decided by territorial communities, their bodies, and officials (Art. 143). Citizens of Ukraine may unite in political parties and public organisations to protect their rights, freedoms, and legitimate interests (Art. 36). The Constitution of Ukraine guarantees political diversity (Art. 15), etc. [30-34].

Therewith, the realities of today indicate the need to attract public, state, and the scientific community attention to a thorough analysis of the specific features of ensuring, in particular, guaranteeing certain rights and freedoms related to the involvement of a person and citizen in the political life of society: the right to citizenship, freedom of movement, free choice of place of residence, the right to freedom of thought and speech, the right to freedom of association in political parties and public organisations, the right to take part in the management of state and public affairs, the right to rallies, marches, and demonstrations, the right to appeal to the authorities, etc.

The definition of institutional guarantees as established by the Constitution, laws, and other normative regulations of the system of national, central, and local bodies and ones of local self-government, public associations that are authorised to create favourable conditions, resort to effective means and measures to ensure the implementation of constitutional political rights and freedoms of person and citizen is formulated in a generalised form.

Conclusions

Based on the above, it can be argued that institutional guarantees for ensuring constitutional rights and freedoms of person and citizen are considered not as statically available conditions and means of ensuring human and civil rights and freedoms but as dynamic duties of the state, its bodies and officials to constantly create favourable conditions and provide effective means of their implementation.

The dynamics of the development of the legislative framework demonstrates trends in modernising the system of institutional guarantees for ensuring political rights and freedoms of person and citizen in Ukraine, expanding the system of bodies and organisations authorised to conduct such an honourable mission for the benefit of a person as the highest social value, meeting their needs and interests. Admittedly, there are many tasks ahead, both at the national and local levels, but it is important for their resolution to be systematic and consistent, effective and timely, accessible to everyone.

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Інституційні гарантії конституційних політичних прав і свобод людини та громадянина в Україні

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Анотація
На підставі узагальнення і систематизації теорії та практики конституційного права в науковій статті висвітлено актуальні питання механізму реалізації конституційних політичних прав і свобод. Мета статті – аналіз механізму забезпечення реалізації конституційних політичних прав і свобод для визначення ролі та значення інституційних гарантій у цьому процесі. У процесі дослідження використано комплекс методів і методологічних підходів. Зокрема, визначальними стали формальноюридичний і структурно-функціональний, системний і порівняльно-правовий методи, методи аналізу й синтезу, прогнозування тощо. В узагальненому вигляді інституційні гарантії можна визначити як закріплену Конституцією, законами й іншими нормативно-правовими актами систему загальнодержавних, центральних та місцевих органів і посадових осіб, органів, посадових осіб місцевого самоврядування, громадських об'єднань, які уповноважені на створення сприятливих умов, вдаватися до ефективних засобів і заходів щодо забезпечення реалізації конституційних політичних прав та свобод людини й громадянина. На підставі викладеного в науковій статті матеріалу можна стверджувати, що інституційні гарантії забезпечення конституційних прав і свобод людини та громадянина розглядають не як статично наявні умови та засоби забезпечення прав і свобод людини й громадянина, а як динамічні обов'язки держави, її органів і посадових осіб постійно створювати сприятливі умови та надавати ефективні засоби їх реалізації. Динаміка розвитку законодавчої бази демонструє тенденції модернізації системи інституційних гарантій забезпечення політичних прав і свобод людини та громадянина в Україні, розширення системи органів та організацій, уповноважених на здійснення такої почесної місії на благо людини як вищої соціальної цінності, задоволення її потреб та інтересів

Ключові слова:
Конституція України; механізм забезпечення; конституційні політичні права і свободи; інституційні гарантії

UDC 342.54
DOI: 10.33270/04212101.47

Anti-Corruption Policy in the Field of Public Administration of the Social Sector in the Context of Decentralisation

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Abstract

The purpose of the study is to analyse the relationship between the implementation of the reform of decentralisation of public power in the field of social sector management and anti-corruption policy in Ukraine, and the development of scientifically based recommendations for improving legislation on the prevention of corruption in local self-government bodies. In the process of scientific research, a complex of philosophical and ideological, general scientific, and special scientific methods was used. The axiological approach is used to clarify the role and importance of proper legislative regulation of certain public relations that arise when making power decisions at the municipal level. The method of analysis and synthesis contributed to the analysis of the concept, features, object, parties, and conditions of decentralisation. From special scientific methods, the study applies systemic and structural-functional, comparative-legal. It is emphasised that the reform on the decentralisation of public power initiated the creation of united territorial communities capable of independently providing high-quality public services, organisational and legal guarantees to the population for the implementation of their constitutional right to social protection by residents. It is stated that many of the positive transformations that are being conducted in the state are being offset primarily at the local level due to the large-scale spread of corruption manifestations. Due to the lack of a special strategic document of anti-corruption orientation, the work of the Parliament on resolving the issue of the anti-corruption strategy was analysed, in particular, the Draft Law "On the principles of state anti-corruption policy for 2020-2024". It is proved that corruption negatively affects the image of the state in the international community, hinders the attraction of foreign investment, and poses a threat to social and economic security. Due to the fact that fraud with budget funds causes substantial damage to the social functions of the state, corruption at the municipal level is often the most harmful, because it affects the most vulnerable segments of the population. It is determined that the legislative framework has been updated at the state level, concepts and programmes for preventing corruption have been adopted, and its own anti-corruption institutional model for organising public administration has been formed. It is stated that corruption continues to play a negative role in public administration, and the means and methods aimed at preventing it remain insufficiently effective. Ways to increase the level of anti-corruption policy in the field of public management of the social sector in the context of decentralisation are proposed. The conclusion is formulated on improving the current anti-corruption legislation by adding local self-government bodies to the list of entities that approve anti-corruption programmes

Keywords:
anti-corruption policy; social protection; decentralisation; local self-government; public administration

Article's History
Received: 16.04.2021
Revised: 24.05.2021
Accepted: 17.06.2021

Suggest Citation:
Ryzhuk, I.V., Bryhinets, O.O., & Halus, O.O., (2021). Anti-corruption policy in the field of public administration of the social sector in the context of decentralisation. *Law Journal of the National Academy of Internal Affairs*, 11(1), 47-54
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Introduction

The current centralised system of state financing of human capital has exhausted its capabilities and needs to be transformed on new principles. The restructuring of the domestic economy as a consequence of the events of 2020 implies not only new development prospects for the state related to the establishment of a new technological paradigm, which was proclaimed at the World Economic Forum in Davos but also new social challenges caused by a substantial transformation of the labour market. Under such conditions, states such as Ukraine, whose industry is already outdated, can suffer the most, so production costs are compensated at the expense of cheap labour. Notably, there is too much cheap labour in the state, so some of it, in particular in the 90s of the last centuries and after 2014, the state "exports" primarily to the member states of the European Union. Such activities are extremely active in the western territories of Ukraine, where the population of the entire village goes to work in the Republic of Poland. The situation is also complicated by the fact that the most qualified employees leave for a long time or forever, and less qualified employees – for seasonal work. Thus, given the fact that human capital is formed due to large-scale investments in the social field, Ukraine has been suffering substantial losses for years.

The purpose of the study is to analyse the relationship between the implementation of the reform of decentralisation of public power in the field of social sector management and anti-corruption policy in Ukraine, and the development of scientifically based recommendations for improving legislation on the prevention of corruption in local self-government bodies.

The following tasks are set to achieve this goal:

– identify the main aspects of social field decentralisation;

– investigate the impact of the state's anti-corruption policy on the development of local self-government;

– analyse the implementation of the state-wide anti-corruption strategy at the local level;

– prove the expediency of approving anti-corruption programmes by local self-government bodies;

– develop scientifically based ways to improve the legal regulation of anti-corruption activities in the field of public management of the social sector in the context of decentralisation.

Results and Discussion

Aspects of the subject under study are covered in the papers of both Ukrainian and foreign researchers. In particular, the problems of public management of the social sector were investigated by V.D. Bakumenko, N.P. Boretska, N.M. Vlasenko, V.A. Goshovska, K.V. Denysenko, T.V. Kravchenko, V.V. Lavrukhin, Yu.O. Makhortov, Yu.A. Khatniuk, Yu.D. Yurchenko, and others [1-2]. Theoretical and practical aspects of the decentralisation of public power in general and in the social field, in particular, were considered by O.M. Babych, O.I. Vasilieva, A.S. Gavrylenko, A.P. Lelechenko, O.V. Remeniak, I.Z. Stornianska, A.F. Tkachuk, S.L. Schultz, and others [3-4]. Such researchers as L.I. Arkusha, D.G. Zabroda, V.V. Kovalenko, V.S. Lukomskyi, M.I. Melnyk, E.V. Nevmerzhytskyi, S.S. Rogulskyi, V.M. Solovyov, S.S. Seriogin, O.V. Tereshchuk, O.V. Tkachenko, S.A. Shalgunova have investigated aspects of the issue of general anti-corruption [5]. The current content and methodological foundations of the study of the problem of forming the foundations of the national anti-corruption policy were not investigated in the field of public administration science. Findings in this area have the following researchers: V.V. Bashtannyk, T.E. Vasylevska, S.G. Kosianchuk, N.A. Lypovska, V.M. Soloviov, V.L. Fedorenko, Yu.S. Tsal-Tsalko, V.P. Yakobchuk, and others [6]. The identification of political corruption as a threat to the state security of Ukraine is investigated [7].

Scientific and theoretical justifications, which were the result of scientific (scientific-practical) achievements of these researchers and practitioners, were focused on the legal regulation and practical activities of subjects authorised to counteract corruption, require further comprehensive theoretical development of this problem. A number of key issues for anti-corruption activities remain insufficiently investigated. First of all, this concerns a clear definition of anti-corruption policy in certain areas of public administration, in particular, in the social field.

In the process of ensuring decentralisation, it is important to consider the position of U. Oates, which determines the use of public resources for the development of each territory, in particular, the benefits of using public resources should be localised in the relevant territory; the population of this territory finances a substantial part of the needs for public or mixed goods and can optimise the production of public goods through involvement in the representative bodies of the relevant territory; the degree of difference in the preferences of the population of this territory in relation to the benefits regulated by the authorities is lower than one of the populations of different territories. Only under such conditions can decentralisation contribute to improving the efficiency of the public sector, economic growth rates, and reducing inter-territorial inequality in living standards [8].

Relatively developed human capital in Ukraine is still one of the main competitive advantages of the national economy. The state leadership tried to change this situation in 2014, approving the concept of reforming local self-government and territorial organisation of power in Ukraine, as a result of which, a reform was initiated to decentralise public power [9]. This reform was not limited to the field of public management of the social sector, as the provision

of social services to the population and the conduct of social work should be as close as possible to the people. The reform gave a new impetus to the study of the problems of financial support for social spending in Ukraine through the prism of decentralisation. With the beginning of the process of voluntary association of territorial communities, they began to create capable united territorial communities (UTC) that can independently provide high-quality public services, organisational and legal guarantees for the implementation of their constitutional right to social protection by residents. This is manifested in the ability to create independent executive bodies for the social protection of the population; properly conduct social work in the community, in particular, to introduce positions of social managers, specialists in social work and social workers; create municipal social service providers and their own administrative service centres, which are front offices for providing administrative services to members of this territorial community. Unlike the capable UTCs, territorial communities that have not united, due to insufficient financial capacity, are often not able to properly ensure the conduct of social work in the community, create the necessary organisational and legal guarantees for the exercise of their constitutional right to social protection of their residents. For example, the Law of Ukraine "On local self-government in Ukraine" provides that in small territorial communities with less than 500 residents, executive bodies may not be created at all, and their functions, in particular in the social field, will be performed by the village head.

The reform on the decentralisation of public power provided for two stages of its implementation. In the first stage, the most important laws were adopted, in particular, "On the voluntary association of territorial communities" [10] and "On cooperation of territorial communities" [11].

The Law of Ukraine "On the voluntary association of territorial communities" defined the procedure for the voluntary association, amended a number of legislative acts regarding state support for such association [11]. In the process of practical implementation of the provisions of this law, many problems arose, which led to repeated amendments, in particular, concerning: the introduction of a mechanism for joining territorial communities to already established UTCs; ensuring the possibility of uniting territorial communities of adjacent districts without changing the boundaries of districts; determining the budgets of UTCs; simplifying the procedure for joining territorial communities to cities of regional importance by introducing additional elections of deputies of the council instead of holding new elections of the mayor and deputies of the council. A mixed reaction among researchers and practitioners was caused by changes to this law concerning the simplification of the procedure for approving long-term plans for the establishment of community territories. Long-term plans for the establishment of community territories (hereinafter – long-term plans) are approved by the Cabinet of Ministers of Ukraine on the recommendation of regional state administrations instead of being approved by decisions of regional councils. They argued that the introduction of such changes was due to the fact that regional councils, often guided by their own political ambitions and attempts to gain the trust of voters, adopted such long-term plans that did not contribute to the creation of capable UTCs. These amendments to the law established a mandatory condition for the voluntary association – association according to long-term plans.

The adoption of the Law of Ukraine "On cooperation of territorial communities" was also an important step in the decentralisation of public administration of the social sector [11]. This law provides for various forms of cooperation, in particular, the delegation of one community by other communities to perform certain tasks with the transfer of appropriate resources to it; the implementation of joint projects, including in the field of social protection; joint financing or maintenance of municipal institutions; the establishment of joint municipal enterprises, institutions and organisations; the establishment of joint management bodies for the implementation of powers defined by law, etc. [12]. For example, territorial communities can conclude a cooperation agreement on the creation of a common social service provider or a common administrative service centre, etc.

An important step in the reform to decentralise public power was the implementation of the territorial reform to eliminate and form enlarged districts in all regions of Ukraine in July 2020 [13]. The reform of the territorial organisation at the district level led to the termination of the activities of district state administrations of the liquidated districts and the need to transfer certain powers of district state administrations in the field of social protection to local self-government bodies of UTCs. A number of normative regulations were adopted, regarding: securing for local self-government bodies of UTCs of the authority to provide administrative services of a social nature, basic social services; the obligation to create a separate structural unit for social protection of the population of the local council; the creation of village, town, and city centres of social services by reorganising the relevant centres of social services for families, children, and youth; the mandatory creation of village, town, and city services for children, separated from other structural divisions of local self-government bodies, etc.

There have also been changes in the organisation of receiving applications and other documents for the appointment of state social assistance, which from March 1, 2021, are accepted by officials of the executive body or the centre for providing administrative

services directly in the UTC [14]. That is, structural divisions of local self-government bodies, their authorised persons and centres for providing administrative services have become front offices for providing administrative services of a social nature to residents of territorial communities. Since 2021 all territorial communities have been connected to the Social Community software application, which has combined front offices (entities that receive applications and documents from the population) with back offices (the social protection body that makes decisions on the provision of social administrative services) in a single information space to prevent corruption phenomena [15-16].

Unfortunately, many positive changes that are taking place in Ukraine are being offset primarily at the local level due to the large-scale spread of corruption manifestations. Indeed, a comprehensive analysis of the problems that hinder the development of the state has allowed determining that the most dangerous manifestation of criminal behaviour in public authorities and local self-government in modern society is corruption, venality of the authorities. In most cases, corruption is considered a set of crimes or law violations committed by officials of state and municipal authorities to satisfy their mercenary or other personal interests. Corruption is a complex, developed phenomenon, and the process of reforming the social, economic and political foundations of society has always been accompanied by a substantial increase in its level. This circumstance is due to the fact that the shadow economy, an essential part of which is corruption, is more flexible, primarily during large-scale transformations in society [17]. In Ukraine, the reform processes continue constantly. Recently, the process of financial decentralisation has started, which is accompanied by social changes.

The main areas of the anti-corruption policy include: improving the current legislation; developing a balanced system of checks and balances between the main bodies of state and municipal authorities; streamlining the existing system of executive and municipal authorities; changing the principles of control over the property status of government representatives and their families; creating conditions for effective control over the distribution and expenditure of budget funds; strengthening the independence of the judiciary both at the national and local levels; improving the system of internal affairs bodies; coordinating anti-corruption policy both at the national and municipal levels [18].

Proper coordination of anti-corruption policy is one of the most important areas of effective support for positive changes in the country. The anti-corruption policy imposes appropriate obligations on all state and municipal bodies, in particular for those for which anti-corruption activities are not leading. Therewith, interpreting the fight against corruption as a full-fledged function of the modern state, a public-power institution, which can be assigned responsibility for such coordination is necessary. Law enforcement agencies and special services should ensure only the detection of corruption manifestations and bring corrupt officials to justice.

It is extremely important to develop a national anti-corruption strategy to achieve a positive result, which should be properly detailed at the municipal level considering the specific features of the development of individual regions of the state.

After the end of the period defined by the relevant law, since 2017, Ukraine has been without a special strategic document of anti-corruption orientation. So far, no new special law has been adopted. The current Draft Law "On the principles of state anti-corruption policy for 2020-2024" [19] was subjected to "amendment spam" - already for the second reading, people's deputies submitted over 500 amendments, which were considered by the working group established under the Committee on Anti-Corruption Policy.

In particular, the Committee considered the amendments that provided that the draft law approved the State Anti-Corruption Strategy for 2021-2025. The proposed strategy contains four sections, the first one is devoted to the concept of forming a state anti-corruption policy for the specified period and the mechanism for its implementation. Other sections of the document describe certain problems and the expected strategic results that are planned to be achieved to solve them. In addition, the draft law provides for the mandatory adoption of the state Anti-Corruption Programme, which would define measures aimed at implementing the Anti-Corruption Strategy, and which will become mandatory for implementation by state bodies, local self-government bodies and other entities determined by the executors of the state Anti-Corruption Programme.

For several years now, the absence of a law has led to the absence of a corresponding state programme, and special departmental strategies and programmes aimed at preventing corruption. Corruption negatively affects the reputation of the state in the international community, hinders the attraction of foreign investment, and poses a threat to domestic social and economic security. Due to the fact that fraud with budget funds causes damage to the social functions of the state, corruption at the municipal level is often the most harmful, because it affects the most vulnerable segments of the population.

The study supports the position of A.S. Bystrova, A.B. Daugavet, A.V. Duka, A.V. Korniienko, who believe that a comprehensive plan to combat corruption in the social field should cover the following elements: the introduction of an appropriate programme for the education of citizenship; the establishment of

intolerance to corruption in society; raising the status of a state official as a representative of society with providing them with special rights and guarantees; increasing the level of legal education; strengthening the influence of civil society; promoting moral values in society; increasing the role of the media in preventing corruption [20]; reducing the level of legal nihilism; guaranteeing an appropriate level of social security for each citizen; strengthening the role of political organisations; reporting on sources of funding for political entities; monitoring by the society for compliance with laws providing for penalties for corruption and abuse of official position.

One of the most important ways to combat the spread of corruption is the reform of anti-corruption legislation, which provides for the creation of anti-corruption laws themselves, and the elimination of norms and provisions of existing laws, future bills that increase corruption in all fields of state activity.

It is proposed to amend the following legal regulations within the framework of the current regulation, which aims to ensure the implementation of anti-corruption policy in the field of public administration of the social sector in the context of decentralisation:

1. part 1 of Art. 19 of the Law of Ukraine "On prevention of corruption", which defines the list of public authorities that adopt anti-corruption programmes [21], should be supplemented with paragraph 6 "local self-government bodies – by approving their decisions". In this regard, it is necessary to amend Art. 26 and 43 of the Law of Ukraine "On local self-government in Ukraine" [22], concerning the assignment of powers to local councils to approve anti-corruption programmes.

2. In the methodological recommendations for the preparation of anti-corruption programmes of government bodies, approved by the decision of the National Agency for the Prevention of Corruption of January 19, 2017, No. 31 [23], there is only a mention of the social field, when it is determined that anti-corruption programmes, in accordance with the requirements of Art. 19 of the Law of Ukraine "On prevention of corruption", are necessarily approved in state trust funds, such as, for example, the Social Insurance Fund of Ukraine, the Fund for Social Protection of Disabled People. In addition, the allocation of any financial or other benefits for individuals or legal entities (social security, subsidies, benefits, etc.) is an integral part of the procedure and decision-making processes defined by the regulatory regulation [21].

Despite the difficulties, the attempt of the NAPC to propose common approaches to the establishment of anti-corruption programmes of state and local government bodies is one of the steps towards introducing effective standards of public administration. However, in practice, a number of problems were identified that negatively affected the form and content of draft anti-corruption programmes of public authorities. The current situation requires the NAPC to focus on working with developers of anti-corruption programmes and strengthening clearer procedures for involving civil society institutions and experts in this process.

Considering the specific features of economic activity regulated by the state and conducted by the private sector of the economy, it was concluded that each of its areas is characterised by special types of corruption risks, the analysis of which requires the involvement of professional experts specialising in certain industries.

Conclusions

In Ukraine, the phenomenon of corruption and the means aimed at preventing it have become an important subject of discussion for both public authorities and the opposition, which is an instrument of political struggle. At the state level, the legislative framework has been updated, concepts and programmes for preventing corruption have been adopted, and the establishment of an anti-corruption institutional model for organising public administration continues. Despite this, corruption continues to play a negative role in public administration, and the means and methods used to prevent it remain ineffective.

This is due to the incompleteness of the establishment of the principles of national anti-corruption legislation, the absence of the relevant law "On the principles of National Anti-Corruption Policy", the detached public reaction to the systematic impact of corruption, the lack of an integrative anti-corruption approach of citizens, public organisations, and the state, because only with a combination of such factors and the socio-political nature of preventing corruption can this ensure real results.

In addition, attention should be focused on the establishment of a platform for cooperation and coordination of the work of experts and non-governmental organisations, which on an ongoing basis would conduct independent monitoring and evaluation of anti-corruption programmes in government bodies and legal entities, would be involved in independent expert assessments of anti-corruption policies and programmes, would take part in the review and improvement of anti-corruption programmes in government bodies and legal entities, would be involved on a regular basis in trainings for authorised units in government bodies, which is extremely important for the effective work of the NAPC.

It is necessary to improve the current anti-corruption legislation by adding local self-government bodies to the list of subjects that approve anti-corruption programmes to prevent corruption in the social protection of the population in the context of decentralisation.

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Антикорупційна політика у сфері публічного управління соціальною галуззю в умовах децентралізації

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Анотація

Мета дослідження – аналіз взаємозв'язків між проведенням в Україні реформи з децентралізації публічної влади у сфері управління соціальною галуззю та антикорупційною політикою, а також розроблення науково обґрунтованих рекомендацій з удосконалення законодавства про запобігання корупції в органах місцевого самоврядування. Методологія. У процесі наукового пошуку використано комплекс філософсько-світоглядних, загальнонаукових і спеціально-наукових методів. Аксіологічний підхід використано для з'ясування ролі та значення належного законодавчого врегулювання окреслених суспільних відносин, які виникають під час прийняття владних рішень на муніципальному рівні. Метод аналізу та синтезу сприяв аналізу поняття, ознак, об'єкта, сторін та умов децентралізації. Зі спеціальних наукових методів дослідження в статті застосовано системний та структурно-функціональний, порівняльно-правовий. Наукова новизна. Акцентовано, що реформа з децентралізації публічної влади започаткувала створення об'єднаних територіальних громад, здатних самостійно надавати якісні публічні послуги населенню, забезпечувати організаційно-правові гарантії реалізації їх жителями конституційного права на соціальний захист. Констатовано, що чимало позитивних перетворень, які здійснюють у нашій державі, нівелюються передусім на місцевому рівні через масштабне поширення корупційних виявів. У зв'язку з відсутністю спеціального стратегічного документа антикорупційної спрямованості проаналізовано законопроєкту роботу парламенту щодо врегулювання питання антикорупційної стратегії, зокрема увагу приділено проєкту Закону "Про засади державної антикорупційної політики на 2020–2024 роки". Доведено, що корупція негативно позначається на іміджі держави в міжнародному співтоваристві, що перешкоджає залученню іноземних інвестицій, створює загрозу вітчизняній соціальній та економічній безпеці. Унаслідок того, що махінації з бюджетними коштами завдають істотного збитку соціальним функціям держави, часто корупція на муніципальному рівні є найшкідливішою, адже вона робить вразливішими найнезахищеніші верстви населення. Визначено, що на державному рівні оновлено законодавчу базу, прийнято концепції та програми запобігання корупції, сформовано власну антикорупційну інституціональну модель організації публічного управління. Констатовано, що корупція продовжує відігравати негативну роль у публічному управлінні, а засоби й методи, спрямовані на її запобігання, залишаються недостатньо ефективними. Висновки. Запропоновано шляхи підвищення рівня антикорупційної політики у сфері публічного управління соціальною галуззю в умовах децентралізації. Сформульовано висновок щодо вдосконалення чинного антикорупційного законодавства шляхом доповнення переліку суб'єктів, які затверджують антикорупційні програми, органами місцевого самоврядування

Ключові слова:

антикорупційна політика; соціальний захист; децентралізація; місцеве самоврядування; публічне управління

UDC 343.222:343.75
DOI: 10.33270/04212101.55

Objective Side of the Composition of the Criminal Offence of Unlawful Enrichment

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Abstract

The purpose of the study is to examine the objective side of the composition of the criminal offence of unlawful enrichment by analysing the content of individual features to solve theoretical and practical problems. The research methodology consists of a set of scientific methods, among which the main place is occupied by the dialectical method. A system of scientific methods is applied: generalisation – for the establishment of positions available in the specialised literature on determining the signs of the objective side of the composition of the criminal offence of unlawful enrichment; formal logic (induction, deduction, analogy synthesis, abstraction) – to clarify the essence of these issues; theoretical – in the process of research of scientific and educational literature; system analysis – to determine the areas for improving the provisions of the Criminal Code of Ukraine and the practice of its application. The scientific originality of the study lies in the fact that it highlights the relevant problems of the objective side of unlawful enrichment by analysing its characteristic features. Specific proposals have been developed to improve the content of a socially dangerous act specified in the disposition of Art. 368-5 of the Criminal Code of Ukraine, which may have theoretical and practical importance for further solving this problem. Based on the results of the study, conclusions are formulated regarding the determination of the objective side of the composition of unlawful enrichment. Based on the analysis of the objective side of unlawful enrichment, the importance of determining a specific period of committed act under study by a person authorised to perform the functions of the state or local self-government, has been established. It is proposed to present the text of part 2 of Art. 368-5 of the Criminal Code of Ukraine in the following wording: the acquisition of assets should be considered the acquisition of their ownership by a person authorised to perform the functions of the state or local self-government, and the acquisition of assets by another individual or legal entity, on behalf of a person authorised to perform the functions of the state or local self-government, or that a person authorised to perform the functions of the state or local self-government, may directly or indirectly perform actions with respect to such assets that are identical in meaning to the exercise of the right to own, use and dispose

Keywords:

unlawful enrichment; objective side; criminal offence; corruption; criminal offence in the field of official activity; official

Article's History

Received: 18.04.2021
Revised: 26.05.2021
Accepted: 19.06.2021

Suggest Citation:

Bezginskyi, B.G. (2021). Objective side of the composition of the criminal offence of unlawful enrichment. *Law Journal of the National Academy of Internal Affairs*, 11(1), 55-61

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Introduction

At the present stage of development of the legal activity of the state, one of the priority tasks remains to counteract corruption law violations. In this context, an important place is given to the provisions of the Criminal Code (CC) of Ukraine, which contain modern effective anti-corruption tools. In particular, they relate to criminal liability for unlawful enrichment (article 368-5 of the CC of Ukraine). This criminal law tool is used to influence officials authorised to perform the functions of the state and local self-government, to prevent them from committing criminal corruption offences.

Analysis of the practice of applying Art. 368-5 of the CC of Ukraine and investigation of scientific literature indicates the presence of certain difficulties in implementing criminal liability for this criminal offence. As of October 10, 2020, ten criminal proceedings were registered, among which only one person was notified of suspicion. One of the reasons for this situation is the inaccurate formulation of the objective side of the composition of the criminal offence of unlawful enrichment since this feature plays a substantial role in its qualification.

The purpose of the study is to examine the forms of implementation of the objective side of the composition of the criminal offence of unlawful enrichment by analysing the content of its individual features and to outline ways to improve this criminal law regulation to increase the level of effectiveness of anti-corruption in Ukraine.

Results and Discussion

In Criminal law science, a correct theoretical and practical understanding of the objective side of the composition of a criminal offence is important. The objective side of the composition of a criminal offence should be considered a set of signs provided for by the law on criminal liability that characterises the external manifestation of a socially dangerous act that encroaches on the objects of criminal legal protection [1]. In the theory of criminal law, mandatory and optional features of the objective side of the composition of a criminal offence are distinguished. The study supports the opinion of M.R. Rudkovska, who claims that the mandatory signs of the objective side of the composition of a criminal offence affect the presence of public danger, they are considered when qualifying encroachment. In turn, optional features of the objective side of the composition of a criminal offence and circumstances that are outside its composition determine the degree of public danger, they are considered during the individualisation of criminal liability [2]. This position was defended by V.M. Kuts, noting that the element of the composition of a criminal offence, which unites a group of its objective features, is the objective side [3]. That is, the establishment of signs of an objective side allows for identifying the presence of elements of a criminal offence in the actions of a person, properly qualifying a socially dangerous act, and distinguishing it from other criminal offences.

When investigating the composition of unlawful enrichment, it is necessary to focus on the content of a socially dangerous act and the form in which such an act can be expressed. Since the most promising direction of influencing crime should be to overcome the desire to commit crimes [4], the content of a socially dangerous act and its forms are embodied in the formulation of the disposition of the criminal law regulation under study. D.G. Mykhailenko aptly called the regulation on unlawful enrichment "an instrument of the final frontier of legal counteraction to corruption" [5]. According to Art. 368-5 of the CC of Ukraine, unlawful enrichment is the acquisition by a person authorised to perform the functions of the state or local self-government of assets the value of which exceeds their legal income by over six thousand five hundred non-taxable minimum incomes of citizens. In part 2 of Art. 368-5 of the CC of Ukraine, the legislator explains that the acquisition of assets should be considered the acquisition of their ownership by a person authorised to perform the functions of the state or local self-government, and the acquisition of assets by another individual or legal entity, if it is proved that such acquisition was conducted on behalf of a person authorised to perform the functions of the state or local self-government, or that a person authorised to perform the functions of the state or local self-government, can directly or indirectly perform actions with such assets that are identical in meaning to the exercise of the right to dispose of them. Thus, to identify what a socially dangerous act is and in what forms it can be implemented, it is necessary to determine the meaning of the terms used in criminal law to denote it.

S.S. Chernyavskyi & A.A. Vozniuk note that two models of legal counteraction to unlawful enrichment have become the most common in the world: recognition of unexplained enrichment as a criminal offence and bringing the perpetrators to criminal responsibility and confiscation of property, the origin of which a person cannot explain, in a civil manner [6]. For the most part, this is the confiscation of assets, which is not based on a guilty verdict, or the so-called civil confiscation [7]. These models have both advantages and disadvantages related to the observance and possible violation of human rights, and the potential to counteract unlawful enrichment [8]. In addition, the legal provisions of some countries require that the prosecution prove the existence of an additional element related

to a particular offence or behaviour [9]. Analysing the criminal law regulation of unlawful enrichment in Ukraine, by its construction and the moment of completion, unlawful enrichment is a criminal offence with material composition since the legislator in the disposition of the article indicates that the value of assets of a person authorised to perform the functions of the state or local self-government should exceed its legal income by over six thousand five hundred non-taxable minimum incomes of citizens. The legislator defines as a mandatory element of the objective side of unlawful enrichment: a socially dangerous act, consequences, and cause-and-effect relationship between the act and the consequences. The place, time, environment, method, tools, and means of committing a criminal offence do not affect the qualification of unlawful enrichment. This study shares the opinion of O.P. Denega, that the optional features of the objective side of a criminal offence should not be ignored, since they implement the principle of individualisation of criminal liability and the basic principles of criminal proceedings [10]. Failure to establish a specific period in which a person is authorised to perform the functions of the state or local self-government during the performance of the duties assigned to it and after their termination causes difficulties in qualifying this socially dangerous act. In particular, it is about that it would be appropriate to provide for the occurrence of criminal liability for unlawful enrichment of a person authorised to perform the functions of the state or local self-government during the performance of their official duties, and within one year after the termination of official activity. In addition, it should be indicated that criminal liability will not occur if a person authorised to perform the functions of the state or local self-government acquires assets before entering the service.

In the disposition of the article on unlawful enrichment, the legislator does not name the methods of unlawful enrichment. This means that unlawful enrichment can be committed in any way. The variety of ways to commit the criminal offence under study is due to the constant appearance in real life of new ways of corruption enrichment, which does not allow providing an exhaustive list of suitable methods. In the paper by I.M. Yasin, such methods of unlawful enrichment are identified. Obtaining illegal benefits during unlawful enrichment by a person authorised to perform the functions of the state or local self-government. The author considers other possible ways of unlawful enrichment to be typical, which are covered by the signs of certain elements of criminal offences provided for in the CC of Ukraine. In this case, the signs (socially dangerous act and method of committing criminal offence) are belonging to different elements of the same criminal offence, but for objective reasons, in different compositions, they denote the same phenomenon of reality. The presence of such signs is a prerequisite for recognising these elements of criminal offences and unlawful enrichment as those provided for by contesting regulations. The researcher emphasises that the criminal law regulation on unlawful enrichment should be applied when a socially dangerous act committed by a subject of criminal law is a violation that is not covered by signs of other corruption abuse or the fact of committing such an act is not proven, and the standard of living of a person does not correspond to their official, annually declared income [11]. According to V.M. Kyrychko, applying the regulation on unlawful enrichment, should first establish the presence of assets on a large scale [12] however, notes A.A. Vozniuk, if a person has acquired assets legally, they will always be able to express their arguments about the legality of acquiring such assets. Even if there are certain doubts, the rule should be applied in a way that all doubts about the guilt of a person are interpreted in their favour [13]

It is appropriate to analyse the above-mentioned construction of part 2 of Art. 368-5 of the CC of Ukraine, in which the legislator specifies in more detail the commission of a socially dangerous act by a subject of unlawful enrichment. The study supports the position of N.Yu. Symonenko and I.O. Slobodianko that the current version of the criminal law ban on unlawful enrichment, despite its imperfection, is a radical measure aimed at reducing the scale of corrupt behaviour, the legal reality that provides for labour-intensive proof and simultaneously poses a danger of selective justice [14]. The Criminal Law regulation of unlawful enrichment clearly indicates that a person authorised to perform the functions of the state or local self-government, another individual, or a legal entity, can acquire ownership of assets if it is proven that such acquisition was conducted on behalf of a person authorised to perform the functions of the state or local self-government. That is, the legislator, using the term "proven", imposes an obligation on law enforcement agencies to prove the fact of acquisition of assets by another individual or legal entity, if it is established that such acquisition was conducted on behalf of a person authorised to perform the functions of the state or local self-government. This may cause difficulties in applying the criminal law regulation on unlawful enrichment in practice. Therefore, it is considered appropriate to formulate its text as follows: "acquisition of assets by ownership by another individual or legal entity, if such acquisition was conducted on behalf of a person authorised to perform the functions of the state or local self-government". The term "acquisition" is commonly used

in the text of the CC of Ukraine not only in relation to property rights but also to denote the emergence of civil rights and obligations. According to the general provisions of the Civil Code of Ukraine, in certain cases, the right of ownership of a thing can pass to the acquirer only after the transaction based on which such a thing is alienated is provided in the form established by law. In particular, in accordance with the requirements of parts 3 and 4 of Art. 334 of the Civil Code of Ukraine, the right of ownership of property under a contract that is subject to notarisation arises from the acquirer from the moment of such certification or from the moment of entry into force of a court decision recognising a contract that is not notarised as valid. If the contract on alienation of property is subject to state registration, the right of ownership of the acquirer arises from the moment of such registration, which is necessarily applied to the emergence of the right of ownership and other real rights to immovable things (Art. 182 of the Civil Code of Ukraine). That is, the right of ownership in such cases will arise only from the moment of notarisation or state registration of the contract. Regarding the acquisition of funds or other property, income from them, they should be considered the implementation of paid or gratuitous actions (purchase, receipt as a gift, in exchange, on account of debt, in the order of compensation for losses, etc.) that provide the opportunity to dispose of such money or property as their own, that is, to own it, alienate, or personally use [15]. Since action is an act that is not compatible with a rule of law that prohibits acting in a certain way, and inaction is an act that contradicts a regulation that contains an order to act in a certain way, unlawful enrichment can only consist in the form of action. The prohibition in this case is the acquisition by a person authorised to perform the functions of the state or local self-government of assets the value of which exceeds their legal income by over six thousand five hundred non-taxable minimum incomes of citizens.

The next controversial issue in part 2 of Art. 368-5 of the CC of Ukraine remains the identification by the legislator of the concept of performing actions by a person authorised to perform the functions of the state or local self-government that are identical in meaning to the exercise of the right to dispose of them. In general, the right of disposal determines the dynamics of property relations, which consists in the commission by the owner of certain active actions in relation to the thing. Based on the right of disposal, the owner has the opportunity to transfer their ownership of the item to other persons. By performing actions, the owner actually determines the future of the item, its further legal fate [16]. Determination of the fate of an item is conducted based on the conscious will of the person. Actions of a person to terminate the right of ownership of an item committed against the will of the owner cannot be considered as the right of disposal. Given the completeness and absolute nature of the right of ownership, the owner of the property has an independent right to dispose of this property. That is, the owner, when disposing of property, is also obliged to consider the rights and interests of others, and the specific features of the object. This is due to the fact that the right of disposal should be exercised within the framework of legislation, failure to comply with which may lead to liability.

Therewith, actions such as ownership and use rights should also be considered. The study shares the opinions of A.A. Vozniuk and A.V. Tytenko that for a person authorised to perform the functions of the state or local self-government, the legislation should establish a clear obligation to provide information about the source of origin of assets that belong to them by right of ownership, use, disposal [17]. Considering the right of ownership, V.S. Myronenko notes that the main feature of the right of ownership is the possession (control) of a person over a thing, which should be interpreted as an influence on a thing, an attitude to a thing. The second sign of ownership is that control must be factual, although this does not always involve constant contact of the person with the thing. As for the right of use, the author notes that such a right is realised by using the useful properties of a thing, benefits that serve to satisfy the interests of the owner [18]. Consequently, each of the rights of a person authorised to perform the functions of the state or local self-government is independent and simultaneously is part of a single legal category – the content of the right to own actions. That is why it is considered appropriate to add the concept of "right of ownership, use, and disposal" to the text of part 2 of Art. 368-5 of the CC of Ukraine.

The scientific originality of the study lies in the fact that it highlighted the relevant problems of the objective side of unlawful enrichment by analysing its characteristic features. Specific proposals were suggested to improve the content of a socially dangerous act specified in the disposition of Art. 368-5 of the CC of Ukraine, which may have theoretical and practical importance for further solving this problem.

Conclusions

Based on the results of the study, it can be concluded that the formulation of the objective side of the composition of unlawful enrichment is not complete and exhaustive. Based on the analysis of the objective side of unlawful enrichment, the importance of determining a specific period of time when the person who committed the socially dangerous

act under study was authorised to perform the functions of the state or local self-government, has been established. It was proposed to present the text of the specified criminal law regulation in the following wording to clarify the criminal legal essence of the objective side of unlawful enrichment, part 2 of Art. 368-5 of the CC of Ukraine: the acquisition of assets should be considered the acquisition of them by a person authorised to perform the functions of the state or local self-government, in ownership, and the acquisition of assets in ownership by another individual or legal entity, on behalf of a person authorised to perform the functions of the state or local self-government, or that a person authorised to perform the functions of the state or local self-government, can directly or indirectly perform actions with respect to such assets that are identical for the exercise of the right of ownership, use, and disposal.

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Об’єктивна сторона складу кримінального правопорушення незаконного збагачення

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Анотація
Метою статті є дослідження об’єктивної сторони складу кримінального правопорушення незаконного збагачення шляхом аналізу змісту окремих ознак для розв’язання теоретичних і практичних проблем. Методологію дослідження становить комплекс наукових методів, серед яких головне місце посідає діалектичний метод. Застосовано систему методів наукового пізнання: метод узагальнення для формування наявних у спеціальній літературі позицій щодо визначення ознак об’єктивної сторони складу кримінального правопорушення незаконного збагачення; формальної логіки (індукцію, дедукцію, аналогію синтез, абстрагування) – для з’ясування сутності зазначених питань; теоретичний – у процесі дослідження наукової та навчально-методичної літератури; метод системного аналізу – для окреслення напрямів удосконалення положень Кримінального кодексу України та практики його застосування. Наукова новизна статті полягає в тому, що в ній висвітлено актуальні проблеми об’єктивної сторони незаконного збагачення за допомогою аналізу характерних особливостей її ознак. Розроблено конкретні пропозиції з удосконалення змісту суспільно небезпечного діяння, означеного в диспозиції ст. 368-5 КК України, які можуть мати теоретичне та практичне значення для подальшого розв’язання цієї проблеми. За результатами здійсненого дослідження сформульовано висновки щодо визначення об’єктивної сторони складу незаконного збагачення. На підставі аналізу об’єктивної сторони незаконного збагачення встановлено важливість визначення конкретного проміжку часу вчинюваного особою, уповноваженою на виконання функцій держави або місцевого самоврядування, аналізованого суспільно небезпечного діяння. Запропоновано викласти текст ч. 2 ст. 368-5 КК України в такій редакції: набуттям активів слід вважати набуття їх особою, уповноваженою на виконання функцій держави або місцевого самоврядування, у власність, а також набуття активів у власність іншою фізичною або юридичною особою, за дорученням особи, уповноваженої на виконання функцій держави або місцевого самоврядування, або що особа, уповноважена на виконання функцій держави чи місцевого самоврядування, може прямо чи опосередковано вчиняти щодо таких активів дії, тотожні за змістом здійсненню права володіння, користування та розпорядження

Ключові слова:
незаконне збагачення; об’єктивна сторона; кримінальне правопорушення; корупція; кримінальне правопорушення у сфері службової діяльності; службова особа

UDC 342.7 (477)
DOI: 10.33270/04212101.62

Concept and Forms of Exercise of Citizens' Electoral Rights in Local Elections

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Abstract

The purpose of the study is to examine the concept and forms of implementation of citizens' electoral rights in local elections in Ukraine for understanding the legal category and further improving of the electoral legislation of Ukraine. During the research, general and special legal methods were used: system analysis, comparative-legal, dialectical approach, and system-structural, scientific methods were applied in accordance with the purpose and objectives of the study. The originality of the study lies in a comprehensive analysis of the concept and forms of implementation of citizens' electoral rights at local elections. The study assessed the concept of exercising the electoral rights of citizens in local elections, considering theoretical scientific approaches to understanding the implementation of the right. Based on the analysis of the laws of Ukraine that regulate the issues of citizens' electoral rights in local elections, it was determined that the implementation of citizens' electoral rights is the most influential form of democracy in the state. It was proved that it is the legal forms of exercising the electoral rights of citizens in local elections that have practical consequences, which in turn provide for the implementation of the will of the people and are generally binding on the implementation of state authorities. It was noted that residency qualification is one of the most substantial obstacles to the exercise of citizens' electoral rights in local elections. The realisation of citizens' electoral rights in local elections is a process during which the subject of electoral law, aware of their own actions (inaction), guided by regulatory requirements, enters into legal relations that are the legal expression of political relations. The legislative requirement that a person belongs to a certain territorial community as a condition for the exercise of the right to vote in local elections is the most substantial obstacle to the exercise of the right to vote. The main forms of exercise of the right to vote by citizens in local elections are the implementation, use, and observance, through which the direct right to vote is realised

Keywords:
electoral law; local elections; form of implementation of electoral law; electoral legislation

Article's History
Received: 20.04.2021
Revised: 28.05.2021
Accepted: 21.06.2021

Suggest Citation:
Voitenko, N.Yu. (2021). Concept and forms of exercise of citizens' electoral rights in local elections. *Law Journal of the National Academy of Internal Affairs*, 11(1), 62-67

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Introduction

According to the provisions of the Constitution of Ukraine, the right to vote is one of the priority political rights of citizens, the implementation of which is an indicator of the development and establishment of human rights and freedoms in a democratic state. Ukraine, which positions itself as a democratic country, is called upon to protect the rights and freedoms of its citizens, and the right to vote belongs to those, as evidenced by a number of international treaties in the field of electoral law, which were ratified by the Verkhovna Rada of Ukraine and implemented in the national legislation of Ukraine.

In turn, the inclusion of electoral international legal provisions in the national legal system is not enough to assess the real state of democracy in the state, because, without real implementation, these norms can be purely declarative in nature.

Analysing the electoral legislation of Ukraine during the years of independence, unsystematic and systemic changes that do not always correspond to the principles of democracy, thereby making it impossible for citizens to actually exercise their right to vote are observed.

The implementation of the constitutional right of citizens to vote in local elections is a legal form of democracy in Ukraine, and ensuring the implementation of this right is one of the factors that allows asserting the movement of our state in this direction. The legality of local elections and the legitimacy of their results depend on an effective mechanism for implementing citizens' electoral rights, which would remove obstacles to ensuring democracy in the state.

The following legal scholars have considered the problems of implementing citizens' electoral rights in local elections in a broad context: Yu. Bilousov, S. Honcharenko, S. Kalchenko, S. Kivalov, Yu. Kliuchkovskyi, M. Koziubra, V. Kravchenko, O. Lavrynovych, V. Mialovytska, V. Pogorelko, M. Riabets, L. Smokovych, M. Stavniichuk, O. Todyka, B. Futei, K. Hraskhof, and others. Therewith, the issues of forms of realisation of citizens' electoral rights in local elections, considering the political challenges of the present time, require a long and thorough examination to improve the electoral legislation of Ukraine in the context of local elections, and to prevent violations of citizens' political rights by state authorities and officials.

The purpose of the study is a regulatory analysis of the concept and forms of implementation of citizens' electoral rights in local elections in Ukraine, considering the experience of European countries to improve national electoral legislation.

Results and Discussion

The legal norms enshrined in laws and other normative regulations can become non-declarative only if they are actually implemented in life, in the conscious and volitional behaviour of a person. Without the implementation of the rule of law, they lose their social purpose and remain "dead", that is, they have a purely informational meaning.

The term "realisation" comes from the Latin word "realis", it is interpreted as embodiment [1]. Among lawyers, the term "realisation" is most often defined as the implementation of something, the execution of ideas by an individual or a group of people into reality. That is, any idea must be implemented in practice.

In turn, the term "exercise of the right" has a similar meaning, consisting of actions, active behaviour of a person. However, the term "realisation" does not require mandatory guarantees from the state for the real implementation of human ideas (for example, the realisation of one's potential), in contrast to the term "realisation of the right", which without proper guarantees of ensuring state power will lose any content and essential purpose.

For example, O.F. Skakun in the paper considers the implementation of legal provisions as the embodiment of the prescriptions of those in the legitimate behaviour of legal entities, in their practical activities, which can be considered as a process and as an end result [2]. This position is shared by P.M. Rabinovych, who notes that the implementation of the right consists primarily of the implementation by subjects of practical actions or inactions in accordance with the requirements, focusing on the actions (inaction) of the subject, which provide for the satisfaction of public needs by all permitted means declared by the state. Category "implementation of legal provisions" A.M. Kolodiy interprets as the embodiment of legal provisions in the actual behaviour (activity) of legal entities [3].

The exercise of a right can be associated with both the implementation of lawful actions and lawful inaction. The result of the realisation of the law is the achievement of full compliance between the requirements of the legal norms regarding certain behaviour of subjects and their actions (inaction) [4].

The realisation of law is legal provisions that are implemented by the legitimate behaviour of subjects of public legal relations and are provided with state power. The realisation of law involves a process that can be considered in two aspects – from the subjective and objective sides. The objective side of the realisation of law consists of the implementation of actions by the subject of legal relations, which are provided for by the legal norms. The subjective side is the direct attitude and will of the subject of law to the requirements established by the legal norms, which are implemented during legal actions or inaction.

In turn, V.S. Nersesiants in the paper considers the problem of the realisation of law considering the subjects of law: on the one hand, the realisation of law consists in following the law on the part of state

bodies and officials; and on the other – in the implementation of the right, which consists in the actions of citizens, the activities of their organisations and associations [5]. This perfectly characterises the implementation of electoral (political) rights of citizens in local elections, where on the one hand there are citizens who exercise their electoral rights in local elections, and on the other – state bodies and officials whose powers are to guarantee the implementation of electoral rights. The main purpose of implementing the right to vote is to form state and local government bodies in accordance with legal regulations.

At the time of realisation of the right of the subject of legal relations, they are given the right of legal action or inaction, which consists in expressing the will of the subject to exercise its right, which is provided for by certain normative regulations authorised by the state. Therewith, the actions or inactions of the subject of legal relations, which is endowed with legal personality, must be within the legal framework, that is, legal actions or inactions must comply with legal requirements. Ultimately, the process of implementing a right is the process of turning an abstract norm into a material one, which requires legitimate actions from the subject, since they provide for the occurrence of specific consequences both for the subject and for all participants in legal relations.

Thus, the implementation of the right in general form implies lawful behaviour (action or inaction) of the subject of legal relations, which must be within the limits of legal prescriptions or be such that it is not prohibited by law. Both active and passive behaviour of the subject of legal relations should be such that it does not infringe or violate the rights of other subjects of the exercise of the right. That is, such behaviour of subjects, on the one hand, provides an opportunity for other subjects of the right to exercise their rights, and on the other – provides for the fulfilment of obligations that are provided for by legal regulations. The exercise of a right in accordance with legal regulations is an act of conscious, voluntary action that is optional and does not entail legal liability. In contrast to the exercise of the right, the performance of duties is mandatory and is ensured by the coercion of the state.

Aspects of the implementation of human and civil electoral rights have been considered at various times by such legal researchers as B.V. Kalynovskyi, T.O. Kulik, which were later reflected in the electoral legislation of Ukraine [6; 7].

The legal provisions formulated in laws and other normative regulations only fulfil their social purpose, when they are implemented in the conscious and volitional actions of subjects. The implementation of legal provisions by their addressees completes the process of legal regulation, thereby embodying a certain result of this type of organisational influence on public life [8].

The implementation of constitutional and legal norms provides for the practical implementation of all democratic principles to ensure human and civil rights and freedoms. This is a system of institutional elements that are auxiliary to the practical implementation of constitutional prescriptions.

This primarily concerns the implementation of the political rights of citizens, namely electoral rights in local elections. The realisation of citizens' electoral rights in local elections is a process during which the subject of electoral law, aware of their actions (inaction), guided by regulatory requirements, enters into legal relations that are the legal expression of political relations. The result of the implementation of citizens' electoral rights in local elections is the establishment of local self-government bodies.

Violation of the electoral legislation entails legal liability established by law and is an important guarantee of the exercise of citizens' electoral rights in local elections. The Basic Laws of Ukraine in its provisions establishes the institution of responsibility for the violation of the electoral right of citizens. A stricter type of liability for electoral violations was introduced after the 2004 presidential election, during which there were massive violations of electoral rights and falsified results.

The issue of investigation of violations of citizens' electoral rights in local elections was considered in the works of various researchers to improve the current legislation of Ukraine. For Example, V.A. Stukalenko examines the issues of electoral disputes [9]. The main laws on bringing to justice for violation of citizens' electoral rights are the Constitution of Ukraine, the Criminal Code of Ukraine and the Code of Ukraine on Administrative Offences. In particular, the Code of Ukraine on Administrative Offences contains 14, and the Criminal Code – 7 elements of offences against electoral rights.

For example, Art. 157 of the Criminal Code of Ukraine [10] provides for criminal liability in the form of a fine of three hundred to five hundred non-taxable minimum incomes of citizens or restraint for up to two years, or imprisonment for the same term, with deprivation of the right to hold certain positions or engage in certain activities for a period of one to three years, for obstructing the exercise of the right to vote or the right to take part in a referendum, the work of an election or a referendum commission, or the activities of an official observer [10]. For comparison, the Criminal Code of the Republic of Poland contains a more severe penalty for violating the electoral legislation in the form of imprisonment from three months to five years, without providing for the imposition of fines on offenders [11]. A more severe type of punishment for violation of citizens' electoral rights in Ukraine would contribute to more stable guarantees of electoral rights since the public danger

of crimes against electoral rights directly encroaches on the constitutional rights and freedoms of people related to the principles of democracy in the state. Any illegal behaviour of a subject of electoral legal relations in local elections simultaneously affects the exercise of electoral rights by other subjects of legal relations and has a causal relationship.

According to the Constitution of Ukraine, the general active right to vote is granted to all citizens of Ukraine who have reached the age of 18 on election day and are legally capable [12]. In accordance with the provisions of Art. 70 of the Basic Law, the exercise of active voting is almost unlimited. With regard to passive voting, the legislator sets qualifications in accordance with the types of elections. For example, the exercise of passive voting in presidential elections is limited by citizenship, age, residency, language qualifications, and legal personality. The exercise of passive voting in parliamentary elections also provides for certain restrictions on candidates: age, residency, citizenship, legal personality qualifications, and restrictions on the exercise of passive voting in the presence of a criminal record.

Unlike general active and passive voting, the exercise of voting in local elections involves a wider range of substantial restrictions. Among other qualifications provided by the legislator for the exercise of the right to vote in local elections, the residency qualification should be highlighted. The legislative requirement that a person belongs to a certain territorial community is the biggest obstacle to the exercise of the right to vote in local elections for: conscripts, persons who are abroad, persons who are in prison, alcoholics and drug addicts who are undergoing compulsory medical treatment. All these persons, in accordance with the general electoral legislation, are subjects of electoral rights and are endowed with legal personality. Therewith, special electoral laws, the provisions of which regulate the exercise of citizens' electoral rights in local elections, establish restrictions for such persons, depriving them of the right to active voting in local elections, which contradicts the general electoral right in accordance with the provisions of the Constitution of Ukraine.

For a more thorough study of the concept of "implementation of electoral law", it is necessary to analyse in more detail the forms of implementation of legal provisions through the prism of theory. Among theorists, the largest is the number of supporters of the position, according to which there are three forms of direct implementation of legal provisions in accordance with the behaviour of legal implementing entities. Thus, there are the following forms of direct realisation of the legal norms: compliance is a form of implementation of the law, which provides for the implementation of prohibitive legal norms and which consists in keeping a person from actions prohibited by the requirements of the law; use is a form of implementation of the legal norms, which provides for active volitional behaviour of a person, in accordance with the requirements of the law, to satisfy their interests and needs; execution is a form of direct implementation of the legal norms, which imposes binding legal norms on a person, the implementation of which consists in the active, conscious actions of a person that they commit in accordance with the requirements of the law, regardless of their desire.

Compliance as a form of exercising the electoral rights of citizens in local elections provides for such behaviour of subjects of the electoral process, which is prohibited by the requirements of the law, that is, it deliberately evades illegal behaviour. During a conscious and volitional action (inaction), the subject of electoral law implements the prohibiting legal norms. The norms of prohibition in the electoral legislation may be fixed indirectly, not directly prohibit certain behaviour, indicating undesirable behaviour of subjects of electoral law, which follows from the content of the rule of law and has an effect. Compliance as a form of exercise of the right to vote in local elections consists mainly in refraining from actions that violate the rights and freedoms of other participants in the electoral process.

For example, the legislator in part 5 of Art. 12 of the Electoral Code of Ukraine establishes an equal and impartial attitude to the subjects of the electoral process on the part of state authorities, authorities of the Autonomous Republic of Crimea, local self-government bodies, state and municipal enterprises, institutions, organisations, their officials, which consists in refraining from illegal actions that encroach on equal voting [13].

Use as one of the forms of exercise of the electoral right of citizens in local elections provides for the exercise of their subjective right, which is provided for by legal regulations and requires conscious action (inaction) from the subject of the electoral process to exercise the electoral right. This form of exercise of the right to vote in local elections is characterised by both action and inaction, which in turn does not entail legal liability. That is, it is a manifestation of the will of the subject of electoral law, who, according to their own beliefs and interests, uses the right granted to them in accordance with the requirements of the legal norms.

For example, part 1 of Art. 7 of the Electoral Code of Ukraine [13] establishes universal voting, which is granted to all subjects of electoral law in accordance with Art. 70 of the Constitution of Ukraine, considering additional restrictions on subjects of electoral law under this Law, that is, in relation to persons who have the right to vote. A rule of law that establishes universal voting provides the subject of voting with the opportunity to freely (voluntarily),

without being forced to exercise their voting, which can manifest itself in the action or inaction of a person, without the occurrence of illegal consequences.

Implementation of legal provisions is a form of exercise of the right to vote in local elections, which provides for the commission of actions by the subject of electoral law that are clearly provided for by the legal norms. Binding norms are partly related to compliance standards. However, in contrast to the norms of compliance, which consist in undisturbed legal norms, which may not provide for direct action, but only fix the behaviour of the person from whom they should refrain, the norms of implementation require active, direct actions from the subject of electoral law to implement the legal norms. Failure to comply, whether conscious or unconscious, will always entail the use of state coercion.

Art. 18 of the Electoral Code of Ukraine in its provisions on the use of innovative technologies in the electoral process in part 5 obliges the Central Election Commission to ensure the implementation and protection of the electoral rights of Ukrainian citizens who vote at polling stations where experiments or pilot projects are conducted, without narrowing their volume [13].

The originality of the study lies in a comprehensive analysis of the concept and forms of implementation of citizens' electoral rights at local elections. The study assessed the concept of exercising the electoral rights of citizens in local elections, considering theoretical scientific approaches to understanding the implementation of the right. Based on the analysis of the laws of Ukraine that regulate the issues of citizens' electoral rights in local elections, it was determined that the implementation of citizens' electoral rights is the most influential form of democracy in the state. It was proved that it is the legal forms of exercising the electoral rights of citizens in local elections that have practical consequences, which in turn provide for the implementation of the will of the people and are generally binding on the implementation of state authorities. It was noted that residency qualification is one of the most substantial obstacles to the exercise of citizens' electoral rights in local elections.

Conclusions

As a result of the study, the author's vision of the concept of exercising the electoral rights of citizens in local elections was provided. The realisation of citizens' electoral rights in local elections is a process during which the subject of electoral law, aware of their own actions (inaction), guided by regulatory requirements, enters into legal relations that are the legal expression of political relations.

The legislative requirement that a person belongs to a certain territorial community as a condition for the exercise of the right to vote in local elections is the most substantial obstacle to the exercise of the right to vote. The main forms of exercise of the right to vote by citizens in local elections are the implementation, use, and observance, through which the direct right to vote is realised.

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Анотація
Метою публікації є дослідження поняття та форм реалізації виборчих прав громадян на місцевих виборах в Україні задля розуміння правової категорії та подальшого вдосконалення виборчого законодавства України. Методологія. Під час дослідження проблематики наукової статті було використано загальні та спеціально-правові методи: системного аналізу, порівняльно-правовий, діалектичний підхід, системно-структурний, застосовано прийоми наукового пізнання відповідно до мети й завдань наукового дослідження. Наукова новизна. Новизна дослідження полягає в комплексному аналізі поняття та форм реалізації виборчих прав громадян на місцевих вборах. У статті розглянуто поняття реалізації виборчих прав громадян на місцевих виборах, з огляду на теоретичні наукові підходи до розуміння реалізації права. На підставі аналізу законів України, які врегульовують питання виборчого права громадян на місцевих виборах, визначено, що реалізація виборчих прав громадян є найбільш впливовою формою демократії в державі. Доведено, що саме правові форми реалізації виборчих прав громадян на місцевих виборах мають практичні наслідки, які своєю чергою передбачають реалізацію волі народу та є загальнообов'язковими до виконання органами державної влади. Зазначено, що ценз осілості є однією з найістотніших перепон у реалізації виборчих прав громадян на місцевих виборах. Висновки. Реалізація виборчих прав громадян на місцевих виборах – це процес, під час якого суб'єкт виборчого права, усвідомлюючи власні дії (бездіяльність), керуючись нормативними приписами, вступає у правовідносини, які є юридичним вираженням політичних відносин. Законодавча вимога щодо належності особи до певної територіальної громади як умова реалізації виборчого права на місцевих виборах є найістотнішою перепоною в реалізації виборчого права. Основними формами реалізації виборчого права громадянами на місцевих виборах є виконання, використання та дотримання, за допомогою яких реалізують безпосереднє виборче право

Ключові слова:
виборче право; місцеві вибори; форма реалізації виборчого права; виборче законодавство

UDC 343.985:343.359.3:343.346:343.9.02
DOI: 10.33270/04212101.68

Features of Disclosure of Illegal Possession of Non-Cleared Cars Committed by Organised Groups

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Abstract

The purpose of the study is to examine the specific features of disclosure of illegal possession of non-cleared cars committed by organised groups. The methodological basis of the study is a holistic and coordinated system of methods, which allowed properly analysing the subject of research. In particular, scientific methods of analysis, synthesis, induction, and deduction are used. The theoretical basis of this study was the papers of Ukrainian researchers on the disclosure and investigation of illegal possession of cars committed by organised groups. The scientific originality of the study consists in determining, based on the study of investigative practice, scientifically based recommendations of Ukrainian researchers to improve the effectiveness of disclosure and investigation of illegal possession of cars committed by organised groups. The analysis of the specific features of disclosure of illegal possession of non-cleared cars committed by organised groups gave grounds to identify the cities where illegal possession of such cars is most often committed, outline the characteristic actions to prepare for the commission of such criminal offences, establish the most common methods of illegal possession of non-cleared cars and ways to implement them, provide proposals for disclosure of illegal possession of non-cleared cars committed by organised groups

Keywords:

illegal possession of a vehicle; non-cleared car; theft; disclosure; investigation; organised groups

Article's History

Received: 04.04.2021
Revised: 14.05.2021
Accepted: 06.06.2021

Suggest Citation:

Bogatykov, O.V. (2021). Features of disclosure of illegal possession of non-cleared cars committed by organised groups. *Law Journal of the National Academy of Internal Affairs*, 11(1), 68-73

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Introduction

Criminals regularly target non-cleared cars. In recent years, the structure of crime in the motor vehicle market the commission of illegal possession of non-cleared cars has been systematically widespread. The largest number of stolen cars with foreign registration is in Kyiv, Odesa, and Lviv regions. Undoubtedly, foreign citizens who came to our country in their own cars also suffer from criminal groups of hijackers specialising in the illegal possession of non-cleared cars with subsequent sale or disassembly for spare parts.

Analysis of the papers of Ukrainian researchers, namely: V.P. Bakhin, O.M. Bryskovska, V.O. Hapchych, V.P. Zakharov, Yu.F. Ivanov, D.O. Karabanov, L.M. Kyselevska, O.V. Karas, P.P Lutsiuk, V.A. Myslyvyi, B.F. Mytsak, O.O. Moroz, A.O. Mykhailychenko, S.Ye. Petrov, N.O. Popova, D.A. Patreliuk, I.V. Pshenychnyi, M.O. Svirin, E.V. Skrypa, O.V. Solodkyi, D.V. Strelchenko, O.L. Khristov, R.V. Shchupakovskyi, and others – indicates a lack of theoretical findings on the investigation and disclosure of illegal possession of vehicles committed by organised groups. A substantial number of scientific papers are devoted to the methodology of Investigation and legal analysis of crimes committed by organised groups, namely: textbooks and monographs of S.S. Boskholov, G.A. Zorin, D.V. Strelchenko, A.Ya. Tereshonok, O.V. Tankevych, V.V. Liutyi, K.O. Chaplynskyi and others, which relate only to the general principles of detection and investigation of illegal possession of vehicles by organised groups. However, most of the issues of disclosure of illegal possession of non-cleared cars committed by organised groups remain ignored by researchers.

The purpose of the study is to determine, based on the analysis of investigative practice and the best practices of Ukrainian researchers, in which regions illegal possession of such cars are most often committed; outline the characteristic actions to prepare for the commission of these criminal offences, determine the most common ways of illegal possession of non-cleared cars and ways of their implementation, provide proposals for the disclosure of illegal possession of non-cleared cars committed by organised groups.

Results and Discussion

The analysis of criminal proceedings and operational search cases of this category gives grounds to assert that during the preparation for the commission of illegal seizures of such vehicles, the criminal group uses special means of monitoring for the relevant object (monitoring the parking place, parking of vehicles, the schedule of the day of the owner or driver of the car). Not only the place is investigated to plan preparatory activities and eliminate obstacles, but also the storage conditions of the cars to prepare various technical means, tools for entering the garage, other premises, or vehicles. Methods of penetration into the storage areas and into the vehicle itself differ depending on the qualification of the criminal [1]. Organised groups are characterised by penetration methods that do not cause visible damage to the car to preserve its marketable appearance. Illegal possession of a non-cleared car is a fully structured measure that involves the preparation, execution, concealment, and process of selling such a car.

Illegal possession of non-cleared cars occurs in the following ways:

– open – when potential buyers who arrived to inspect the car with "europlates", get into it and flee;

– robbery, for example, in May 2018 in Puscha-Voditsa, employees of the Head of the National Police in the Kyiv region found an Audi A4 car with Lithuanian license plates, which three weeks earlier in Brovary was stolen from the owner during an armed attack. When the man arrived at the service station, three people ran up to him, put a gun to the side of his torso, ordered him to move away, then got into the car and disappeared [2];

– secret: for example, they sell a car with a second set of keys. After that, they arrive at night, pick up the car, restore the documents and put the car up for sale again.

The commission of robberies on drivers in most cases prevailed, in comparison with the illegal possession of non-cleared cars. First, the mobile group (2-3 people among the members of the criminal group) goes around the places of bus stops, parking lots, and conducts so-called reconnaissance. The collected information is transmitted by means of communication available in the group to the capture group, whose members are in full readiness and arrive at the specified place. When the victim gets out of the car, a collision occurs with the perpetrator, armed or unarmed, which forces the victim to abandon the vehicle [3].

After illegal possession of such a vehicle, depending on the purpose for which the car was stolen, members of organised groups are driven to places of "stay". If for disassembly for the purpose of selling spare parts, such places of "stay" are searched for and equipped more carefully. If the goal is to sell an undamaged non-cleared car, then it is driven immediately to another district, or region by resellers [4]. Criminals search for documents for such a car by brand, model, color (often to legalise a stolen non-cleared car, they place ads for the purchase of cars beaten after accidents).

Many schemes for the sale of stolen vehicles have been identified. The sites still contain offers "will sell Polish/Lithuanian/any documents for a car". These are fakes, however, if there is an offer for "documents", then it can be concluded that the number of illegally imported or stolen cars that need them is also substantial. They started making license

plates and holograms for license plates. The level of execution of fakes is low, but a person who has never seen a real Lithuanian or Polish hologram on the number will be quite satisfied with this.

The study of criminal proceedings on illegal possession of vehicles provides an opportunity to establish the purpose of possession of non-cleared cars by organised groups. Such cars are seized for the purpose of sale in 76.2% of cases, for disassembly and parts sale – 15.8%, for the commission of another crime – 6%, for another purpose – 2%.

Statistics on organised crime-related thefts in the EU remain almost stable. The car theft market in the EU has changed, as has the role of conventional destinations for stolen cars (particularly Eastern Europe). Supply and demand form the structure of the vehicle theft market in Bulgaria, and contraband models in the source countries of Spain. Car theft and trafficking are common on the Bulgarian black market. This nuanced historical approach, which considers a wider range of factors in destination countries, can help explain recent changes in European vehicle theft markets [5].

The most typical places of sale of non-cleared cars that were illegally seized are both cities in Ukraine and in territories that are not under its control (the temporarily occupied territory of the Luhansk and Donetsk regions, the Autonomous Republic of Crimea), and in neighbouring countries.

For effective disclosure and counteraction to illegal possession of cars, it is advisable to: 1) immediately deploy the investigative and operational group at the scene of events, involve specialists of expert units, employees of operational and technical support units to take part in their work, use photo, video equipment, and other special technical means to collect evidence [6]; 2) establish the presence of video cameras in places of parking lots, near supermarkets, houses, gas stations, shops, traffic flows, near office premises, and government agencies, at airports. Such electronic devices allow you to monitor what is happening around the clock. It is also advisable to identify vehicles with video recorders that passed near the crime scene from the place of work to the place of residence or vice versa [7]; 3) check all similar cases of illegal possession of vehicles (in relation to certain models, in a similar way, in a particular area, in the same period); 4) check persons who are registered with law enforcement agencies, and persons who received operational information about their possible involvement in the crime, it is important to periodically study information about organised criminal groups and persons who are subject to operational registration, check their vehicles [8]; 5) fully use the secret capabilities of operational workers in operational positions in the criminal environment and at criminal facilities, conduct intelligence activities in places of accumulation of the criminal element and sale of vehicles, its parts, aggregates, etc.; 6) in criminal proceedings, which have data on the commission of crimes by organised groups with interregional connections, it is advisable to raise the issue of the possibility of creating an investigative and operational group of the gunp or interregional investigative and operational groups; 7) use the capabilities of operational and technical support units, operational services in such criminal proceedings; 8) use the capabilities of operational and technical services, departmental information and search engines, and information resources of other organisations, mass media, and individuals, social media (platforms for sharing opinions and news). This gives the ability to display the events (in particular criminal offences) in the physical world – social networks [9]; 9) restore on-site service lists are repair shops vehicles, service stations, and disassembly of vehicles, and employees (including retired) of these objects; 10) conduct checks on the legality of the establishment and registration of the relevant entities; 11) work out the probable location of stolen vehicles or parts thereof, in particular: service stations, where the repair and re-equipment of vehicles; private workshops, which perform welding, alignment (straightening), painting, repair of components and assemblies of vehicles; notary offices, car exchanges, beauty stores, expert institutions that conduct evaluation of motor vehicles (including private experts-avtotehna), car, called to implement, spare parts and accessories, places of spare parts on the market; revision (Internet portals) periodicals, which contains ads about buying and selling motor vehicles involved in road traffic accidents and accompanying documents, and uncleared vehicles or those that are trying to sell at a lower cost [8]; 12) to systematise current information in respect of such business entities and individuals; 13) for the detection of stolen vehicles available to employees on their service areas to explore the courtyards, streets, lanes, green spaces, garages, the garage cooperatives, car parks, garages, public, private and collective enterprises, car, car washes, and other possible storage places of the vehicles and the roadside service station; 14) in case of detection of a car in a "stay" it is advisable to involve specialists of forensic to obtain DNA samples from the surface of the car (interior, trunk, door handles etc.) [10]. Exposure by criminal police units of persons involved in the illegal possession of cars is conducted both in the general complex of operational search measures aimed at identifying persons and facts of operational interest (operational search) and within the framework of an operational search case.

If persons who prepare or commit illegal possession of a vehicle are identified during criminal proceedings, documentation is conducted within the

framework of criminal proceedings, and secret investigative (search) actions are conducted [11].

Since crime is constantly improving the technical equipment of devices that facilitate the commission of a crime, the use of a "bait car" with European license plates is an effective means of documenting a criminal offence committed by a group of individuals. This method is advisable if special units block possible escape routes for criminals and monitor such a car by operatives who will be nearby in another car. Such "bait cars" should not differ from other cars, so that the criminal does not have any suspicions, it is necessary to install hidden video cameras that will record all their actions. It is necessary for the employees of the Criminal Investigation Department of motor vehicles to conduct daily analysis, in the particular, cartographic and operational situation on the roads and road network of the region by the method, time, places of illegal seizures, and the brand and model of the vehicle. According to the results of this analysis, changes should be made to the deployment of posts and patrol routes of such vehicles, that is, a "bait car" under the supervision of a car with operational workers. The method of placing "bait cars" in all areas in places where illegal carjacking acts are committed will be effective for identifying organised groups and individuals who commit such illegal acts [12].

The process of operational search should be continuous (permanent): operational verification can be formally completed, members of a criminal group are brought to criminal responsibility, but operational interest in the structure of organised criminal groups of a common criminal orientation should be preserved, as for the materials obtained on a specific operational search case implemented. The next stage of operational and analytical search can begin with them [13].

The scientific originality of the results obtained consists in determining, based on the study of investigative practice and scientifically based recommendations of Ukrainian researchers to improve the effectiveness of disclosure and investigation of illegal possession of cars committed by organised groups, the specific features of disclosure of illegal possession of non-cleared cars committed by organised groups. The scientifically based theoretical provisions, conclusions, and proposals formulated in the study can serve as a basis for further research on improving the effectiveness of disclosure of illegal possession of non-cleared motor vehicles.

Conclusions

The study of the issue of the specific features of disclosure of illegal possession of non-cleared cars committed by organised groups gave grounds to identify the regions and cities in which illegal possession of such cars is most often committed, establish characteristic actions to prepare for the commission of such criminal offences, determine the most common ways of illegal possession of non-cleared cars and ways to implement them, provide proposals for disclosure of illegal possession of non-cleared cars committed by organised groups. For effective detection of such criminal offences, comprehensive operational search measures are conducted aimed at identifying persons and facts of operational interest (operational search), and within the framework of an operational search case. It is advisable to use the covert capabilities of operational employees in the criminal environment and at criminal facilities to conduct intelligence activities in places where the criminal element accumulates and sells such vehicles, their parts, aggregates, etc.

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Особливості розкриття незаконного заволодіння нерозмитненими автомобілями, вчиненого організованими групами

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Анотація
Мета дослідження – вивчити питання щодо особливостей розкриття незаконного заволодіння нерозмитненими автомобілями, вчиненого організованими групами. Методологічне підґрунтя наукової статті становить цілісна й узгоджена система методів, що дала змогу належно проаналізувати предмет дослідження. Зокрема, використано наукові методи аналізу, синтезу, індукції та дедукції. Теоретичним підґрунтям цієї публікації стали праці вітчизняних учених щодо розкриття та розслідування незаконного заволодіння автомобілями, вчиненого організованими групами. Наукова новизна публікації полягає у визначенні на підставі вивчення слідчої практики науково обґрунтованих рекомендацій вітчизняних вчених щодо підвищення ефективності розкриття та розслідування незаконного заволодіння автомобілями, вчиненого організованими групами. Висновки. Аналіз особливостей розкриття незаконного заволодіння нерозмитненими автомобілями, вчиненого організованими групами, дав підстави визначити міста, у яких найчастіше вчиняють незаконні заволодіння такими автомобілями, окреслити характерні дії з підготовки до вчинення таких кримінальних правопорушень, встановити найпоширеніші способи незаконного заволодіння нерозмитненими автомобілями та способи їх реалізації, надати пропозиції щодо розкриття незаконного заволодіння нерозмитненими автомобілями, вчиненого організованими групами

Ключові слова:
незаконне заволодіння транспортним засобом; нерозмитнений автомобіль; викрадення; розкриття; розслідування; організовані групи

UDC 343.6
DOI: 10.33270/04212101.74

Legal Basis for Countering Gender-Based Violence During the Armed Conflict in the East of Ukraine

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Abstract

The purpose of the study is to conduct a comprehensive analysis of the socio-legal aspects of gender-based violence in the context of the armed conflict in the East of Ukraine, develop theoretical and practical foundations for the use of means of countering this violence, prepare scientifically based proposals for improving legislation, law enforcement, and practice. In the course of conducting the research, philosophical, general scientific, and specific sociological methods were used. The work was based on the laws of unity and struggle of opposites, the negation of negation, and the transition of quantitative changes to qualitative ones. The empirical material was obtained by using the methods of questionnaires, interviews, content analysis, observation, and expert assessments. The study highlights the results of comprehensive criminal and administrative investigation in the field of countering gender-based violence during the armed conflict in the East of Ukraine. The author outlined the features of this type of violence, the factors that cause criminal domestic violence, and also conducted a comparative analysis of the legislation of Ukraine and the Russian Federation, the "legislation" of the DPR and LPR in this area. Ways to improve the activities of subjects of prevention of gender-based violence are identified. Since the "legislation" of the self-proclaimed republics is declarative in nature, changes of a legal and social nature are proposed, which can be implemented on the territory of Ukraine to protect citizens living in uncontrolled territories from gender-based violence

Keywords:
gender-based violence; gender; gender stereotypes; violent crimes; gender equality

Article's History
Received: 06.04.2021
Revised: 18.05.2021
Accepted: 09.06.2021

Suggest Citation:
Prus, I.M. (2021). Legal basis for countering gender-based violence during the armed conflict in the east of Ukraine. *Law Journal of the National Academy of Internal Affairs*, 11(1), 74-80

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Introduction

Recently, gender-based violence has been the focus of studies and social discussions in Ukraine. Social movements focus on sexual and domestic violence, gender discrimination in the media and politics, and discriminatory attitudes in Ukrainian society. International non-governmental organisations encourage Ukraine to introduce effective monitoring of compliance with obligations in the field of combating gender-based violence. However, despite the adoption of new laws, measures to combat gender-based violence, increased media attention and discussions on social networks, violence against women is still widespread in Ukraine. The media reports the most audacious cases, but the daily experiences of sexual, physical, economic, and psychological violence experienced by many women are mostly ignored or silenced. Victims are often left without assistance in institutions created to protect them and prosecute those responsible.

Gender restrictions have had a major impact on women's lives, narrowing their opportunities and violating inalienable rights and freedoms. According to a 2020 study, over 1 million Ukrainian women experience physical, sexual, or emotional abuse at home every year (about 23 million adult women live in Ukraine). For those of them who live in the conflict-affected Donetsk and Luhansk regions, this type of gender-based violence is particularly dangerous. Currently, 2.7 million people affected by the armed conflict that began in 2014 live within a 20 km radius on both sides of the so-called "contact line", which is over 420 km long and separates the controlled and uncontrolled areas of Donetsk and Luhansk regions of Ukraine. Most of these people, namely 2 million, are women, children, and elderly people.

In these areas, women are at an increased risk of various forms of gender-based violence, which is often hidden due to factors such as the presence of the army, low security, the absence or destruction of the rule of law, and the widespread impunity of perpetrators. The prevalence of this phenomenon is due to the economic crisis, the destruction of traditional family values, the weakening of territorial communities, the lack of a system for the reintegration of veterans in society, social vulnerability due to forced relocation, permanent psychological pressure, and the lack of infrastructure, including social services. Amnesty International's studies show that the military conflict in the Donetsk and Luhansk regions of Ukraine has seriously affected the establishment and development of domestic violence, and the effectiveness of law enforcement in the Donetsk and Luhansk regions.

The purpose of the study is to conduct a comprehensive analysis of the socio-legal aspects of gender-based violence in the context of the armed conflict in the East of Ukraine, develop theoretical and applied bases for the use of means of countering this violence, prepare scientifically based proposals for improving legislation, law enforcement, and practice. This involves performing the following tasks:

– theoretically substantiate and formulate the concept of gender-based violence;

– describe in detail the persons who have committed gender-based violence;

– identify the causal complex of factors of domestic violence;

– identify ways to improve the regulatory support for preventive impact on gender-based violent manifestations.

Results and Discussion

Every third woman and every fourth man surveyed who was held captive in the conflict zone in the Donetsk region suffered or witnessed gender-based violence. These are the results of a study conducted by the public organisation "East Ukrainian centre for public initiatives", and its results are presented in the analytical report "War without rules: gender-based violence associated with the armed conflict in the East of Ukraine" [1].

According to Art. 3 of the Constitution of Ukraine, "a person, their life and health, honour and dignity, inviolability and security" is the greatest social value. Other articles on gender equality include Art. 21 (all people are free, equal in rights and obligations; human rights and freedoms are inalienable and inviolable), Art. 24 (citizens have equal constitutional rights and freedoms, and everyone is equal before the law; in relation to race, skin colour, politics, religion, and other beliefs, gender, race, and social origin, property status, place of residence, language, or other characteristics), Art. 51 (marriage is based on the free consent of a woman and a man; members of spouses have equal rights and obligations in the family and marriage) [2].

Since Ukraine has not taken part in any armed conflict (international or local) since its declaration of independence, the issue of gender-based violence is considered in the legislation mainly as domestic violence. This understanding is very narrow and cannot reproduce the essence of the phenomenon. For example, the Istanbul Convention [3] defines gender-based violence as violence against a woman because she is a woman (forced abortion, female genital mutilation). Therewith, women experience violence more often than men: sexual violence, rape, harassment, sexual harassment, domestic violence, forced marriage, forced sterilisation.

The Verkhovna Rada of Ukraine (hereinafter referred to as the VRU) adopted the Law of Ukraine "On prevention of domestic violence" in 2001, according to which domestic violence refers to intentional physical, sexual, psychological, or economic

actions of a family member against another family member if these actions violate the constitutional rights and freedoms of a family member as a person and citizen and cause them moral harm, harm to their physical or mental health [4-5].

The Law defines certain types of violence (physical, sexual, psychological, and economic) and characterises them. The Law also defines the system of state authorities responsible for implementing measures to prevent domestic violence, in particular authorised units of the National Police of Ukraine, guardianship authorities, specialised institutions for perpetrators of domestic violence and its victims. These include crisis centres for family members who have experienced domestic violence or a real threat of domestic violence and medical and social rehabilitation centres for victims of domestic violence. The law defines special measures to prevent domestic violence:

– an official written warning that the person has not committed domestic violence (provided that there are no signs of a crime in their behaviour), and sending them to a crisis centre for a correctional programme (in case of the continuation of unlawful behaviour after receiving the warning);

– preventive accounting of persons who have committed domestic violence;

– issuing a protective order against a person (prohibition to perform certain actions) to a victim of violence;

– recovery by a court decision from persons who have committed gender-based violence, funds for reimbursement of expenses for helping victims of domestic violence and keeping them in specialised institutions for victims of domestic violence [4]. Thus, in 2005, the VRU adopted the Law of Ukraine "On ensuring equal rights and opportunities for women and men" [6], which entered into force on January 1, 2006. Unlike the Law of Ukraine "On prevention of domestic violence", this law does not directly provide for countering gender-based violence. However, this is only one of many regulatory documents, the implementation of the instructions of which can prevent domestic violence.

Where men and women have unequal rights and opportunities, gender-based violence is almost always present [7-12].

For a long time, there was not a single document on this issue that could determine the status of women in society and provide for punishment for sexual violence. There was no such thing in unauthorised republics and their state authorities. This led to the fact that the views and beliefs of field commanders shaped the actual policy of the self-proclaimed republic in this region and determined the status and role of women in local society. An idea of the role of women assigned to them by the separatist leaders in the temporarily occupied territories is taken from their public statements. For example, the armed establishments of O. Mozgovoy – one of the most influential field commanders, controlled several cities in the occupied regions (Alchevsk, Sievierodonetsk, Lysychansk, Pervomaisk) from 2014 to 2020. During the session of the "people's court", which took place in Alchevsk, proclaimed: "A woman must be the guardian of the home, a mother. If you want to stay honest and loyal to your man, stay at home and embroider with a cross. Sit at home, bake pies, celebrate March 8. You must remember that you are Russian! Time to remember your spirituality!"

Men and boys in the DPR and LPR must also perform their planned "roles". Therewith as the introduction of the gender policy of separatist power institutions that regulate the social roles of men and women, information became widespread about systemic cases of gender-based violence by armed groups: abduction of women, rape of minors, violence against older women. The mass media indicate that cases of sexual violence are not properly investigated – "law enforcement officers of the republics" hide them. These actions on the part of the military are also reported by international organisations. This is evidenced by the results of interviews with direct victims and witnesses of violence conducted as part of the study, who were illegally detained on the territory of the self-proclaimed republics.

Given that human rights organisations cannot enter a territory that calls itself an independent republic, it is impossible to comprehensively and objectively assess the level of gender-based violence in various forms in the temporarily occupied territories. From the testimony of the victims, it can be seen that these persons knew about the existence of places of non-freedom and conditions of stay there and were aware that violence was used against people who were there. Facts of gender-based violence were also recorded among the Ukrainian military and volunteer battalions. The most famous case was the case of soldiers of the "Tornado" battalion: three people were brought to criminal responsibility. However, there are much fewer such facts, because the system in the controlled territories differs substantially [13].

The spread of gender-based violence in the territory of armed conflict contradicts numerous international documents, for example, the Geneva Convention and the Rome Statute of the International Criminal Court [14-16].

Given the legal position, any normative act of the self-proclaimed republics is illegal, but de facto persons living there cannot ignore these norms. Their relevant legal provisions should be analysed to examine the specific features of legal responsibility for committing gender-based violence in the occupied territory.

The "constitutions" of the self-proclaimed republics contain general instructions prohibiting

torture, cruel, inhuman, or degrading treatment or punishment (Art. 14 of the Constitution) [17-18] and fully comply with the provisions of the Constitution of Ukraine (Art. 28) and Russia (Art. 28) [19].

Criminal offences against sexual freedom and inviolability are subject to liability under the criminal codes of the two self-proclaimed republics. In the criminal legislation of Ukraine, Russia, and the LDPR, these crimes have the same composition. The liability provided for by the criminal legislation corresponds to the provisions of the criminal legislation of the Russian Federation, but sometimes exceeds the sanctions provided for in the relevant articles of the Criminal Code of Ukraine for domestic violence, that is, intentional actions of a physical, economic, or psychological nature. These include: physical violence that causes physical pain but does not cause serious bodily harm threats, harassment, seizure of property, housing, food, valuables, or funds that are the property of the affected person. The maximum penalty for this crime is 15 days of administrative arrest. However, in the DPR, gender-based violence is an administrative offence and administrative responsibility for it is identical to Ukrainian legislation.

The laws of the Russian Federation do not contain such a concept as "gender-based violence" or "domestic violence", but the composition of this offence corresponds to Art. 6.1 of the Code of Administrative Offences. The penalty for committing an offence is 15 days of administrative arrest. The same maximum sanction is established by Art. 173-2 of the Code of administrative offences of Ukraine, which provides for administrative liability for committing domestic violence (Table 1).

Table 1. Comparative analysis of sanctions for crimes based on gender-based violence

Comparative analysis of sanctions for crimes based on gender-based violence Crime	Ukraine	Russian Federation	LPR	DPR
Rape	15 years of imprisonment	20 years of imprisonment	20 years of imprisonment	20 years of imprisonment
Violent satisfaction of sexual passion in an unnatural way	15 years of imprisonment	20 years of imprisonment	20 years of imprisonment	20 years of imprisonment
Forced sexual intercourse	3 years of imprisonment	5 years of imprisonment	5 years of imprisonment	5 years of imprisonment
Sexual intercourse with a person who has not reached puberty	8 years of imprisonment	20 years of imprisonment	20 years of imprisonment	20 years of imprisonment
Molestation of minors	8 years of imprisonment	15 years of imprisonment	15 years of imprisonment	15 years of imprisonment

Source: developed by author

Thus, the comparative analysis shows that the legislation of the self-proclaimed republics on gender crimes duplicates the provisions of the legislation of the Russian Federation on the qualification and extent of sanctions. The punishment for gender-based violence in the republics of the DPR, Russia, and Ukraine is identical and provides for a maximum sanction of 15 days of administrative arrest. However, the lack of a proper judicial and law enforcement system in the self-proclaimed republics reduces the effectiveness of legislation to a minimum [20-21].

The study presents the results of a comprehensive scientific analysis in the field of countering gender-based violence during the armed conflict in the East of Ukraine. The author identified typical features of gender-based violence, specific factors that cause criminal domestic violence; and also conducted a comparative analysis of the legislation of Ukraine, the Russian Federation, the DPR, and the LPR in this area. The study identifies ways to improve the activities of subjects of prevention of gender-based violence.

Conclusions

Since the legislation of the self-proclaimed republics is declarative in nature and a priori is not normative regulations, considering the theory of law and international standards, it is necessary to propose changes of a legal and social nature that can be implemented on the territory of Ukraine to protect citizens living in uncontrolled territories from gender-based violence. These include:

1. Enhancing the effectiveness of interdepartmental coordination of social and humanitarian response to manifestations of gender-based violence through the organisation of sub-clusters to overcome violence at the regional level, the development of specialised information systems for processing and analysing information about acts of gender-based violence, increasing the ability of social workers to

respond to the facts of gender-based violence in humanitarian missions.

2. Improving awareness of the phenomenon of gender-based violence among the population of the region, available services and algorithms for actions in cases of violence, distributing various printed information materials to vulnerable groups, raising awareness and social campaigns on gender-based violence, involving residents of pilot areas in national and regional media.

3. Improving the capacity of authorities and social services to provide assistance to victims of gender-based violence and their potential victims. This includes training district police inspectors to deal with cases of gender-based violence and establishing a mechanism for cooperation between law enforcement agencies and health care institutions; supporting organisations that provide assistance to women-victims of violence; establishing national and regional hotlines, call centres that work with victims of violence and direct them to institutions and services that provide specialised assistance.

4. Providing high-quality primary health care in the field of protection of sexual and reproductive health in conditions of social crisis, in particular for victims of gender-based violence, and potentially socially vulnerable categories of the population, which consists in providing training for employees of medical institutions on working with cases of gender-based sexual violence (in particular, facts of rape) and sending persons affected by it to specialised social services; conducting trainings for medical workers on the use of the syndrome approach in the diagnosis and treatment of sexually transmitted infections; providing individual medical kits for gynaecological care, assistance in case of rape, and therapeutic drugs for the prevention of infections that sexually transmitted diseases.

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Правові засади протидії гендерно зумовленому насильству під час збройного конфлікту на Сході України

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Анотація
Мета статті полягає в здійсненні комплексного аналізу соціально-правових аспектів гендерно зумовленого насильства в контексті збройного конфлікту на Сході України, розробленні теоретичних і прикладних основ використання засобів протидії зазначеному насильству, підготовці науково обґрунтованих пропозицій з удосконалення законодавства, правозастосування та практики. Методологія. У процесі проведення дослідження використано філософські, загальнонаукові та конкретно-соціологічні методи. Виконання роботи ґрунтувалося на законах єдності та боротьби протилежностей, заперечення заперечення, переходу кількісних змін у якісні. Емпіричний матеріал було отримано шляхом використання методів анкетування, інтерв'ювання, контент-аналізу, спостереження, експертних оцінок. Наукова новизна. У статті висвітлено результати комплексного кримінально-правового й адміністративно-правового дослідження у сфері протидії гендерно зумовленому насильству під час збройного конфлікту на Сході України. Автор окреслив особливості такого виду насильства, фактори, що зумовлюють злочинне насильство в сім'ї, а також здійснив порівняльний аналіз законодавства України та Російської Федерації, «законодавства» ДНР та ЛНР в зазначеній сфері. Визначено шляхи вдосконалення діяльності суб'єктів профілактики гендерно зумовленого насильства. Висновки. Оскільки «законодавство» самопроголошених республік має декларативний характер, запропоновано зміни правового та соціального характеру, які можливо реалізувати на території України для захисту громадян, що проживають на непідконтрольних територіях від гендерно зумовленого насильства

Ключові слова:
гендерно зумовлене насильство; гендер; гендерні стереотипи; насильницькі злочини; гендерна рівність

UDC 351.741:343.85
DOI: 10.33270/04212101.81

Transformation of Approaches to Police Functioning in Line with the Introduction of the Broken Windows Theory and the SARE Model

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Article's History
Received: 10.04.2021
Revised: 20.05.2021
Accepted: 11.06.2021

Abstract The purpose of the study is to examine the foreign experience of using methods of effective crime prevention in modern Ukrainian realities within the framework of the broken windows theory and the SARE model (scanning, analysis, response, and evaluation). A complex of general and special scientific methods of cognition is used, namely: terminological, system-structural, formal-logical, historical-legal, comparative-legal, socio-legal, method of interdisciplinary analysis. The proposed study is one of the first attempts in Ukrainian criminology to investigate the transformation of approaches to police functioning in line with the introduction of the broken windows theory and the SARE model in the context of cross-border cooperation and global globalisation processes and to outline the spiritual-value aspects of the practical implementation of the investigated concepts. Current problems of Ukrainian society are considered, measures for crime prevention and crime reduction are proposed, a general excursion into the history of the establishment of these concepts is conducted, spiritual-value aspects of the broken windows theory are highlighted, the foreign experience of implementing the SARE model, and the specific features of their functioning are investigated. The study justified the need for practical implementation of the analysed theoretical findings in Ukrainian realities. A large number of scientific papers are devoted to the study of the broken windows theory, but the situation remains disappointing: it has not received proper popularisation and practical implementation. The need to combine the efforts of state authorities, civil society institutions, and the entire social community to consolidate cooperation in the further popularisation of this area of scientific research is substantiated. It is proven that from the standpoint of practical implementation of the broken windows theory, the action "restore order near your house" would be effective. An annual competition, encouraging concerned citizens and entrepreneurs who want to make cities neater and more attractive to visitors can be announced. The police and the public should take a principled position in these processes. According to the broken windows theory, the indicator of deterioration of the criminal situation depends on the number of minor offences. The theory clearly demonstrates how the smallest details affect substantial successes, achievements, and victories. It is aimed at the eradication of impurity, the fight against evil. Littered streets, polluted environment, neglected residential buildings, painted walls are the cause of various offences and other negative phenomena in society. The broken windows theory is not only external cleanliness, but also internal, as a guarantee of harmony, well-being, and a normal moral and psychological climate in the group and the state. In addition, this theory is an effective factor in crime prevention. For example, when an investigator conducts an inspection of the scene of an accident, they focus on the smallest details and subtleties of both fixing traces of a crime, and criminal, criminal procedural, and international legislation. Therefore, the theory under study can be developed on a much broader scale, considering it in the aspect of a spiritual-value component: purity of thoughts, the ability to respect a person as the highest social value. In the institutional hierarchy of all criminological theories and concepts, the SARE model is promising for implementation, which is a logical continuation of the broken windows theory and has not yet received proper popularisation and scientific understanding. The Canadian experience of its practical application has shown the successful overcoming of poverty, unemployment, drug addiction, domestic violence, suicidal moods, corruption component, high crime rate, and distrust of citizens. The introduction of the SARE model in Ukrainian reality is an important step in the context of the reform of the Ministry of Internal Affairs of Ukraine towards crime prevention. Thus, the social aspects of the broken windows theory and the SARE model for their implementation are unlimited. In close cooperation between states, authorities and society, investment projects are of great importance in the way to cleanliness in cities, crime prevention, and optimisation of the police functioning process. As part of the implementation of the analysed concepts in practice, it is proposed to start performing joint studies. It is believed that such criminological findings require practical implementation at the regional level. This year, the Main Directorate of the National Police in the Ivano-Frankivsk region proposed to include in the plan of research and development of the National Academy of Internal Affairs for 2021 the study "Criminological broken windows theory and the model of interaction between the police and the SARE community in crime prevention", which will contribute to the activation of scientific work on writing methodological papers, preparing conclusions and recommendations to further implement these findings in practice

Keywords: broken windows theory; police functioning; state authorities; spiritual-value component

Suggest Citation:
Golubosh, V.V. (2021). Transformation of approaches to police functioning in line with the introduction of the broken windows theory and the SARE model. *Law Journal of the National Academy of Internal Affairs*, 11(1), 81-90

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Introduction

The use of experimental methods of research opens not only new opportunities for solving current problems but also ensures the achievement of true knowledge about social reality. Such findings integrate modern theoretical approaches to conducting original investigations and are a source of a comprehensive analysis of current problems of legal reality. In this aspect, criminology is substantial, it is the most effective science in the fight against crime.

The criminological broken windows theory considers minor law violations not only as a factor of the criminal situation but also as an active aspect affecting the level of crime in general. It is formulated by the American sociologists J. Wilson & J. Kelling, first published in 1982 in the Atlantic Monthly journal [1].

The authors of the theory give an apt example: if the broken glass is not replaced in the window of the house, then later there will not be a single whole place left in it, and then looting and rapid deterioration of the general criminal situation will begin. Committing minor offences (such as vandalism, public drunkenness, jumping over a turnstile in the subway) is a prerequisite for committing more serious crimes [2]. Researchers have empirically justified the connection of the state of criminogenicity in certain areas with their sanitary condition, the quality of equipment and maintenance [3], proving that the crime rate is lower where residents and local authorities care about cleanliness and order [4].

The broken windows theory was actively applied in practice first in New York, and later in other cities in the United States, Europe, South Africa, and Indonesia. Rudolph Giuliani, who was elected mayor of New York in 1994, and the new local police commissioner William Bratton announced the fight against such minor violations as graffiti, stowaway travel, begging, fights with rubber batons, etc. What was previously ignored has become unacceptable. Despite criticism and ridicule, R. Giuliani consistently battled "broken windows", which led to an overall reduction in the number of crimes in the city. Residents got a cleaner and safer city, and confidence in the ability of the police to cope not only with minor offences but also serious crimes. In the end, the number of crimes against the person in New York decreased by 56% [5]. By carefully monitoring the cleanliness of the streets and washing graffiti off the walls, the New York authorities not only taught citizens to behave more culturally but also achieved a substantial reduction in the crime rate in the city. This proves the truth of the implementation of the analysed theory in everyday activities because the right socio-cultural attitudes contribute to compliance with social norms and overcoming crime.

The following researchers have devoted their scientific works to these issues: J. Wilson and J. Kelling [1], M. Levine [5], Lee Kuan Yew [6; 7], M.V Hrebeniuk [8], M.G. Kolodiazhnyi [3; 4; 9], S.S. Maulik [10], O. Petrov [2], G.G. Holdyn & L.O. Ternova [11]. Substantial are the practical findings of R. Giuliani [12] & T. Hardy [13] towards crime prevention and normalisation of relations between the police and the community based on cooperation. Therewith, the question of comparative analysis and interaction of the broken windows theory and the SARE model through the prism of the spiritual-value component was not the subject of special study.

The main purpose of the paper is to examine foreign experience in using methods of effective crime prevention in modern Ukrainian realities within the framework of the broken windows theory and the SARE model. The following tasks are defined to achieve this goal: develop theoretical and methodological foundations for the conceptual interaction of social institutions of society with state authorities; identify the relationship between the state of urban pollution and crime processes; outline ways for state managers to form responsibility for solving community problems; develop approaches to creating a safe housing environment based on the principles of good neighbourliness and morality; examine the social microclimate in collectives and reformatting personal consciousness towards serving the interests of society and the state.

Results and Discussion

Active work to prevent minor violations and punish violators of even the least substantial rules creates an atmosphere of intolerance to violations in general. Such activities allow detaining or substantially limiting the possibilities of recidivists who usually neglect the rules of behaviour in public places, which leads to deviant behaviour [14]: they say, if others can, then why am I not allowed? That is, zero tolerance on the part of society for small things subsequently creates an atmosphere of tolerance on a large scale. This formula consists of the fact that a person, observing violations of the rules of behaviour by other members of society, does not try to prevent them. Over time, such rules are no longer considered mandatory, and the absolute majority completely ignores them (this refers to violations that have become known due to various circumstances). The indicator of "permissibility of violations" should constantly decrease under the influence of an increase in the level of general culture and education of citizens, which will contribute to the establishment of a civil society where social harmony and well-being, the establishment of law and justice prevail. On the other hand, external

impurity can be a consequence of the disordered state of mind of a person. This aspect of the broken windows theory is insufficiently investigated, which confirms the relevance of the study.

1. The broken windows theory in various fields of public life

This theory affects the efficiency of staff work. If an employee constantly violates internal regulations, is late for work, and is not responsible for unfulfilled tasks, then others, convinced of impunity, also express a desire to do so. As a result, the socio-psychological climate in the team worsens, delays become common, and staff productivity decreases. It is important to notice "broken windows" in time, which may turn out to be a dirty counter, a rude employee, or scattered garbage near houses. It is necessary to organise a set of measures for the prevention of minor violations, and it is necessary to start with compliance with generally accepted rules of living and behaviour, in particular, maintaining cleanliness and order in the entrance, house, city, involving broad segments of the population and, above all, young people [2].

According to A. Petrov, a complex of unresolved economic, social, and national problems is an indicator of crisis phenomena in society. Among them are the following: economic and energy crisis, rising prices and inflation; a decrease in the standard of living of most of the population, which leads to increased social tension, the influence of such socio-psychological factors as anger, envy, hatred, nostalgia for the past; the crisis state of individual social and professional groups, an increase in unemployment; migration problems, interethnic conflicts; psychological and professional degradation of the individual in a market economy [2]. There is also a destructive impact on the entire spectrum of public relations when interethnic conflicts unfold under the slogans of democracy, "freedom, equality, and brotherhood", and new extremist-nationalist formations are created with a clearly aggressive goal. These problems are the basis for levelling morals and increasing the crime rate.

It is important to outline further ways to overcome them. In particular, the crime prevention strategy should include a number of large-scale measures, primarily on information policy, promotion of universal values, the introduction of positive foreign experience in modern local realities; the cult of violence, propaganda of cruelty, and radical nationalism, morally deformed behavioural stereotypes, including the use of profanity, should be eradicated from television screens and book pages. Prevention should be conducted at the initial stages of the development of negative processes, that is, at the stage when the motivation for illegal behaviour is formed [2].

2. The broken windows theory in the context of trans-border cooperation and world globalisation processes and local realities

The Mayor Of New York, R. Giuliani on November 19, 2017, as part of the working visit to Ukraine, participated in the round table "Kharkiv: security and public order" meeting, where he shared the experience on how to make cities cleaner and safer. Among the main advantages of Kharkiv, the politician noted the cleanliness and neatness, and explained that this aspect directly affects the level of security. In recent years, the city has become one of the cleanest and most comfortable regional centres. The main merit belongs to both local authorities and residents and activists who take an active part in eco-actions and measures to improve the city. According to R. Giuliani, cleanliness and order are not only a guarantee of security but also a factor in the attractiveness of any locality. The head of New York gave a simple example that confirms this connection: "if you pass by a building that has no windows, – they are broken or there is no glass at all – then you think that everyone does not care what is happening around. Soon, windows will be broken in the neighbouring house, and the feeling of impunity will spread to neighbourhoods and districts. This situation also developed in New York: while graffiti was not washed off, there was more and more of them, but when they began to respond quickly, the problem disappeared. There is more order in the city" [14]. The politician noted that due to the introduction of the concept of zero tolerance for crime back in 1994, which consisted in bringing individuals to justice even for the smallest offences, in New York in just two years it was possible to reduce the level of serious crimes by 30%, and premeditated murders – by as much as 50% [15].

Now in different localities of Ukraine, the situation is disappointing: there are buildings with broken windows, desolation, and disorder caused by military operations or a natural disaster. L.O. Ternova rightly notes that our entire planet can be displayed as a house with broken windows. Each such window is evidence of an armed conflict or another revolution, which causes unpleasant associations in the imagination [16]. Natural and man-made disasters occur increasingly often, leaving residents of their homes, causing widespread ruin [11]. Emphasis should be placed on the general harm of keeping silent about the facts of minor offences, which is the driving force for committing serious and especially serious crimes.

The universality of the investigated theory is evidenced by the activity of enterprises, where the relationship between the presence of "small cracks on windows" and global consequences within the entire business is most clearly reflected [17]. In particular, the quality of products and their high competitiveness in a market economy directly depends on the elimination of defects or other substantial errors that are made during the production of such products. A similar situation develops in teams, when advanced ideas must go through appropriate adaptation periods before acclimating and changing the system from within. These are complex, lengthy processes that require inspiration and considerable effort. Researcher M. Levine, in the book "Broken windows, broken business: how the smallest details affect great achievements" (2017), explores the broken windows theory using the example of world-famous companies: Google, Ikea, Coca-Cola, etc. [17].

M. Kolodiazhnyi defines the advantages of the broken windows theory in comparison with other areas of crime prevention, namely:

– establishment of zero tolerance for crime among citizens;

– strengthening responsibility among ordinary citizens for the state of security in local communities;

– reducing the burden on state budget expenditures due to the implementation of some measures within the framework of this theory at the expense of individuals;

– improving public-private partnership in the field of crime prevention;

– overcoming citizens' fear of crime. In addition, its effectiveness depends on compliance with the principle of complexity simultaneously with other areas of crime prevention of a general and special preventive nature [10].

Lee Kuan Yew – one of the creators of the Singapore "economic miracle", the first Prime Minister of Singapore, the author of the memoir "Singapore history. From the third world to the first" [6] – provides answers to theoretical questions related to state construction and nation formation, interracial hostility, the search for a national idea, that is, to the key questions of today – how to "educate" the people and form a strong society [10]. Even before the 1982 broken windows theory, Lee Kuan Yew realised in the 60s that to create a successful and rational society, an economically efficient country, it was necessary to get rid of Asian indifference to garbage, Buddhist attitude to dirt on the streets, number of homeless people, street noise, unsanitary conditions, and other antisocial elements of public life. The fight against littering was one of the priorities of Lee Kuan Yew's social policy. However, as the politician noted, "improving the physical infrastructure was easier than changing people's habits (...) their behaviour remained the same as before" [7]. Over a relatively short period of time, a substantial number of institutions appeared in Singapore society, in which ordinary citizens of the country actively took part [10].

In addition, attention should be focused on the problem of global law and order, because the security of the state is cross-border in nature. Borrowing international experience, popularising the best accomplishments and achievements of leading countries will contribute to the order and consolidation of the national community.

3. Spiritual-value approach in criminological science

Adopting the experience and borrowing of knowledge developed by various sciences opens up new prospects for investigation of the most important problems of natural science and humanities, substantially enriches the developed scientific discipline, which integrates scientific approaches, sources of investigation of current legal and social issues.

The importance of criminology is growing in today's conditions when the socio-spiritual crisis of public relations has worsened in the world, and new challenges have arisen, the essence of which is extremely difficult to understand. In the context of spreading ideas and values that are not inherent in society, ensuring new standards of living should make substantial efforts to implement the main task – the fight against crime. It is necessary to suggest alternative ways out of the situation to prevent such negative manifestations. In the aspect of the spiritual-value paradigm, the broken windows theory is not developed at the proper level. However, in police practice, such findings would be effective, for example, when investigating the psychological profile of a person.

Considering the main postulates of the broken windows theory, the prevalence of disorder increases criminal activity in prosperous urban areas. Unwillingness to tolerate such a situation leads to a change of place of residence, as a result of which social ties and control that previously restrained criminals are weakened. In the end, a prosperous neighbourhood turns into a hotbed of criminal activity [1]. In this aspect, the city of Detroit (USA), that belongs to the top ten most criminogenic cities in the world, is notable. If earlier Detroit was famous for machine building, today it has turned into a ghost town, where about 80 thousand dilapidated and abandoned buildings and almost 900 thousand residents live.

The disorder causes crime, and crime multiplies physical disorder, which can include abandoned buildings or cars, broken windows, spontaneous

landfills, etc.; social disorder, typical examples of which are drinking alcohol in public places, begging, noisy neighbours, or inappropriate behaviour [1]. In this case, the question of internal cleanliness is raised, but from a different perspective – social, when external untidiness subsequently manifests itself in disorder, and internal – in socially negative behavioural manifestations, general apathy and trouble. Thus, it is proposed to consider the broken windows theory in the aspect of identifying internally deep processes of the spread of evil, as a result – external antisocial behaviour manifested in an imbalance of the internal spiritual state.

It is also important to conduct comprehensive studies in this area. The development of the broken windows theory in Ukrainian realities involves an interdisciplinary cross-section, attracting knowledge from economics, sociology, law, psychology, political science, and religion. It is necessary to combine the efforts of all sciences in countering crime, and using the example of the broken windows theory, it will be most effective to influence the maximum number of people who are prone to marginal or conformist behaviour.

4. Introduction of the broken windows theory in police activities

An important condition for improving the criminal situation in the state is to identify effective methods of countering crime to effectively operate police units. This is due to the fact that most of the detected crimes are investigated within competence and in accordance with the functionality of police units. It is the police who take the greatest number of measures to counteract crime in the state, and the solution to the issue of improving the criminal situation in any country depends on its effectiveness [8].

The police officer constantly counteracts various violations: from smoking or crossing the road in unidentified places to solving particularly dangerous crimes. That is, its scope of activity goes beyond the norms prescribed in the legislation because not all relations can be regulated at the regulatory level. For example, throwing a piece of paper on the street or swearing is a violation that is not provided for by law. A police officer does not have the right to pass by the offender and is obliged to make a remark.

It is necessary to develop joint recommendations with local authorities, the public, and conduct seminars to discuss current negative trends in society to organise counteraction and combat negative phenomena (for example, covering up-to-date information on billboards). Of the minor violations, there are substantial ones, and an increase in the number of police personnel is necessary to ensure order on the streets so that people feel safe. However, excessive police presence is not always correct. A police officer should live by the principle: come to the place where they are least expected and most needed.

Adequate measures of influence should be taken against violators of the rules and norms of public life. When teenagers are drunk on the streets, parents should be aware of this. A police officer must have information about where students rent housing, what they do in everyday life and dormitories. Efforts should also be made to eradicate drug addiction among young people. In other words, the entire range of law enforcement activities is much more diverse than just implementing the law. Society wants to see such police officers: they must work overtime, be far-sighted in the field of countering negative phenomena.

Coming to a new place of work, the manager should inspect all the premises and get acquainted with the real situation in the teams; make efforts to create proper conditions for the training and work of personnel, increase the self-esteem of the police officer; conduct systematic meetings with authorities, heads of enterprises, institutions, organisations to raise funds for the purchase of necessary material and technical support, because the safety of citizens and peace in homes depend on it. Comfortable living conditions are also the key to reducing the crime rate. “Small cracks” should always be patched up, because there is a possibility that they will lead to substantially more negative consequences.

Trust as the main indicator in evaluating the work of a police officer requires qualitatively new approaches to obtaining it. It is necessary to work towards not only preventing offences and crimes to do this but also establishing relations with the population to serve every citizen within their capabilities. The police officer is a “consolidation link” between the public and the authorities, justice, the law, business, and the volunteer corps. Such cooperation should be based on the principle of mutual assistance, which will certainly contribute to the effective functioning of state institutions.

Many of the problems that exist in Ukrainian society encourage the development of more effective ways to overcome them. One of the priority tasks of the National Police of Ukraine is to introduce a set of measures to prevent offences and reduce the crime rate based on various concepts and approaches, among which the broken windows theory deserves special attention. It is able to bring useful results both for society and for every citizen, due to its implementation, it will be possible to maintain cleanliness and order in settlements, implement interesting social projects that substantially improve the quality of life [18].

5. SARE model for normalising police-community relationships: a Canadian collaborative experience

An effective extension of the broken windows theory is the SARE model (*scanning, analysing, responding*, and *evaluation*), proposed by Canadian police colleagues, which requires a separate scientific understanding. Notably, the SARE model is most effective for normalising relations between the police and the community. The first step is to implement *scan*: identify pressing problems, process statistics, documents, media history, news, and posts on the Internet. The scan should be comprehensive and reflect the state of cooperation between the police and the community. *Analyse* – means identifying how and why something happened. For example, why domestic violence is widespread, why drugs are distributed on this particular street, and why pedestrians die at a certain intersection. The analysis should be conducted from different positions, and it is extremely important not to ignore it before *responding*. At this stage, it is necessary to create a plan with a specific execution time, guided by the understanding that it should be legal, effective, ethical, and realistic; determine who else can be involved in the implementation of the tasks set, and what information is missing. It is important to listen to different participants, their ideas and advice. *Evaluation* does not involve finding the culprits, but working on mistakes. That is, the main task is to record opinions and constantly communicate with the community [12].

The SARE model was first launched at the level of a small settlement in Canada, where poverty, unemployment, drug addiction, domestic violence, suicidal moods, corruption, and a high crime rate progressed. Law enforcement agencies also had problems: distrust of citizens, lack of personnel, lack of equipment, insufficient material and technical support, lack of funds. The work on highlighting the positive image of a police officer was actually reduced to nothing.

According to this model, the police began to collect statistics, official data, and data from medical institutions; investigated public opinion, complaints, publications in the media, economic forecasts in the labour market, and the death rate of the population; conducted an analysis of crime related to alcohol abuse and drug addiction; created a rating of the provision of services by the police; established connections with politicians, entrepreneurs, social workers, doctors. The situation began to change for the better.

Advisory groups have also been established, which are now developing across Canada, with a total of up to 12 participants each: for example, a youth group, a group of older people, etc. The volunteers formed a backbone that helped attract additional specialists. Cooperation took place with members of various interest groups, mostly activists, and ideas about the overall picture consisted of personal opinions, not official data. Some employees were engaged in attracting additional funding through grants. Regular briefings on their safety have been held for the community.

The powers of investigators have been expanded, and people have been appointed who report to the community on the results of their work to refute rumours and gossip. In turn, when unprecedented measures were taken and the police were silent, it provoked the spread of gossip about a substantial number of victims and attacks and looked like the inaction of the local police. Therefore, attention was focused on normalising relations with society, so that the police officer felt that their work was appreciated.

Proper working conditions were created and police training was organised. It was important to avoid formalities during training sessions to prevent the outflow of personnel from the police. The local police officer has enough days off to recuperate and rest because they are under constant stress and professional "burnout". It is necessary to focus on improving the working conditions and well-being of police officers to overcome these challenges.

In addition, the Canadian police were active lobbyists for changes to local legislation: they managed to limit the sale of alcohol, set priority for educational activities among the population. The work with schools was active: police officers talked about violence, behaviour with parents, adults, handling weapons; and with pensioners – about how to protect themselves from fraud. Children and young people talked about drunk driving. Canadian police officers also organised readings, sports, and art events. Judges were also involved in such discussions, who, together with the police, discussed how to deal with problems. Special courts for domestic violence have been established.

Admittedly, not all initiatives were successful in the early stages, and the results varied. The work started with small steps, and it took Canada 20 years. The main thing was the analysis and optimisation of the process of functioning of the police, which provides that police officers should sit less for paperwork in the office, and go out on the streets and communicate with the population. It is necessary to convince law enforcement officers to act in such a way that they believe that this is not a new type of "commitment", but an easier and more efficient way of their work [12].

The proposed study is one of the first attempts in Ukrainian criminology to investigate the

transformation of approaches to police functioning in line with the introduction of the broken windows theory and the SARE model in the context of cross-border cooperation and global globalisation processes and to outline the spiritual-value aspects of the practical implementation of the investigated concepts. Current problems of Ukrainian society were considered, measures for crime prevention and crime reduction were proposed, a general excursion into the history of the emergence of these concepts was conducted, spiritual-value aspects of the broken windows theory were highlighted, foreign experience of implementing the SARE model was investigated, and the specific features of their functioning were highlighted. The study justified the need for practical implementation of the analysed theoretical findings in Ukrainian realities. Despite the fact that a large number of papers are devoted to the analysis of the broken windows theory, the situation remains disappointing: it has not been properly popularised and implemented. It is required to combine the efforts of state authorities, civil society institutions, and the entire social community to further popularise this area of research. From the standpoint of practical implementation of the broken windows theory, the action "restore order near your house" would be effective. The police and the public should take a principled position in these processes.

Conclusions

According to the broken windows theory, the indicator of deterioration of the criminal situation depends on the number of minor offences. The theory clearly demonstrates how the smallest details affect substantial successes, achievements, and victories. Apparently, littered streets, polluted environment, neglected residential buildings, and painted walls are the cause of various legal violations and negative consequences in society. The broken windows theory is not only external cleanliness, but also internal, a guarantee of harmony, well-being, and a normal moral and psychological climate in the group and the state. This theory is an effective factor in crime prevention. For example, when an investigator conducts an inspection of the scene of an accident, they focus on the smallest details and subtleties of both fixing traces of a crime, and criminal, criminal procedural, and international legislation. Therefore, the theory under study can be developed on a much broader scale, considering it in the aspect of a spiritual-value component: purity of thoughts, the ability to respect a person as the highest social value.

In the institutional hierarchy of all criminological theories and concepts, the SARE model is promising for implementation, which is a logical continuation of the broken windows theory and has not yet gained the proper popularity and scientific understanding. The Canadian experience of its practical application has shown the successful overcoming of poverty, unemployment, drug addiction, domestic violence, suicidal moods, corruption component, high crime rate, and distrust of citizens. The introduction of the SARE model in Ukrainian reality is an important step in the context of the reform of the Ministry of Internal Affairs of Ukraine towards crime prevention.

Thus, the social aspects of the broken windows theory and the SARE model for their implementation are unlimited. In close cooperation between states, authorities and society, investment projects are of great importance in the way to cleanliness in cities, crime prevention, and optimisation of the police functioning process. As part of the implementation of the analysed concepts in practice, it is proposed to start joint scientific studies. It is believed that such criminological findings require practical implementation at the regional level. This year, the State Unitary Enterprise in the Ivano-Frankivsk region proposed to include in the plan of research and development of the National Academy of internal affairs for 2021 the study "Criminological broken windows theory and the model of interaction between the police and the SARE community in crime prevention", which will contribute to the activation of scientific work on writing methodological papers, preparing conclusions and recommendations to further implement these findings in practice.

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Трансформація підходів поліцейського функціонування в руслі впровадження теорії розбитих вікон і моделі CAPO

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Анотація
Метою статті є вивчення іноземного досвіду використання в сучасних українських реаліях методів ефективного попередження злочинності в межах теорії розбитих вікон і моделі CAPO (сканування, аналіз, реагування та оцінка). Використано комплекс загальнонаукових і спеціально-наукових методів пізнання, а саме: термінологічний, системно-структурний, формально-логічний, історико-правовий, порівняльно-правовий, соціально-правовий, метод міждисциплінарного аналізу. Пропонована стаття є однією з перших спроб в українській кримінології дослідити трансформацію підходів поліцейського функціонування в руслі впровадження теорії розбитих вікон і моделі CAPO в умовах транскордонного співробітництва та світових глобалізаційних процесів, а також окреслити духовно-ціннісні аспекти практичного втілення досліджуваних концепцій. Розглянуто актуальні проблеми українського суспільства, запропоновано заходи щодо профілактики правопорушень і зниження рівня злочинності, здійснено загальний екскурс в історію формування цих концепцій, висвітлено духовно-ціннісні аспекти теорії розбитих вікон, вивчено іноземний досвід упровадження моделі CAPO, а також специфіку їх функціонування. Автор обґрунтовує необхідність практичного втілення аналізованих теоретичних напрацювань в українських реаліях. Дослідженню теорії розбитих вікон присвячено численну кількість наукових праць, однак ситуація залишається невтішною: вона не набула належної популяризації та практичної реалізації. Обґрунтовано необхідність об'єднання зусиль органів державної влади, інститутів громадянського суспільства та всієї соціальної спільноти з метою консолідованої співпраці щодо подальшої популяризації зазначеного напряму наукового дослідження. Доведено, що з позицій практичної реалізації теорії розбитих вікон ефективною була б акція "Наведи порядок біля свого дому". Також можна оголосити щорічний конкурс, заохочуючи небайдужих громадян, підприємців, які прагнуть зробити міста охайнішими, привабливими для відвідувачів. Принципову позицію в цих процесах мають посісти поліція та громадськість. Згідно з теорією розбитих вікон, показник погіршення криміногенної обстановки залежить від кількості дрібних правопорушень. Теорія наочно демонструє, як найдрібніші деталі впливають на значні успіхи, досягнення та перемоги. Вона спрямована на викорінення нечистоти, боротьбу зі злом. Засмічені вулиці, забруднене навколишнє середовище, запущені житлові будинки, розмальовані стіни є причиною різних правопорушень та інших негативних явищ у суспільстві. Теорія розбитих вікон – це не лише зовнішня чистота, а й внутрішня, як запорука гармонії, добробуту, нормального морально-психологічного клімату в колективі, державі. Крім того, ця теорія є ефективним чинником профілактики злочинності. Наприклад, коли слідчий проводить огляд місця події, він акцентує увагу на найдрібніших деталях і тонкощах як фіксації слідів злочину, так і кримінального, кримінально-процесуального та міжнародного законодавства. Тож досліджувану теорію можна розвивати в значно ширших масштабах, розглядаючи її в аспекті духовно-ціннісної складової: чистоти помислів, уміння поважати людину як найвищу соціальну цінність. В інституційній ієрархії всіх кримінологічних теорій та концепцій перспективною для впровадження є модель CAPO, яка є логічним продовженням теорії розбитих вікон і ще не набула належної популяризації та наукового осмислення. Канадський досвід її практичного застосування засвідчив успішне подолання бідності, безробіття, наркозалежності, домашнього насильства, суїцидальних настроїв, корупційної складової, високого рівня злочинності, недовіри громадян. Упровадження моделі CAPO в українських реаліях є важливим кроком в умовах реформи Міністерства внутрішніх справ України в напрямі профілактики злочинності. Отже, соціальні аспекти теорії розбитих вікон і моделі CAPO щодо їх втілення в життя необмежені. У тісній співпраці між державами, органами влади та громадою інвестиційні проєкти мають неабияке значення на шляху до чистоти в містах, запобігання злочинності, оптимізації процесу функціонування поліції. У межах реалізації на практиці аналізованих концепцій запропоновано започаткувати виконання спільних наукових досліджень. Вважаємо, що такі кримінологічні напрацювання потребують практичної реалізації на регіональному рівні. Цьогоріч Головне управління Національної поліції в Івано-Франківській області запропоновало включити до Плану науково-дослідних та дослідно-конструкторських робіт Національної академії внутрішніх справ на 2021 рік наукове дослідження "Кримінологічна теорія розбитих вікон та модель взаємодії поліції і громади CAPO у попередженні злочинності", що сприятиме активізації наукової роботи з написання методичних праць, підготовки висновків і рекомендацій з метою подальшого втілення зазначених напрацювань на практиці

Ключові слова: теорія розбитих вікон; поліцейське функціонування; органи державної влади; духовно-ціннісна складова

UDC 343.97:343.615
DOI: 10.33270/04212101.74

Global Experience in Bullying Prevention

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Abstract
The purpose of the article is to study the theoretical and applied aspects of bullying prevention in different countries and to develop proposals for effective measures to prevent bullying in Ukraine based on a comprehensive analysis of foreign experience. The methodological tools were selected in accordance with the set goal, the specifics of the object and the subject of research. The study used the dialectical method of scientific knowledge of socio-legal phenomena in their contradictions, development and changes, which makes it possible to objectively assess the level and effectiveness of preventing bullying in Ukraine; formal and logical method, which identified the elements of the legal mechanism for preventing violence; the comparative legal method was used in the analysis of current legislation and international regulations. The theoretical basis of the publication was the works of domestic and foreign scientists devoted to the aspects of bullying prevention. The scientific novelty of the publication consists in highlighting the main measures to prevent bullying in foreign countries. A number of recommendations are proposed that can be used in preventive measures against bullying and to help victims. As a result of the catastrophic spread of bullying in the country, there is an urgent need to constantly update methodological recommendations for teachers and psychologists to prevent this phenomenon in educational institutions. Following the example of such countries as Sweden, the United Kingdom, Finland, the United States of America, Spain, Norway, Canada and Japan, special programmes should be introduced in the educational environment to educate young people in the spirit of tolerance towards each other, democracy, humane attitude towards peers and other positive aspects. Combined with numerous legal mechanisms, this approach will help to eradicate bullying not only in practice but also in the consciousness of Ukrainian society

Keywords:
bullying; anti-bullying measures; victim; aggressor; foreign experience; prevention of bullying

Article's History
Received: 15.04.2021
Revised: 25.05.2021
Accepted: 15.06.2021

Suggest Citation:
Levchenko, Yu.O. (2021). Global experience in bullying prevention. *Law Journal of the National Academy of Internal Affairs*, 11(1), 91-97

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Introduction

While in the world the issue of school bullying has been widely studied since the 80s of the last century, the attention of Ukrainian researchers to this issue has intensified only in the last decade (the first studies in Ukraine began only in 2005). This is primarily due to the fact that today bullying among Ukrainian schoolchildren has become widespread (or, perhaps, society has begun to witness manifestations of this phenomenon more often due to the publication of horrific videos where children bully each other). According to the World Health Organisation, Ukraine ranks fourth in the prevalence of aggression among adolescents after russia, Albania and Belarus [1].

Disappointing statistics raise concerns of all those who can help to overcome the problem - parents, teachers, human rights activists, psychologists, and policymakers in the field of education.

The purpose and objectives of the publication are to study foreign experience in preventing bullying and to find out the possibilities of its application in Ukraine.

Results and Discussion

Bullying is a form of violence that is intentional, manifested in prolonged aggression associated with repeated actions of a physical, mental, economic, sexual nature by a person or group of persons who have advantages (physical, psychological, etc.), with the possible use of technical means committed for a specific purpose (intimidation of a person, punishment for committing an act, moral humiliation, coercion to confess to something, etc.), which causes various kinds (social, material, moral, physiological, psychological, etc.) negative consequences and is dangerous to human life and health [2].

Bullying is an international phenomenon that is studied by scientists from different countries: the United States of America, Great Britain, Canada, Norway, Finland, etc. Russian scientist I. Cohn noted that over the past 20 years, bullying has become an international socio-psychological and pedagogical term, which means a complex set of social, psychological, criminological and legal problems [3]. This is in fact a scaled-down version of the terrorist act. On the one hand, the persecutor oppresses the victim, on the other hand, he makes it clear to all witnesses, to the whole class who is "in charge". Researchers emphasise that criminals are brought up under such conditions. Schematically, it can be described as follows: child bullying – radicalisation – violent extremism... And finally, the most acute form – terrorism.

The consequences of the impact of bullying on pupils and students are published in the reports of the Center for Disease Control and the National Center for Education Statistics, namely, people who are bullied have an increased risk of poor adaptation to school, sleeping difficulties, anxiety and depression; have mental health and behavioural problems; bullying also negatively affects well-being (19%), relationships with friends and family, school activities (14%) and physical health (9%); they are twice as likely as their peers to experience negative health consequences, including headaches and stomachaches. Young people who self-blame and believe they deserve to be subjected to violence are more likely to experience negative consequences such as depression, long-term victimisation and injustice [4].

In developed countries, the study of bullying began in the 80s of the twentieth century with the further consolidation of the problem of "school violence" in the legislation. Today, such countries as India, Ireland and Singapore have the strictest "minors" legislation - imprisonment is possible from the age of 7, including for bullying. In the UK, Switzerland, the USA and Australia, people are imprisoned from the age of 10 (for example, in the state of Pennsylvania (USA), the court sentenced an 11-year-old convict who shot a pregnant woman to life imprisonment).

Obviously, the creation of an effective legal mechanism to counteract such a phenomenon as bullying in Ukraine requires consideration of foreign experience, because this problem has no borders and the issue of security of educational space arises even in socially prosperous countries.

Outlining the world experience on this issue, it should be noted that one of the first countries where the issue of bullying was considered at the national and legislative levels was Sweden. In addition to the laws protecting victims of bullying, there is a systematic preventive work enshrined in the legislation, which is carried out by state institutions and non-profit organisations "Friends" [5].

In the United Kingdom, Facebook joined the fight against bullying in cyberspace by organising a network of "Internet officers" in each secondary school, and in 2014, Yale University, together with Facebook, launched a special online project "Bullying Prevention Centre". At the same time, the Prince William Foundation announced the launch of a project that teaches children aged 11-16 to counteract online bullying [5].

The formation of special anti-bullying programmes at the regulatory level is a tool used in other Eurozone countries. For example, Finland has launched the "KiVa" programme in the period from 2006 to 2009, and it has been functioning quite effectively to this day. The programme is targeted at all pupils of secondary schools from 5 to 11 years old. Its mission is to reduce school bullying and peer victimisation. A key focus of the Finnish programme is working with minors. Within its activities, children are taught to recognize bullying behaviour and to

counteract it using collective resources. The Finnish program contains both universal actions to prevent bullying and specific actions that consist of direct intervention in instances of school bullying. Thus, specific actions can be considered the use of animated lessons and video games as a supplement to booklets and communication with teachers. At the same time, each school has a team of three teachers (or other school staff) and a class teacher who jointly study a certified or detected case of bullying [6].

These cases are considered through a series of individual and small group discussions with victims or initiators, and then systematic meetings are organised. Alternatively, the teacher meets with two to four classmates of high social status in the class, encouraging them to support each affected child. Universal actions to combat school bullying are 20 hours of classes on this topic, which are conducted by teachers during the school year. The main goals of such classes are to raise awareness of the role that the group plays in countering bullying and to increase the sense of empathy for victims of bullying. During such classes, discussions, group work, role-playing exercises are organised, resulting in the formation of internal rules for the class to avoid and prevent bullying [7].

In the United States, unlike Ukraine, there is a multi-layered system of anti-bullying, which consists of state influence on the educational system and regional anti-bullying policies. Besides, there are many NGOs that monitor, control, promote legislative initiatives, prevent bullying, rehabilitate victims or socialize and patronise bullies. There are certain standard requirements for anti-bullying laws that can be taken into account if Ukraine adopts anti-bullying laws. For example, the Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on Counteracting Bullying"

Does not have any recommendations or instructions on anti-bullying policies to be implemented by educational institutions, as the law does not provide for the education of specialists in the prevention of bullying and response to its manifestations. Thus, despite the fact that this law imposes obligations on participants in the educational process to implement anti-bullying policy, comply with its requirements and monitor its proper implementation, it is still formal in nature, as it does not contain a mechanism to combat bullying. American laws have inexhaustible lists of actions that can be interpreted as bullying and cyberbullying [8].

Ukraine does not have a codified definition of "cyberbullying" at all, and "bullying" is used in a broad sense, without specifying some components, so each interprets it independently. The direct definition of bullying, which amends the Code of Ukraine on Administrative Offences, does not show a systematic approach, but the Law of Ukraine "On Education" does. This indicates the imperfection of domestic anti-bullying legislation and the need to improve it in view of foreign experience [8].

All states have their own anti-bullying laws, each of which has local policies to address this issue. Relevant laws and regulations governing various aspects of the problem focus on both individual and school responsibility for safety, giving due consideration to anonymity and confidentiality [5].

Another subject of debate in US academic and political circles is the zero-tolerance approach adopted by many schools after the tragedies at Columbine High School and Virginia Tech. Critics of the zero-tolerance policy agree that children at high risk of misconduct should face certain disciplinary penalties, but drastic measures to curb minor violations do more harm than good. In many cases, the school administration's response was exaggerated and disproportionate to the perceived threat. There are also racial disparities among students who are subject to strict disciplinary measures in response to bullying. African-Americans and low-income Latinos are mostly subject to suspension, expulsion, and criminal liability.

This policy does not consider the individual circumstances of violations, imposing equally severe disciplinary responsibility on all students who violate school rules. For example, in 2001, the American Bar Association voted to repeal zero-tolerance laws in schools, due to the lack of effectiveness of these policies and their discriminatory application. However, almost 90% of Public Schools in the United States have some form of zero-tolerance policy [9].

The foundations of anti-bullying in Spain were laid in the 1990s. In particular, the first programme developed in Spain was the SAVE project, which combined a research initiative with a set of preventive actions aimed at reducing cases of victimisation and violence in primary and secondary schools. Such actions are primarily aimed at developing a sense of security, communication skills in schoolchildren, and awareness of common values among teenagers.

Besides, the project implementation included activities with the teaching staff, namely, training on anti-bullying at school, as well as cooperation of teachers in this area. At the personal level, work on critical thinking skills was carried out to promote empathy and the ability to reflect. The most effective vector of the "SAVE" project is the democratisation of the process of managing the coexistence of schoolchildren in the team, and emotional and value-based education. Democratisation was carried out through the introduction of clear rules that were focused on establishing positive interpersonal relationships [7].

The most effective anti-bullying initiative is the Norwegian nationwide Dan Olveus programme.

It was thoroughly studied in a large research project, which involved 2500 children from 42 schools over a period of two and a half years. The results of long-term monitoring demonstrated the effectiveness of the program – the number of incidents related to harassment decreased by 30-50%. At the same time, the indicators of antisocial behaviour (drinking, theft, vandalism, etc.) decreased and the overall climate in schools improved [10].

The key to success lies in a systematic approach to the issue of bullying: psychologist and scientist Dan Olweus insists on the importance of working with a range of social roles: the so-called "bullying circle" consists not only of the victim and the aggressor but also of supporters and passive observers. This initiative is based on the principles of creating a welcoming and friendly school (and ideally home) environment and focuses not on punishment but on encouraging peaceful coexistence with clearly defined boundaries for unacceptable behaviour [5].

The programme is based on 4 key principles:

– creating a school (and ideally home) environment characterised by warmth, positive attitudes and adult engagement;

– clear boundaries of unacceptable behaviour;

– consistent application of non-punitive, non-physical sanctions for unacceptable behaviour and violation of the rules;

– the presence of authoritative adults - role models.

Besides, the programme has two main lines of work – prevention, i.e. avoidance of bullying, and response to bullying [5].

The prevention part of the campaign includes: creating a positive environment where relationships between participants are built on mutual respect; informing students, staff and parents about the types of bullying and its impact; external anti-bullying programmes for students at risk; an annual survey on bullying in the school or college; a clear and accessible document on the rights and responsibilities of students [10].

These activities have contributed to a reduction in student complaints of bullying and harassment by more than 50%; a significant drop in student reports of general anti-social behaviour such as vandalism, fighting, theft and truancy; and a clear improvement in the social climate in the classroom, as evidenced by student reports of improved order and discipline, more positive social relationships and attitudes towards school work and school.

The prevention programme has been improved, expanded and further evaluated in five additional large-scale projects in Norway. Statistics further showed successful prevention of bullying in schools. Starting with the initiative of the Norwegian government, the Olweus bullying prevention initiative has received the status of a priority national programme, which is widely implemented in primary and secondary schools throughout Norway and is now one of the most studied and effective [10].

The experience of Canada is also relevant. In particular, the concept of "bullying" is defined in this country at the legislative level. Thus, according to the Education Act of the province of Quebec (Part 13, paragraph 1.1), "bullying" is a direct or indirect behaviour, comment, action or sign, in particular made through social networks, with the intent to cause physical or psychological harm, humiliation, intimidation, social exclusion. Canadian schools attach great importance to working with witnesses of bullying: they work to raise their awareness of this phenomenon and its consequences, teach witnesses of bullying how to respond to cases of bullying, and develop their confidence in the need to protect the victim. Another issue is that teachers or school staff are often absent when a bullying incident occurs and do not always intervene to stop it [11].

Canada, after recognising the issue of bullying, immediately began preparing relevant legislation, which required the Ministry of Education to develop policies and guidelines for the prevention of bullying, disciplinary measures for inappropriate behaviour, including more serious punishment for repeated bullying. Currently, in Canada, fines can be imposed even on witnesses of bullying who do not report it to responsible persons or those who can intervene in the situation. Also, according to the federal law "On Educational Institutions" (2011), each school must hold an annual bullying awareness week and organise training to counteract this phenomenon.

It should be mentioned that Canadian schools are transitioning from a zero-tolerance approach to addressing bullying (common in the 1990s) to a more constructive and preventive approach. The zero-tolerance approach consisted of strict sanctions against students who initiated bullying (suspension from school or expulsion from school). Despite this, the preventive approach demonstrates much greater effectiveness. It consists in creating a school-wide culture of respect and understanding; integrating the anti-bullying component into the educational process and extracurricular and informal activities; consideration of the severity of bullying behaviour, and the factors that cause it, to make adequate intervention; conducting ongoing monitoring and recording of bullying cases; using restorative justice to restore the relationship between the offender and the victim; eliminating the harm caused by bullying [12].

Japan has been moving towards recognising the problem of bullying at the legislative level for quite a long time. This is explained by the cultural specifics of the country – bullying has always been perceived by the Japanese as a phenomenon quite acceptable in the school environment (primarily

among boys, as girls did not attend school in the past). Thus, it is believed that bullying of peers should toughen the character, and therefore it was humiliating and shameful to complain about such actions by classmates. It was assumed that those who are not able to cope with bullying on their own will not be able to protect either their loved ones or their homeland in the future.

Today, the current law obliges the school administration to report serious cases of harassment to the police. At the same time, educational institutions must form an effective organisational structure to counteract bullying at school. In particular, it provides for the establishment of a special commission to investigate the causes and consequences of incidents, and the development of school policies to prevent bullying. In addition, the authorities request regular monitoring of social networks and other Internet platforms to identify bullying of children in the online space [5].

The author offers a number of recommendations to counteract and prevent the spread of bullying and its consequences in educational institutions of Ukraine:

– increase the number of subjects that would give an idea of real life, values and relationships inherent in the "adult world", including the skills of nonviolent conflict resolution. Addressing the issues of confronting violence not only in case of bullying in the classroom or once (class hour), they should become part of various classes (literature, law, history, etc.), in particular the introduction of the values of peaceful settlement of issues, empathy, justice, safe use of the Internet through various subjects. That is, the prevention of bullying in the community should not be a one-time event, but a systematic process throughout the entire period of the child's education [5];

– the participation of a teacher or psychologist in the educational institution with the skills to help victims of bullying and knowledge of methods of influencing aggressors. This recommendation is based on the judgments of high school and college students who reported in a survey that the most helpful things teachers can do are: listen to them; talk to them afterwards to make sure the bullying has stopped; and provide advice [4];

– to shift priorities from knowledge transfer to the system of skills development and their use. In the context of counteracting violent behavior, it is primarily about increasing the number of hours for pedagogical activities (including extracurricular activities of the group), strengthening the discussion component in humanitarian subjects, modeling conflicts and their resolution;

– introduce subjects that would meet the challenges of our time. For example, the basics of conflictology, virtual space safety. It is not just about optional or variant courses, but about compulsory classes. In particular, Israel provides a training programme that teaches children to resist cyberbullying [5];

– develop an electronic system for reporting bullying cases at a school or college. Such a system can be implemented, for example, on any convenient messenger platform – Facebook, Viber, Telegram, WhatsApp; have short columns for quick completion with a minimum of manual input. Prompt receipt of information will enable teachers and psychologists to quickly and efficiently respond to an act of aggression and provide support to the victim;

– to create centres for the prevention of bullying throughout the country, given the catastrophic spread of this phenomenon in the country. To draw the attention of pupils and students to the confidentiality of information on violent acts provided to the e-system of bullying reports, and to tactful communication that does not degrade the dignity of both parties [4].

The scientific novelty of the publication is that it outlines the main measures to prevent bullying in foreign countries. The author proposed a number of recommendations that can be used in preventing bullying and helping victims in Ukraine.

Conclusions

In the civilized world, bullying is considered as a rather serious social and pedagogical problem of our time. The practice of foreign countries demonstrates that effective prevention of bullying in schools requires a well-coordinated organisation of both intra-system and interdepartmental interaction, which is based on a clear legislative and regulatory framework.

To effectively prevent and counteract bullying in Ukraine, it is necessary to address the issues in this area at the legislative level. The introduction of a three-level system of measures for its prevention and criminal liability will be efficient. In addition, a prerequisite for the prevention of bullying is the training of teachers and psychologists to address bullying in secondary schools with the mandatory involvement of psychological services, educational authorities, community members, churches, law enforcement agencies.

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Світовий досвід запобігання булінгу

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Анотація
Метою статті є дослідження теоретичних і прикладних аспектів запобігання булінгу в різних державах і розроблення пропозицій щодо дієвих заходів запобігання булінгу в Україні на підставі всебічного аналізу іноземного досвіду. Методологічний інструментарій обрано відповідно до поставленої мети, специфіки об'єкта й предмета дослідження. У процесі дослідження використано діалектичний метод наукового пізнання соціально-правових явищ в їхніх суперечностях, розвитку та змінах, що дає змогу об'єктивно оцінити рівень й ефективність запобігання булінгу в Україні; формально-логічний метод, завдяки якому виявлено елементи правового механізму запобігання насильству; порівняльно-правовий метод застосовано під час аналізу чинного законодавства та міжнародних нормативних актів. Теоретичним підґрунтям публікації стали праці вітчизняних й іноземних учених, присвячені аспектам запобігання булінгу. Наукова новизна публікації полягає у висвітленні основних заходів запобігання булінгу в іноземних державах. Запропоновано низку рекомендацій, які можна буде використати в запобіжних заходах щодо булінгу та для допомоги постраждалим. Унаслідок катастрофічного поширення булінгу в країні постала гостра потреба в постійному оновленні методичних рекомендацій для вчителів і психологів щодо запобігання цьому явищу в освітніх закладах. Наслідуючи приклад таких країн, як Швеція, Велика Британія, Фінляндія, Сполучені Штати Америки, Іспанія, Норвегія, Канада та Японія, слід запровадити в середовищі освітянської діяльності спеціальні програми, метою яких стане виховання молоді в дусі толерантності один до одного, демократизм, людяне ставлення до однолітків й інші позитивні аспекти. У поєднанні з численними правовими механізмами такий підхід сприятиме викоріненню булінгу не лише на практиці, а й у свідомості представників українського суспільства

Ключові слова:
булінг; антибулінгова робота; жертва; агресор; іноземний досвід; запобігання булінгу

UDC 343.97:351.743:343.35
DOI: 10.33270/04212101.98

Foreign Experience of Public Involvement in the Prevention of Corruption Crimes

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Abstract

The purpose of this study is to examine the most common practices of involving the public in the prevention of corruption crimes in foreign countries and the prospects for implementing such experience in Ukraine. The methodological tools were selected in accordance with the set goal, the specific features of the object and the subject of research. The comparative legal method is used in the analysis of current legislation and international regulations. General scientific and special methods are used to achieve this goal, which are tools of scientific search. This refers to structural-functional and systemic, formal-logical, hermeneutical, anthropological, and other methods that provided an opportunity to examine the foreign experience of public involvement in the prevention of corruption crimes. A special research method used in the study is system analysis. The scientific originality of the study lies in the fact that the experience of involving the public in the prevention of corruption crimes in foreign countries is considered. It was established that in the leading countries of the world, the practice of public involvement in anti-corruption events is quite common. These measures provide for revealing activities of ordinary citizens, public discussions, public control, etc. Consideration of the current foreign practice of public involvement in the prevention of corruption crime gives grounds for possible borrowing of its individual components to improve the existing forms of interaction between the public and state bodies in Ukraine, and the development of a new strategy for preventing corruption crime. The anti-corruption experience of the countries under consideration is a certain guideline that every country, including Ukraine, should strive for. Their main advantage lies in proper governance, because public authorities, exercising their powers, realise the importance of their own actions for the well-being of society, evaluate management activities as prestigious and value their own reputation. A systematic solution to a number of problems will help build a way to increase the role and capabilities of civil society in preventing corruption in Ukraine

Keywords:
crime prevention; corruption; public; foreign experience

Article's History
Received: 13.04.2021
Revised: 23.05.2021
Accepted: 18.06.2021

Suggest Citation:
Krotiuk, A.M. (2021). Foreign experience of public involvement in the prevention of corruption crimes. *Law Journal of the National Academy of Internal Affairs*, 11(1), 98-105

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Introduction

Corruption in Ukraine is recognised as a threat to national interests, sustainable development, and European integration. Despite the substantial efforts made by the state and international institutions to overcome corruption in the main fields of public life, its level still remains high.

The substantial potential of the anti-corruption function of civil society is a generally recognised fact. Comprehensive state support and proper legislative support for public involvement in the field of corruption prevention is an important international standard for anti-corruption activities [1].

The purpose and objectives of this study are to examine the most common practices of involving the public in the prevention of corruption crimes in foreign countries and the prospects for implementing such experience in Ukraine.

Results and Discussion

All countries, without exception, are concerned about the existence and spread of such a destructive phenomenon as corruption, which harms the activities of public authorities, hinders the development of the economy, and distorts the consciousness of society. In this regard, each of the countries introduces its own anti-corruption programme, strategy or implements the corresponding policy.

In Ukraine, among the difficulties that hinder the effective activities of the public in the field of anti-corruption, it is necessary to note the following: lack of support from the authorities, imperfection of legislative consolidation of the rights and obligations of the public. A substantial role is played by the desire of activists to cash in on their activities, and the implementation of personal and political tasks by the public. Scandals about "grant-eating" in the media do not subside to this day. From time to time, there are informational studies about corruption cases among public organisations [2].

One of the most substantial achievements of the international community in preventing corruption crimes was the UN Convention Against Corruption of October 31, 2003 (ratified by the Law of Ukraine No. 251-V of October 18, 2006). Art. 13 of the Convention provides for public involvement in the prevention of corruption crimes. Each state party shall take appropriate measures to ensure that the relevant authorities for the prevention of corruption offences referred to in this convention are known to the public and shall ensure access to such authorities to provide them with reports, in particular anonymously, of any cases that may be considered an offence under this Convention [3].

In addition, each state party is obliged to promote the active involvement of individuals and groups outside the public sector, in particular, such as civil society, non-governmental organisations and community-based organisations, in preventing and combating corruption, namely: increasing transparency and promoting public involvement in decision-making processes; ensuring effective access to information for the population; taking public awareness measures that contribute to creating an environment of non-acceptance of corruption, and implementing public education programmes, in particular, educational programmes in schools and universities: respecting, promoting, and protecting the freedom to seek, receive, publish, and disseminate information about corruption. They may impose certain restrictions on this freedom, but only provided for by law and which are necessary: a) to respect the rights or reputation of others; b) to protect national security, or public order, or to protect the health or morals of the population [4].

The main trends in the field of preventing corruption in democratic countries are, firstly, a clear correlation and relationship between the level of democratisation of society and corruption (the higher the level of democracy in the country, the fewer corruption manifestations); secondly, civil society is considered as the main subject of influence on the government, and therefore as the primary subject of anti-corruption [5].

Non-governmental organisations, whose main task is to expose corruption, have powerful opportunities in this area. Researchers of public involvement in the prevention of corruption crimes in foreign countries identify a number of non-governmental organisations with international status. These are: Transparency International, International Anti-corruption Resource Center, Corruption Watch, Transparify, etc. [6]. The world has not only proper legal regulation of public involvement in the anti-corruption process but also organisations that are ready to provide material support for such activities.

The analysis of the activities of these and other non-governmental organisations gives grounds for the conclusion that their anti-corruption influence is implemented through the following measures: development and implementation of anti-corruption policies; assessment of anti-corruption mechanisms used by governments; collection and processing of information on cases of corruption; identification of corruption risks; provision of legal assistance; development and implementation of educational programmes; development of an anti-corruption worldview of citizens [7].

An important area of activity of public organisations is interaction with the population in the field of corruption prevention. Therefore, relevant organisations should establish close Information relations with citizens to promote their activities. Informing the public on corruption prevention issues is conducted: through the organisation's website by

holding informational events (round tables, press conferences, etc.), through external campaigning. Public organisations successfully implement their anti-corruption campaigns aimed at increasing awareness of the negative consequences of corruption, which is confirmed by the level of perception and attitude to corruption [6].

In Ukraine, among the forms of involvement of citizens and their associations or authorised representatives concerning the prevention, detection, and counteraction to corruption offences proposed to identify such: to report the findings of committing corruption or corruption-related offences, real, potential conflict of interest specially authorised subjects in the field of combating corruption, the national agency, management, or other representatives of the authority, enterprises, institutions, or organisations that were committed these offences or employees which there is a conflict of interests, and the public; to request and receive from state bodies, authorities of the Autonomous Republic of Crimea, local self-government bodies in order provided by law, information on the activities of anti-corruption; to hold a public anti-corruption expertise of normative regulations and drafts of normative regulations, to present the results of examination of the proposal to the relevant authorities, to obtain from the relevant authorities information about the context of the proposals; take part in parliamentary hearings and other events on the prevention of corruption; to make suggestions to the subjects of legislative initiative to improve the legislative regulation of relations arising in the field of prevention of corruption; to conduct, have conducted research, particularly in scientific, sociological, etc., on the prevention of corruption; hold events to educate the public on the prevention of corruption; to exercise public control over the implementation of laws in the field of prevention of corruption using such forms of control that are not contrary to law; to conduct other legal measures for the prevention of corruption [8].

Among the countries that have created an effective anti-corruption mechanism are: Finland, Denmark, New Zealand, Iceland, Singapore, Sweden, Canada, the Netherlands, Luxembourg, Norway, Australia, Switzerland, the United Kingdom, Austria, Israel, the United States, Japan, China, Ireland, Germany, etc.

In these countries, there is almost no corruption at the grassroots level. This is due to the fact that in the public consciousness, the image of an official is identified as a person who performs important functions – implements national policy and serves the population. Corruption is perceived by the governments of these countries as a serious national security problem, as it is an internal and external threat. Efforts to limit corruption in these countries are institutionalised and impressive in scale [9].

We propose to consider the experience of involving the public in anti-corruption activities in such countries as Sweden, Finland, the United States, Austria, the Netherlands, the United Kingdom, and Denmark.

Sweden ranks first among the countries least affected by corruption. In this country, there is effective public control over the activities of both the public and private sectors, the leading role in the implementation of which is played by the media, the church, and public opinion. Moreover, the latter can create a negative image for businessmen or officials, as a result of which some will be forced to resign, while others will lose trust among business partners. In addition, public control over the activities of government agencies, and the cultivation of intolerance to any manifestations of corruption in society, are inherent in Switzerland, The Netherlands, the United States, France, Poland, etc. [7].

In particular, in Sweden, independent monitoring of the level of corruption in certain areas of society is conducted by the public organisation "Democratic audit", established in 1994, which unites leading Swedish politologists, economists, and researchers. In addition to monitoring the state of development of democratic freedoms in Swedish society, this organisation also investigates other issues related, in particular, to the fight against corruption. Independent monitoring of the level of corruption in various fields of society is conducted by the Swedish public organisation "Swedish Anti-Corruption Institute", founded in 1923. Receiving funding from business organisations and the Stockholm Chamber of Commerce, in recent years the Institute has increasingly focused on explaining in detail to citizens the subtleties of anti-corruption legislation [10].

The experience of Finland, which is characterised by social control by civil society, due to the small population and the openness and real legitimacy of legal relations between municipalities and citizens, may be relevant for Ukraine [11].

Finland's anti-corruption policy is integrated into the overall national policy, as corruption is considered a complex phenomenon: as part of criminal legislation, as part of legislation on mismanagement. Ukraine now has a different trend-filling the legislative framework with acts on the involvement of civil society in the processes of preventing corruption [1]. Indeed, expanding the capabilities of civil society institutions and creating protection guarantees for participants in anti-corruption activities is a positive development, but increasing the number of regulatory regulations does not guarantee minimising or overcoming corruption.

In the United States, the Institute for public anti-corruption surveillance is regulated by the Freedom of Information Act of 1966, according to which

all federal agencies must provide citizens with free access to available declassified information. Due to the operation of this law, exposing corruption has become more real. Such activities are provided by a number of non-governmental organisations in the United States: Judicial Watch, Project on Government Oversight, Government Accountability Project, etc. For example, in Seoul in 1999, the Anti-Corruption programme "OPEN" was developed, which provided citizens with the opportunity to monitor the work of officials, in particular, at any time to monitor the process of reviewing documents for applications for permits for a particular case, especially when the probability of corruption is high. Canada has no special anti-corruption agencies, and its anti-corruption system is based on active public involvement through the media, professional associations, and organisations [7].

The high standards of civic conduct in the UK are the result of political and legislative measures, moral change and more effective social control over civil servants. This country has the oldest traditions of fighting corruption. A distinctive feature of Great Britain, which has determined the relatively low level of corruption in this country, is the tradition of observing high ethical standards of behaviour in the state sector, in which personal interest should give way to public interests [12]. These standards were expressed primarily in the form of unwritten rules and regulations [13]. Therewith, the system of anti-corruption mechanisms is also regulated at the legislative level.

The second feature is the extremely high role of public opinion, which tracks the dynamics of negative phenomena in society. For the most part, public debates relate to issues connected to lobbying and buying political influence, problems created by changing the boundaries of private and state property, and the moral climate, bribery, abuse of employees of local authorities, police, customs service, etc. [17].

It should also be noted that in the United Kingdom and the United States, society is extremely negative about even minor manifestations of informal ties, clannishness, and nepotism. Fair competition and equal rights are the basic values of these communities, which date back to the English Charter of Liberties and the American Bill of Rights. That is why citizens are so active in demanding a report from officials on their income and react with great indignation even to minor abuses. This is how comprehensive regulation of the activities of civil servants in the United States and the creation of the Independent Parliamentary Standards Authority, and numerous other ethics commissions in the United Kingdom, are ensured [13].

In Austria, with the involvement of representatives of public organisations, an informal approach to anti-corruption education in educational institutions is used as a basis for fostering zero tolerance for corruption. The Austrian education system is known for covering many courses aimed at fostering an independent worldview and social responsibility among schoolchildren and students. Young citizens are prepared to take part in the economic and cultural life of the country, Europe, and the world. Understanding the phenomenon of corruption, legal and ethical aspects of anti-corruption is conveyed to the audience in such a way that they are not perceived abstractly, but are used during the entry of young citizens into adult active life. That is, to ensure the effectiveness of anti-corruption education, a comprehensive approach is used, covering various methods [9].

Effective methods of combating corruption offences have also been developed in the Netherlands. The system of combating corruption in the state covers the following procedural and institutionalised measures: constant reporting and publicity in matters of detecting corruption and discussing the consequences – punishments for corruption activities; development of a system of public monitoring of possible points of occurrence of corruption actions in state organisations and strict control over the activities of persons located in these points through public involvement; all materials related to corruption actions, if they do not affect the national security system, are necessarily made available to the public [15]. Mass media that cover corruption cases and subjects of independent investigations into corruption crime in the state have become important in the fight against corruption.

Another example of the effective involvement of civil society institutions in combating corruption is Denmark. The anti-corruption system provides, in particular, the following main procedural and institutional measures: a system of comprehensive monitoring of possible areas of corruption actions in state and public organisations, and strict control over the activities of persons involved in these areas; a system of punishments for corruption actions, the main measure is a ban on working in state organisations and the loss of all social benefits provided to it by the state service; a system of encouraging positive actions of officials aimed at ensuring that officials were profitable not only in material but also in moral aspects to behave honestly and effectively; a system of state security for combating corruption – special police, endowed with a substantial amount of authority to identify corruption manifestations [16].

In addition, public and private anti-corruption initiatives are important in preventing corruption offences. For example, some private sector organisations have adopted a zero-tolerance policy, which is that the provisions of the anti-corruption legislation include in all government agreements on Denmark's development assistance, contracts with companies

involved in this activity [17], that is, companies must sign a declaration prohibiting bribery as a manifestation of corruption, and in case of violation of this provision, one party initiates the termination of the contract and refuses further partnership.

Thus, the role of the public in preventing corruption in foreign countries is substantial, has a practical focus, which consists in:

– supervision, that is, the public closely monitors legislative and institutional changes, transparency in the development and functioning of the government, and processes in corruption cases (from the disclosure of information to investigation, prosecution and trial);

– development of viable alternatives based on experience and knowledge through the development of draft laws, concepts of institutional reforms, and educational campaigns;

– influence as one of the most important tools that can be used to exert public pressure on the government and officials when making specific decisions;

– actions, namely the provision of services in the social field, disclosure of information about cases of corruption, and raising the level of awareness of a wide range of citizens in the analysed area [7].

Thus, the main forms of interaction between non-governmental organisations and state authorities in overcoming corruption in Ukraine should be:

– conducting monitoring and analysis of public opinion on the causes and ways to overcome corruption by state authorities and non-governmental organisations;

– development of consultative and advisory expert bodies under state authorities with the involvement of public experts and activists on a voluntary basis, the main task of which would be the implementation of analytical, research, and information projects, in particular, the search for scientifically based ways to overcome the problem of corruption in Ukraine [18];

– organisation of educational events among various groups of the population to form an intolerant attitude to corruption as a phenomenon;

– informing the public about real measures and results of anti-corruption policy in Ukraine;

– joint provision of information openness in society about the state of corruption and the effectiveness of anti-corruption measures, identification of specific cases of corruption actions. It is necessary to introduce simpler procedures for submitting requests for information, define the duty of public authorities to assist the public in obtaining information for a short period, and consider the possibility of creating an independent special (out-of-court) mechanism for reviewing decisions on the refusal of access to official information to properly implement this form of interaction [18];

– establishment by state authorities and non-governmental organisations of effective channels for submitting complaints and suggestions from citizens related to the prevention and counteraction of corruption. This will create a favourable information field and increase the level of public confidence in their own ability to protect their rights and freedoms.;

– implementation by non-governmental organisations of public control over the activities of state authorities in the field of combating corruption in the form of public monitoring of the preparation and implementation of decisions, examination of their effectiveness, submission of expert proposals to public authorities. The main purpose of monitoring should be to ensure the accountability of public authorities to citizens. The object of monitoring can be a wide range of subjects: executive power structures, political parties, parliament, judicial and law enforcement agencies. Therewith, public authorities should not interfere with such monitoring, but rather fully promote its independent conduct [18];

– cooperation of state authorities and non-governmental organisations in the development of a policy of training and retraining of public administration personnel, joint training of officials and representatives of public organisations in the skills of effective interaction, familiarisation of the general population with the forms of their involvement in preventing and combating corruption [18].

The study outlined the key problems of public involvement in the prevention of corruption crimes in Ukraine. The study clarified the specific features of effective forms of interaction between citizens and public authorities in preventing corruption in such countries as Sweden, Finland, the United States, Austria, The Netherlands, the United Kingdom, and Denmark. The main forms of interaction between non-governmental organisations and state authorities in overcoming corruption in Ukraine were identified.

Conclusions

One of the defining problems of the implementation of anti-corruption international standards for public involvement is the unwillingness of the authorities to contribute to the implementation of these norms in practice, that is, in the country, there is a practice when the norms regarding public involvement in the prevention of corruption crimes are only declarative in nature, and the state authorities do not really want to cooperate with anti-corruption public organisations. The public should focus its efforts on creating mechanisms for "forcing" state authorities to work together. One of them may be the influence of both governmental and non-governmental international organisations.

The foundations of a successful national anti-corruption policy in Ukraine can be highlighted by the following provisions: strong political will of the top leadership of the state to fight corruption and formed on its basis a unified national policy towards

combating corruption, which would cover a set of measures of a state, political, economic, social, and legal nature; organised social control by civil society on the system of public administration in general (an indispensable condition for this is the creation of an environment of transparency), provided for the possibility of violating criminal prosecution of offenders within these limits; strict accountability of persons with power to a truly independent body that monitors transparency it is also empowered to hold officials accountable, regardless of their place in the hierarchical structure of power.

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Зарубіжний досвід участі громадськості в запобіганні корупційним злочинам

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Анотація
Метою цієї статті є дослідження найпоширеніших практик залучення громадськості до запобігання корупційним злочинам у зарубіжних країнах і перспективи впровадження такого досвіду в Україні. Методологія. Методологічний інструментарій обрано відповідно до поставленої мети, специфіки об'єкта та предмета дослідження. Порівняльно-правовий метод застосовано під час аналізу чинного законодавства й міжнародних нормативних актів. Для досягнення поставленої мети використано загальнонаукові й спеціальні методи, які є інструментами наукового пошуку. Ідеться про структурно-функціональний і системний, формально-логічний, герменевтичний, антропологічний та інші методи, що надали можливість вивчити зарубіжний досвід участі громадськості в запобіганні корупційним злочинам. Спеціальним методом дослідження, використаним у статті, є метод системного аналізу. Наукова новизна публікації полягає в тому, що розглянуто досвід залучення громадськості до запобігання корупційним злочинам у зарубіжних країнах. З'ясовано, що в провідних країнах світу практика участі громадськості в антикорупційних заходах є достатньо поширеною. Ці заходи передбачають викривальну діяльність пересічних громадян, громадські обговорення, громадський контроль тощо. Висновки. Розгляд сучасної зарубіжної практики участі громадськості в запобіганні корупційній злочинності дає підстави для можливого запозичення її окремих складових з метою вдосконалення наявних форм взаємодії між громадськістю та державними органами в Україні, а також формування новітньої стратегії запобігання корупційній злочинності. Антикорупційний досвід розглядуваних країн є певним орієнтиром, до якого має прагнути кожна країна, зокрема й Україна. Основна їх перевага полягає в належному урядуванні, адже органи публічної влади, здійснюючи свої повноваження, усвідомлюють важливість власних дій для добробуту суспільства, оцінюють діяльність у сфері управління як престижну та цінують власну репутацію. Системне розв'язання низки проблем допоможе побудувати шлях до підвищення ролі та спроможностей громадянського суспільства у сфері запобігання корупції в Україні

Ключові слова:
запобігання злочинності; корупція; громадськість; зарубіжний досвід

UDC 351.741.088.6-048.87 (1-622NATO)(4) (477)
DOI: 10.33270/04212101.106

Cooperation of the Ministry of Internal Affairs of Ukraine with the Police Departments of the EU and NATO Countries in the Field of Professional Training of Managerial Personnel

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Abstract

The purpose of the study is to examine the essence and relevance of issues of cooperation between the Ministry of Internal Affairs of Ukraine and police departments of the European Union and NATO countries in the field of professional training of managerial personnel. The paper uses general and special scientific methods of cognition, the specific combination of which is determined by the purpose and objectives of the study. The use of the formal-logical method allowed for defining, clarifying, and supplementing individual concepts, categories, and organising the terminology. Methods of formal logic are also applied, in particular analysis and synthesis, deduction and induction, analogy and generalisation, etc. The scientific originality of the study is that it investigates the cooperation of the Ministry of Internal Affairs of Ukraine with the police departments of the European Union and NATO countries at the present stage of state and legal development, and highlights current problems in this area. Cooperation of the Ministry of Internal Affairs of Ukraine with the police departments of the European Union and NATO countries is one of the priority areas. Further study in this area should be linked to the detailed development of individual problems of administrative and legal regulation in the area. In particular, this concerns the issue of regulatory regulation of the activities of the Ministry of Internal Affairs of Ukraine using the experience of the European Union and NATO countries. The paper draws conclusions about the possibility of using areas for improving the interaction of the Ministry of Internal Affairs of Ukraine with the police departments of the European Union and NATO countries in the field of professional training of managerial personnel

Keywords:

management personnel of the police; international cooperation; experience of the European Union countries; professional training; NATO; legal regulation; partnership for peace; European integration policy

Article's History

Received: 17.04.2021
Revised: 28.05.2021
Accepted: 27.06.2021

Suggest Citation:

Kuzmenko, I.G. (2021). Cooperation of the ministry of internal affairs of ukraine with the police departments of the eu and nato countries in the field of professional training of managerial personnel. *Law Journal of the National Academy of Internal Affairs*, 11(1), 106-112

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Introduction

Considering the centuries-old history of the Ukrainian state, based on the right to self-determination exercised by the Ukrainian nation, taking care of ensuring human rights and freedoms and decent living conditions, taking care of strengthening civil harmony in the land of Ukraine and confirming the European identity of the Ukrainian people and the irreversibility of the European and Euro-Atlantic course of Ukraine, striving to develop and strengthen a democratic, social, legal state, guided by the Act of Declaration of Independence of Ukraine of August 24, 1991, approved on December 1, 1991, by popular vote, Ukraine is a sovereign and an independent, democratic, social, and legal state [1].

The Ministry of Internal Affairs of Ukraine was involved in planning and evaluating forces within the framework of the Partnership for Peace programme, which is positive for the development and reform of the Ukrainian state [2].

The main purpose of the programmes offered by international experts of the Alliance is to provide the Ukrainian security forces with an information base and an action plan. For this purpose, the Ministry of Internal Affairs of Ukraine constantly works to improve the skills of its own management personnel, which contributes to their involvement in platforms for the exchange of experience, and the involvement of other mechanisms of international assistance.

However, the issues of improving the legal regulation of the activities of the Ministry of Internal Affairs of Ukraine with the police departments of the EU and NATO countries in the field of ensuring international peace have not yet been sufficiently investigated and require further research.

Aspects of the outlined problems and the use of the experience of organisational activities of the EU police were covered by Ukrainian researchers: M.I. Anufriiev, O.M. Bandurka, V.O. Zarosylo, I.V. Zozulya [3], D.P. Kalaianov [4], O.V. Kopan, O.V. Kuzmenko, V.V. Cherniei [5], and foreign researchers: Zh. Wedel, R. Drago, D. Insiardi, G. Kelling, K. Kenny, L. Lei, T. Feltes, R. Friedman, and others.

Notably, the improvement of legal regulation of the organisational activities of the Ministry of Internal Affairs of Ukraine in the field of professional training of managerial personnel contributes to the implementation of the European integration policy and the achievement of criteria necessary for the acquisition of full membership of Ukraine in the North Atlantic Treaty Organisation. Highlighting the unexplored aspects of the general problem determines the relevance of the study and the need for further study of international cooperation of the Ministry of Internal Affairs of Ukraine in the field of professional training of managerial personnel.

Results and Discussion

On February 7, 2019, the Verkhovna Rada of Ukraine adopted the Law "On amendments to the Constitution of Ukraine, regarding the strategic course of the state to acquire full membership of Ukraine in the European Union and the North Atlantic Treaty Organisation". The initiated amendments to the Constitution of Ukraine consolidate the irreversibility of the state's strategic course towards gaining full legal membership in the European Union and the North Atlantic Treaty Organisation.

For the implementation of the programme *"NATO reflection process"* and *"Enhanced Opportunities Partner"* a logical unifying step is the creation of a new state law enforcement agency of Ukraine *"ASAE" –Administration of the state Alliance and Enlargement*) with a wide range and powers of experienced patriot employees of all law enforcement agencies of Ukraine and an official representative of cooperation.

This study believes that in the process of creating a new ASAE law enforcement agency as the headquarters of the NATO high readiness forces, an example is the establishment of 1 GE/NL – a corps consisting of units from the Netherlands and Germany. The Corps Headquarters also takes part in NATO Response Force readiness rotations. It is located in Munster (North Rhine-Westphalia) – the former headquarters of the 1st corps of the German army, from which the "first" German-Dutch Corps was formed, has multinational operational duties, and its commander is the only one in Europe who has OPCON (Operational Command) in peacetime. As it is the headquarters of the NATO high readiness force, Munster also hosts soldiers from other NATO member countries, the United States, Norway, Spain, Italy, Great Britain, France, Greece, Turkey, the Czech Republic and Belgium, who, in the context of the ASAE establishment, must necessarily be invited to conduct joint exercises in Ukraine.

Therewith, the responsibility for the establishment of a corps set of units and units of combat and logistics support, which, according to NATO standards, should contain: communication brigades, rocket artillery, army aviation, engineering, radiation, chemical, and biological protection troops, transport, logistics support, medical; a battalion of military police; intelligence and electronic warfare units – also lies with the founding state.

Within the framework of the creation of this law enforcement agency, substantial attention should be paid to the implementation of a wide range of such areas as: budgeting, creation of an effective planning and coordination system, reduction of corruption risks, creation of a national law enforcement system, strategic communications, countering hybrid

threats, cybersecurity, medical and psychological rehabilitation, protection of people's rights, gender policy, communication and information systems, interaction and coordination; professional training and education of management personnel on the implementation of NATO standards.

By adopting NATO standards, ASAE as the headquarters of the high readiness force and the launch of a unique military project, it must be able to fully interact with Western partners at all levels of operational, strategic, and tactical management. In addition, the new structure should ensure effective resource management and improve decision-making and response to situations in which these bodies operate. «Communitate ASAE» – Together Strong!" ASAE is not only a big step into Ukraine's future, it will also strengthen Ukraine's presence in the North Atlantic Alliance. At present, the system of the Ministry of Internal Affairs of Ukraine already includes two military structures: the National Guard of Ukraine – a military establishment with law enforcement functions and the state border service of Ukraine – a special purpose law enforcement agency, which, in the opinion of this study, should be part of the new law enforcement agency of Ukraine "ASAE", aimed at implementing a "Special partnership", and promoting any other measures of Ukraine with NATO and cooperation programmes.

In addition, the draft law on reformatting the Military Law Enforcement Service (MLES) of the Armed Forces of Ukraine into the "Military Police", which is being prepared by the Working Group in the Verkhovna Rada Committee on law enforcement, should indicate that it should not be subordinate to the Ministry of Defence of Ukraine and the Ministry of Internal Affairs of Ukraine but should be coordinated by the newly created law enforcement state body of Ukraine "ASAE" with the international legal standards of the North Atlantic Alliance.

Earlier it was mentioned that the MLES was planned to be reorganised into a separate law enforcement structure of over 8,000 personnel. According to the current law, the maximum number of military personnel and employees of the MLES cannot exceed 1.5% of the total number of the Armed Forces of Ukraine (that is, no over 3750 people) [6].

Therefore, Ukraine should borrow the reasonable experience of the EU countries, and not create a "monster" from the Ministry of Internal Affairs like the "Soviet" one. For example, a special feature of the Swiss military justice system is that the military police personnel are formed from police officers who are undergoing military service, and the functions of the military police are the same as those of the police in general. The military police, and the civilian police, have the right to detain a person for 12 hours, then the court must decide on further detention. The most common war crime is the evasion of military duty – 70% of all cases considered. In addition, there are military courts and a military prosecutor's office in Switzerland. This country has a military code that regulates war crimes. Therewith, disciplinary penalties, which include short-term detention, are imposed by the commanders of military units [6].

According to Mykola Khavronyuk, Doctor of Jurisprudence, professor, and honoured lawyer of Ukraine, it is not entirely clear who will protect the rights of suspects in war crimes, because everyone has the right to protection. "Can lawyers who specialise in criminal cases do this? How competent are the courts of general jurisdiction? Once there was a military tribunal, but there were many questions about its impartiality. There are no military courts...", – the expert believes. Adds that there is another point – military secrecy: "if a crime is connected with military secrecy, then an ordinary court cannot consider it. The same can be said about lawyers" [6].

Analysing further areas of cooperation on the creation of a separate state law enforcement agency "ASAE", it can be concluded that the next step in improvement should be the development of a theoretical concept for the restoration and further functioning of military courts. They must comply with the criteria of independence and the provisions of the Universal Declaration of Human Rights and the European Convention for the protection of Human Rights and Fundamental Freedoms to understand whether the institution of military courts meets international standards of justice. It is also necessary to consider the specific features of working in combat conditions, which means an increased load.

Undoubtedly, to restore military courts based on European principles of justice, it is not enough just to understand the essence, it is also necessary to understand how the system of principles works in practice. Therefore, it is worth analysing the institutions of military courts in the EU countries, since it is there that there are excellent approaches to determining the place of military courts in the justice system. However, most of the countries, in which the institute of military justice operates, have given these courts the status of specialised courts.

Thus, the Belgian Constitution provides that the structure of military tribunals, their competence, and the rights and obligations of members of these tribunals are established by separate laws. According to Art. 93 of the Greek Constitution, courts are divided into administrative, civil, and criminal courts, which are formed according to special laws governing juvenile courts, military field tribunals, and naval and air courts.

Under the Constitution of Luxembourg, the organisation of military courts and the status of judges of these courts are determined by a special law. The Basic Law of the Netherlands provides for two categories of courts in the judicial system: general and

special jurisdiction. Thus, courts of special jurisdiction include administrative and military courts. According to the Polish Constitution, justice is administered by the Supreme Court, general, administrative, and military courts.

The method of determining the place of military courts in the judicial system of Ukraine differs from the most common one in the EU countries. Our state defines the jurisdiction of military courts as general, not special, yet not ordinary, but forms a separate (military) judicial jurisdiction. A fundamental mistake is the lack of awareness of the fact that a peacetime situation is different from a wartime situation. A system that can work effectively when there is no fighting in the country will not work as well during wartime. It is necessary to consider the fact that the most terrible crimes always occur during military operations, and therefore take it for granted and make every effort to build an effective law enforcement system designed to work in such conditions.

Among the necessary areas of improvement, is the introduction of a simplified procedure for considering criminal proceedings in military courts during the war, that is, reducing the term of procedural actions, limiting the number of instances that review decisions of military courts by two, while simultaneously limiting the maximum possible penalty that a military court can impose, imprisonment for up to 10 years, and mandatory review of decisions taken in this order after the end of the war by higher courts [6].

Securing the dual status of military courts as courts of general jurisdiction in peacetime and specialised courts during wartime will have a double effect:

– on the one hand, the activity of military courts in peacetime based on the strictest standards of justice will increase efficiency by strengthening the rule of law in military establishments;

– and on the other hand, in the event of a threat of war and the outbreak of hostilities, it will allow adapting the justice system to wartime in the shortest possible time, while preventing the transformation of military courts into a repressive and punitive machine.

The Verkhovna Rada Committee on legislative support of law enforcement activities should recommend that the Parliament adopt a draft law on the creation of a new law enforcement agency "Management of the State Alliance and Expansion", considering the irreversibility of the European and Euro-Atlantic course.

As mentioned above, the problem for the Ministry of Internal Affairs of Ukraine and for the state, in general, is the lack of highly qualified managerial personnel. Currently, managers who are responsible for preparing draft normative regulations should not only have a legal education and relevant work experience on issues within their competence, but also be proficient in one of the official languages of the EU, know the basics of international law and comparative legal analysis, have a good understanding of what the EU is, EU legislation in general, and freely navigate the relevant industry legislation. That is why it is extremely important, first of all, to pay great attention to improving the skills of management personnel responsible for the work of adapting legislation and taking part in the implementation of appropriate reforms [7].

In the current conditions, the Ministry of Internal Affairs of Ukraine cooperates with the NATO mission in Ukraine, consisting of the NATO Liaison Office and the Information and Documentation Centre in the implementation of interaction and cooperation mechanisms, including: the NATO Professional Development Programme (NATO PDP), the integrity education programme, cooperation with Ukraine – NATO trust funds and the NATO Support and Supply Agency [8].

The updated partnership package for the Ministry of Internal Affairs contains three "goals", namely: (CP I 0013) – gender policy; (CP I 0304) – planning and budgeting; (CP I 7302) – cyber defence.

As part of the work of the commission on coordination of Euro-Atlantic integration of Ukraine, representatives of the Ministry of Internal Affairs of Ukraine take part in the following interdepartmental working groups: on the development of annual national programmes under the auspices of Ukraine – NATO Commission; on the implementation of the national policy for gender equality in the security and defence sector of Ukraine; on countering hybrid threats; on social adaptation of military personnel; on coordination of activities within the framework of the partnership menu; on the professional development of civil servants; on the implementation of the national stability system.

In 2018, the Ministry of Internal Affairs of Ukraine intensified cooperation within the framework of involvement in the Individual Ukraine – NATO Partnership Programme (hereinafter referred to as the IPP).

According to the IPP, every year the Cabinet of Ministers of Ukraine approves a list of events in which interested structures of the security and defence sector, in particular the Ministry of Internal Affairs of Ukraine, take part in priority areas of development, to improve the skills, awareness, and professionalism of personnel for further application of their experience in service and combat activities [9].

The implementation of the IPP is conducted by involving representatives of the Ministry of Internal Affairs and bodies of its system in international cooperation events (seminars, conferences, training courses, etc.) within the framework of this programme. Accordingly, the Individual Partnership programme with NATO is a type of partnership between permanent members of the NATO alliance and third countries that are not part of it, which provides for allied relations and strategic military partnership. The Individual

Partnership Programme (IPP) between Ukraine and NATO consists of international cooperation activities proposed by the member states and partner countries of the North Atlantic alliance in the format of the Euro-Atlantic Partnership Working plan (EAP WP).

The EAP WP project contains a wide range of training courses, seminars, conferences, symposia, working meetings, and meetings of NATO committees. All activities of this project are divided into separate areas of cooperation in accordance with the main areas of cooperation between NATO and partner countries.

The Ministry of Internal Affairs of Ukraine is a component of the national security sector and performs its part of the tasks within the framework of the implementation of the association agreement. Institutional and organisational measures have been taken for this purpose. Thus, in accordance with the order of the Minister of Internal Affairs of May 17, 2018, No. 421, the departmental action plan for the implementation of the agreement was approved (the updated plan was approved by Order No. 644 of September 3, 2020) [10]. The Directorate of Strategic Planning and European Integration has been established in the structure of the Ministry of Internal Affairs of Ukraine to ensure the proper organisation of certain tasks and consistency of results. The European Integration Department of the Main Directorate for European and Euro-Atlantic Integration is responsible for coordinating and monitoring the implementation of the Agreement. In particular, the Ministry of Internal Affairs ensures the implementation of the tasks of Section III of the agreement "Justice, freedom and security", and part of Section II "Political dialogue and reforms, political association, cooperation and convergence in the field of foreign and security policy", and certain tasks within the framework of sectoral integration, in particular in the fields of environment, transport, cross-border and regional cooperation. Today, communication between the state bodies of Ukraine and relevant partners from the European Union and NATO is a continuous process. However, the most formal and effective platform for personal dialogue is the meetings of the association's bilateral bodies, which are held annually. These are the Ukraine – EU summit, the Association Council, the Association Committee and its subcommittees. In accordance with its competence, the Ministry of Internal Affairs of Ukraine is involved in the organisation and conduct of the Association Committee, the Subcommittee on justice, freedom, and security, and the Dialogue on human rights [11-14].

The scientific originality of the study lies in the fact that it highlighted topical issues of international cooperation of the Ministry of Internal Affairs of Ukraine in the field of professional training of managerial personnel with the police departments of the EU and NATO countries in the context of modern realities of administrative and legal development and ensuring international peace.

Conclusions

Ukraine has received another historic chance to build a civilised, democratic European state governed by the rule of law, confirming the European identity of the Ukrainian people and the irreversibility of the European and Euro-Atlantic course, which will have to be implemented in extremely difficult conditions of hybrid war, which should not be the reason for the delay or cancellation of important reforms, and success and irreversibility will be one of the components of our victory.

The analysis also demonstrated that the cooperation of the Ministry of Internal Affairs of Ukraine with the police departments of the EU and NATO countries in the field of professional training of police management personnel is a continuous process.

The importance of the study is determined by the focus on fulfilling the tasks facing the Ministry of Internal Affairs of Ukraine. The conclusions obtained during the study, the proposals and recommendations provided will contribute to the development of measures to improve the organisational and legal framework, strategy and tactics of organisational activities of the Ministry of Internal Affairs of Ukraine and strengthen their interaction with the police of the EU and NATO countries, and be used in the process of training managerial personnel in higher education institutions with specific training conditions and conducting investigations on relevant issues.

Relevance is also based on the need to overcome the contradictions between the need to apply European standards for ensuring international peace and the lack of a proper theoretical, methodological, scientific, and practical basis for implementing new approaches to improving law enforcement in Ukraine.

At this stage, the introduction of training specialists for the Ministry of Internal Affairs of Ukraine requires detailed adjustment and refinement. Therefore, our common task is to facilitate the timely development of these adjustments to improve the quality of training and standardisation of the North Atlantic Alliance.

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Співробітництво МВС України з поліцейськими відомствами країн ЄС та НАТО у сфері професійної підготовки управлінських кадрів

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Анотація
Метою статті є дослідження сутності й актуальності питань співробітництва МВС України з поліцейськими відомствами країн Європейського Союзу та НАТО у сфері професійної підготовки управлінських кадрів. Методологія. У роботі використано загальнонаукові та спеціально-наукові методи пізнання, конкретне поєднання яких зумовлене метою та завданнями дослідження. Використання формально-логічного методу дало змогу визначити, уточнити й доповнити окремі поняття, категорії та впорядкувати понятійно-категоріальний апарат. Застосовано також методи формальної логіки, зокрема аналізу й синтезу, дедукції та індукції, аналогії та узагальнення тощо. Наукова новизна статті полягає в тому, що в ній здійснено дослідження співробітництва МВС України з поліцейськими відомствами країн Європейського Союзу та НАТО на сучасному етапі державно-правового розвитку, а також виокремлено актуальні проблеми в цій сфері. Висновки. Співробітництво МВС України з поліцейськими відомствами країн Європейського Союзу та НАТО є одним із пріоритетних напрямів. Подальші наукові дослідження в цій сфері слід пов'язувати з детальним розробленням окремих проблем адміністративно-правового регулювання в аналізованій сфері. Зокрема, це стосується питання нормативно-правового регулювання діяльності МВС України з використанням досвіду країн Європейського Союзу та НАТО. У роботі сформульовано висновки щодо можливості використання напрямів удосконалення взаємодії МВС України з поліцейськими відомствами країн Європейського Союзу та НАТО у сфері професійної підготовки управлінських кадрів

Ключові слова:
управлінські кадри поліції; міжнародне співробітництво; досвід країн Європейського Союзу; професійна підготовка; НАТО; нормативно-правове регулювання; партнерство заради миру; євроінтеграційна політика

ЮРИДИЧНИЙ ЧАСОПИС
НАЦІОНАЛЬНОЇ АКАДЕМІЇ ВНУТРІШНІХ СПРАВ

Науковий журнал

Том 11, № 1. 2021

Заснований у 2011 р. Виходить чотири рази на рік

Оригінал-макет видання виготовлено у відділі підготовки навчально-наукових видань
Національної академії внутрішніх справ

Редагування англомовних текстів:
С. Воровський, К. Касьянов

Комп'ютерна верстка:
О. Глінченко

Підписано до друку 24 червня 2021 р. Формат 60*84/8
Умов. друк. арк. 13
Наклад 50 прим.

Адреса видавництва:
Національна академія внутрішніх справ
пл. Солом'янська, 1, м. Київ, Україна, 03035
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www: https://lawjournal.com.ua/uk

LAW JOURNAL
OF THE NATIONAL ACADEMY OF INTERNAL AFFAIRS

Scientific Journal

Volume 11, No. 1. 2021

Founded in 2011. Published four times per year

The original layout of the publication is made in the Department of Preparation of Educational and Scientific Publications of National Academy of Internal Affairs

Editing English-language texts:
S. Vorovsky, K. Kasianov

Desktop publishing:
O. Glinchenko

Signed for print of June 24, 2021. Format 60*84/8
Conventional printed pages 13
Circulation 50 copies

Editors office address:
National Academy of Internal Affairs
03035, 1 Solomianska Sq., Kyiv, Ukraine
Tel.: +38 (044) 520-08-47
E-mail: info@lawjournal.com.ua
www: https://lawjournal.com.ua/en