

**THE RULE OF LAW STATE:
REALITIES AND PROSPECTS OF DEVELOPMENT
IN THE CONTEXT OF GLOBALIZATION**

Monograph

2020

UDC 340.12:316.42](477)

P 78

*Recommended for publication by the Academic Council
of Sumy State Pedagogical University named after A.S. Makarenko
(Protocol № 5 from December 30, 2020)*

REVIEWER:

- A. M. Aparov* Doctor of Law, Professor of the Department of Law and Methods of Teaching Law of Sumy State Makarenko Pedagogical University;
- O. V. Minchenko* Doctor of Law, Associate Professor of the Department of Theory of State and Law of the National Academy of Internal Affairs;
- O. V. Legka* Doctor of Law, Professor of the Department of International Law of University of Customs and Finance.

II 78 The rule of law state: realities and prospects of development in the context of globalization: monograph. Head of the author's team O. M. Ivani. LAP LAMBERT Academic Publishing, 2020. – 123 p.

The monograph deals with the analysis of the main aspects of the impact of globalization on the state-legal sphere in Ukraine. The factors are highlighted that contribute to the loss or strengthening of the identity of the national legal system, lead to the transformation, change and modernization of state-legal institutions, norms and relations within the framework of national and supranational law.

The attention is focused on the fact that epistemological developments of a conceptual nature regarding the understanding of the essence of the rule of law, its main characteristics, and the possibilities of adapting the provisions that constitute the basis for the formation and functioning of the rule of law to national characteristics are important for Ukrainian legal science.

The philosophical and legal analysis of problems of forming a state governed by the rule of law outlined. Practical recommendations on improvement of the domestic legislation are given.

© authors, 2018
© LAP LAMBERT
Academic Publishing, 2020

GROUP AUTHORS

- APAROV A.M. – Doctor of Juridical Sciences (Grand PhD), Professor – § 2.4
- IVANII O.M. – Candidate of Pedagogics (PhD), Associate Professor – § 1.2
- KUROVA A.A. – Candidate of Juridical Sciences (PhD) – § 2.3
- KUCHUK A.M. – Doctor of Juridical Sciences (Grand PhD), Associate Professor – § 1.1
- MYROSLAVSKYI S.V. – Candidate of Juridical Sciences (PhD), Associate Professor – § 2.2
- NESTERENKO O.S. – Candidate of Juridical Sciences (PhD) – § 2.5
- CHERNADCHUK O.V. – Candidate of Juridical Sciences (PhD) – § 2.1
- SHESTOPALOV R.M. – Candidate of Juridical Sciences (PhD) – § 2.6

CONTENT

FOREWORD	5
Chapter 1. LEGAL STATE IN UKRAINE IN THE CONTEXT OF GLOBALISATION: THEORETICAL BASIS	
§ 1.1. Natural School of Law	7
§ 1.2. Information rights during the pandemic in the conditions of global changes: restrictions or protection	22
Chapter 2. APPLIED ASPECTS OF IMPLEMENTATION OF THE CONCEPT OF THE RULE OF LAW IN UKRAINE	
§ 2.1. Experience of foreign countries in countering the legalization of criminal proceeds by financial intelligence units and law enforcement agencies	37
§ 2.2. Problematic issues of legal regulation of the use of bill in the modern system of financial services in Ukraine in the context of globalization	45
§ 2.3. Regarding the issue of mobbing in labour legal relations.....	61
§ 2.4. Sports law as an integral element of the legal system.....	75
§ 2.5. Features of procedural legal relations of the head of pre-trial investigation body with the prosecutor.....	90
§ 2.6. Criminal proceedings and public activists.....	105

FOREWORD

In 1996, Ukrainian society decided on the direction of its development, fixing in the Constitution the intention to develop a state governed by the rule of Law (Article 1), in which the principle of the rule of law (Article 8) is recognized and operates, and a person is the main value (Article 3). Almost 30 years of development of Ukraine allows us to draw certain conclusions about the state of its formation and functioning as a legal entity, as well as determine the prospects for the implementation of this German concept in Ukrainian reality.

The doctrine of the rule of law state, like the doctrine of the rule of law, is a component of Western legal culture and is based on the values inherent in the Western legal tradition. Domestic legal doctrine has long been in the sphere of Soviet legal culture, for which completely different (compared to Western) axiological postulates were immanent. Even today, the national system of law largely proceeds precisely from the provisions established for it, which are not fully consistent with the natural and legal understanding within which a state governed by the rule of law can function.

An important indicator of the formation of a state governed by the rule of law is the level of ensuring human rights. And this is really a problem for Ukraine. This is confirmed by a significant number of international ratings, statistics of appeals to the European Court of human rights. In addition, it should be noted that even today human rights, even within the framework of legal science, are perceived mainly through the prism of legal positivism.

Consequently, epistemological developments of a conceptual nature regarding the understanding of the essence of the rule of law, its main characteristics, and the possibilities of adapting the provisions that constitute the basis for the formation and functioning of the rule of law to national characteristics are important for Ukrainian legal science. It is also necessary to understand the state of implementation of the concept of the rule of law through the prism of certain branches of law. This influenced the structure of this work, making it necessary to distinguish two sections: the first of which concerns the theoretical foundations of the formation and functioning of the rule of law

state in the context of globalization, and the second – applied aspects of the implementation of the concept of the rule of law state in the context of the functioning of the Ukrainian state. At the same time, it is worth noting that the authors analyse the foreign experience of developing the rule of law in modern conditions. Special attention is paid to the implementation of human rights in the context of the pandemic, which significantly affected the lives of people around the world, which could not but affect the field of law.

The research was carried out within the framework of the scientific topic of the Department of Law and Methods of Teaching Law of Sumy State Makarenko Pedagogical University (registration number 0120U100544).

The authors hope that this work will be useful both for students of law institutions of higher education, in particular, in the context of mastering the content of individual academic disciplines and forming their legal culture based on the principles of the rule of law, and for scientists whose subject of knowledge is the rule of law in the context of globalization. The problems of forming a state governed by the rule of law outlined by the author's team and the proposed directions for improving the process of its functioning can be considered as promising areas for further scientific research.

Chapter 1.

LEGAL STATE IN UKRAINE IN THE CONTEXT OF GLOBALISATION: THEORETICAL BASIS

§ 1.1. Natural School of Law

For a long time now, the main regulator of public relations has been law (despite the fact that lawyers still cannot reach a consensus on what this regulator is and they are unlikely to be able to do so).

Despite the enshrinement in the Basic Law of Ukraine of the principle of the rule of law (Article 8 of the Constitution of Ukraine), as well as the recognition of Ukraine as a “democratic, social, law-based state” (Article 1 of the Constitution of Ukraine), law is regarded as a system of obligatory, formally defined rules of conduct adopted (sanctioned) and protected by the state in the vast majority of educational accessories and textbooks on theory of law. In fact, the same definition was given in the first half of the twentieth century by A. Vyshinsky. However, neither the rule of law can be realized, nor the law-based state can be developed in a society in which legism prevails. The identification of law and the law, the naming of the law by law can have tragic consequences. I will remember the history of China. “Citizens' lives have become a web of prohibitions and regulations. Everything was regulated: the number of dishes that can be served to the family table, the color of dresses, the shape of hairstyles, the thickness of mats and the height of benches, the shape of trees in the yard, the frequency of ventilation and the number of bows to be made before sowing. All agricultural work was carried out under the supervision of officials, who managed the timing and types of plantings, bought most of the grain grown at a fixed ridiculous rate and imposed five, tens and hundreds of penalties if there was a crop failure” [1].

The law cannot be equated with law. The first is only a prescriptive text, which may not reflect social relations, not be implemented in social behavior, and therefore not be the norm (as noted above, “above all, the legal norm is where and when it is demonstrated by social practice. So far as the official text may have any content, the presence of a text about a legal norm is not equivalent to the existence of the norm itself. The official text has no

magical power, and with its help it is impossible, like a spell, to generate social phenomena that do not yet exist” [2], although it has a textual form of expression. Law, according to M.I. Koziubra is a complex, social phenomenon in which various aspects of society vital functions, including other phenomena, are intertwined [3, p. 10].

Awareness of human being as a value, the existence of such values as freedom and justice will allow avoiding the creation of such societies, which were described by L. Fuller in his paper “Anatomy of Law”. In particular, this is an excerpt from the report of an American scientist who spent a year in the USSR, visiting primarily the judiciary. This scholar wrote: “Like the harsh climate, barren land and poor peasantry, courts and laws seem to be perceived as properties of the landscape with which nothing can be done, because such was the will of higher powers, so it has always been so... When I asked the specific question of whether the courts were “fair”, the answer was usually a shrug and an uncertain “yes.” There was shrugging – because the question seemed strange to them. Ordinary Russians are passive about such things, they don’t consider the law good or evil, but inevitable, and this is not because of their passion for contemplation. We can say that they very rarely think about the law. “What will you do?” [4, p. 7].

Thus, domestic legal science (and, education of course,) should finally understand the need to move away from legalism and accept the concepts of law, which can be called idealistic.

In this connection, one cannot fail to mention the Nuremberg Trials, in which the leaders of National Socialist Germany were convicted of war crimes and crimes against peace. The question arises: on what basis were these people convicted? Based on their law? Based on Hitler's orders, which were the law? No, of course, not. This process, perhaps for the first time in the world history, took place and achieved its result due to an appeal to natural law, to the idealistic concept of law. “That's the way it should be”, says common sense. It is common sense, but not a prescriptive text.

We should agree with the words of V.M Ivanov regarding the fact that “the Nuremberg International Military Tribunal is criticized for being a post factum court, and justice was administered contrary to the principle of *nullum crimen, nulla poenitentia, sine lege*. However, the merit of the Nuremberg tribunal is in the “superpositivity” of its decisions, which, according to the international scientist O.O. Merezko, are “examples of the effectiveness of natural

law in the twentieth century”. Domestic and foreign jurists emphasize the fundamental importance of interpreting international crimes, especially on the basis of natural law, that the principle of “no crime without punishment” is understood in the natural and law aspect, when it comes to a crime not in the law, but in law”[5, p. 25].

The theory of natural law (axiological or natural and law approach) has become especially relevant in Western culture, according to which the initial form of law is social consciousness; law is not a text of the law, but a system of ideas (concepts) about universally binding norms, rights, responsibilities, prohibitions, natural conditions of their origin and implementation, the order and forms of protection, which is in the public consciousness and focused on moral values. In this approach, law and the law are separated, the primacy is given to law as a normatively enshrined justice, and the law is seen as its form, designed to correspond to law as its contents.

Although it should be noted, that there are different areas (theories, etc.) within the school of natural law. Therefore, using the concept of “theory of natural law”, we understand that as such one theory is quite difficult to single out and we are talking primarily about different theories, the integrating feature of which is the provisions mentioned above. In this regard, it is impossible to disagree with the thesis of V.O. Chetvernin (who in his turn indicates that similar views are held by V.D. Zorkin) regarding the classification of theories of natural law: “In modern concepts, natural law is derived from:

1) existence of transcendent ideas, the divine order of existence (neotomism, neo-Protestantism);

2) objective existence of the idea, spirit, eidos, ideal values (neo-Hegelianism, the Munich School of Phenomenology, “material value ethics”);

3) realized in social life of a priori due (neo-Kantianism);

4) existence of consciousness (existentialism, existential and phenomenological hermeneutics);

5) irrational foundations of human nature (intuitionism, philosophical anthropology) [6, p. 35].

In general, positively perceiving such a classification and recognizing its practical role in the detailed study of natural law concepts, we note that our goal is not a comprehensive coverage of each of these concepts, which, in

fact, is extremely difficult and almost impossible to do within one paper. Our goal is to focus on the pluralism of understandings of law (even within the so-called one school).

Explaining the content of theories of natural law, we pay attention to the theory of law by I. Kant. Considering I. Kant's views on morality and law, L.E. Kryshchyn notes that the thinker proceeded from the fact that “in fact, not all people are able to behave morally, that is, to be guided in their actions by the moral law. A man, deprived of the law, is much more terrible than the wild beast. Hence the need to create a system of law restricting human will by external laws. But there is only one law that does not contradict human freedom – the law of freedom or moral law. Therefore, the whole system of law should necessarily be deduced from the categorical imperative. Otherwise, it would contradict the idea of autonomy, would level the value of a human being, which, according to Kant, is unacceptable. After all, it is freedom that gives a person not just value but dignity, making it possible for him to be an end in himself and impossible to provide an equivalent. It is freedom, as a result, is the fundamental difference between a man and an animal” [7, p. 107].

As indicated by O.M. Beliaieva, Kant was clearly aware of the inadequacy of the categorical imperative as a regulator of human behavior and saw the way out in law. Considering the correlation between law and morality, Kant characterizes the laws of law as a kind of first degree of morality, thus providing for the famous statement of V. Soloviov that “morals is the minimum of morality”. In favor of this expression is evidenced by the general source of moral and law laws, namely – practical reason or free will of people” [8, p. 24].

In his paper “Basics of Metaphysics of Morals”(Grundlegung zur Metaphysik der Sitten), Immanuel Kant emphasizes that everyone should agree that the law, if it is to have moral significance, that is, as the basis of obligation, should be accompanied with the absolute necessity; that the commandment: do not deceive – is important not only for people, as if other intelligent beings should not pay attention to it; that happens in a similar way to all other moral laws in the proper sense; that, therefore, the basis of obligation should be sought not in human nature or in the circumstances of the environment in which a human being is placed, but a priori exclusively in the notions of pure reason, that any other order based on the principles of experience alone and

even in in some respects, the general prescription, because it is the least, at least in the sense of the original factor, based on empirical grounds, of course can be called a practical rule, but can never be considered as a moral law [9, p.47].

The thinker emphasizes that “the *motivum morale* should accordingly be considered entirely in itself and for itself and separated from the motives of the rationality of the senses. We by nature have enough abilities in the soul to very precisely and subtly distinguish of moral goodness from problematic and pragmatic goodness, and then the action is so pure that it seems that it came down from heaven” [10, p. 50].

Given that I. Kant deprived the will of all the incentives that could arise for it from following the law, the philosopher has nothing left but to recognize the general pattern of action in general, which only should serve the will with principle, and which can be formulated in the following way: I should never act otherwise than on such a maxim, in relation to which I might also wish it to become a general law.

Thus, according to I. Kant, the practical imperative is as follows: Act so that you never treat humanity, both in your person and in the person of anyone else, only as a means, but always at the same time and as a goal [9, p. 169].

In the paper “Towards Eternal Peace” I. Kant emphasizes that in relation to domestic law (*ins civitatis*), i.e. law in force within the state, it contains the question: “Is the uprising a legitimate means for the people to throw off the yoke so the so-called tyrant (*non titulo, sed exercitio talis*)? It is difficult for many people to answer this question, but it is easily solved by the transcendental principle of publicity. If the rights of the people are violated, then the overthrow of his (tyrant) will be fair - there is no doubt in it. [11].

I. Kant's idea that freedom is immanent to a human being is important: “Morality and law are historically determined ways of existence of the idea of freedom in reality. The idea of freedom is thus inextricably linked to the phenomenon of human existence in the world. In Kant's manuscript legacy there is the following record: “Man (being in the world) is at the same time a being, who is characterized by freedom - a property that is completely outside the causal principles of the world and yet inherent in man”- points out O.M. Mukhutdinov [12, p. 178].

Kant's natural and law views thus presuppose a certain distinction between law and the law. This provision is inherent in the modern vision of the correlation between law and the law. Thus, for a lawyer there is no doubt (we can say that it is axiomatic) the thesis that not every legislative act or bylaw (as well as the decision of a judicial or administrative body) may be lawful in contents (may not comply with the principle of the rule of law). This, in its turn, focuses on the axiological understanding of law. Law is a value category. In deciding whether an act is legal or not, it is necessary to proceed from what or whether it is fair. It is justice that forms the basis of legality.

I note that even in the Consolidation of Justinian, or rather in the Institutions we can see the distinction between “ius natural” (“with which nature has endowed all living things”, Inst. 1,2, pr) and “ius gentium” (which determines the natural cause for all people, which is peculiar to all nations”, Inst. 1,2,1; vgl. aber 2, 1,41) [13, p. 128].

Considering the natural and law concept, it is impossible not to mention the outstanding philosopher of law B.M. Chicherin, especially considering that in Ukraine his creative achievement remains almost unexplored, despite the rather deep and comprehensive coverage of the issue of human freedom, morality in relation to law; truth (justice) as the basis of law, etc.

Although the lawyer pointed out that law is the external freedom of man, which is determined by the general law [14, p. 84]; recognition of the force of legal law (arising from the requirements of freedom) is based not on physical necessity, but on a reasonable awareness of the needs of coexistence, without which the implementation of moral foundations would be impossible [14, p. 90] and considered the existence of law only in the state, while he criticized positivism, emphasizing that the basis of legal and moral law is one source - the recognition of the human person. In a situation where the legal law is insufficient, it is morality that may require the performance of action on the basis of internal conviction, for example, in the performance of duties that have no legal force [14, p. 91].

Elsewhere in his work, the author draws attention to the fact that “law and morality have one root - the spiritual nature of man; they operate in the same sphere of human relations; external actions and internal beliefs are closely related to each other, and therefore the interaction of two principles is necessary, and at the same time the need to reconcile them” [14, p. 92].

B. Chicherin argued that the binding nature of legal law is associated with the recognition by a certain society of its (law) as a valid rule of law. It is this recognition that gives effect to legal law. As a result, the latter may be different at different times and in different nations [14, p. 93]. Such an understanding of law allowed the German historical school, likening law to language, to consider it as an organic phenomenon of the people's spirit, which should accordingly develop not by artificial and arbitrary, but evolutionary - as the formation of people's needs and consciousness.

The basis of law is truth (justice). At the same time, justice is considered that that is applied equally to all. Recognition of natural equality (all human beings are intelligent, free beings, created in the image and likeness of God, and therefore equal among themselves) is the highest requirement of truth. The true truth is the recognition of equal dignity and freedom for all human beings, regardless of the circumstances of their being or their status. The truth is that everyone gets their own - *sum cuique tribuere*.

It should be remembered that the analysis of the creative achievement of B.M. Chicherin allows us to conclude that Boris Mykolayovych distinguished three degrees of freedom:

- 1) external freedom - law;
- 2) inner freedom - morality;
- 3) social freedom - the transition of subjective morality into objective and its combination with law in public associations (family, civil society, church and state) [15, p. 74].

According to the philosopher of law, the free interaction of people in one way or another will lead to a conflict of rights, which should be resolved by the judiciary. At the same time, it is possible that “the legal title is on one side, and at the same time the other party makes claims based on the truth and, accordingly, which therefore cannot be ignored”. This situation is due to the fact that the law itself, which establishes general rules of law, is not without its shortcomings and gaps. Due to its generality, it cannot predict all the variety of specific cases. In these circumstances, if guided by legal law, it will be necessary to take away from a person that that belongs to him “on the merits” (and not in accordance with the letter of the law). “Hence the Roman expression: *summum jus summa injuria*” (unquestionably exercised law is equivalent to higher lawlessness; higher legality is higher lawlessness). The

factor that helps to find a way out of this situation is not legal law, but – *aequitas* (true justice) [14, p. 100-101].

Considering the natural and law concepts cannot fail to mention the doctrine of law of P.I. Novgorodtsev, whose masterpiece covers such important topics as the relationship between general and individual, human rights, law-based state, civil society and more.

Note that during the Soviet era, they tried to forget the name of P.I. Novgorodtsev, in particular, because of his criticism of the stateless form of organization of society, which in one way or another leads to totalitarianism. At the same time, according to Pavlo Ivanovych, the most dangerous is Marxism, which raises society to an absolute, as well as anarchism, which, in contrast to the former, over-absolutizes individualism.

According to the eminent philosopher of law, social progress is connected with the development of the individual and, accordingly, follows from his tasks.

P.I. Novgorodtsev criticized the approach of the “old individualists” to the elucidation of the principle of personality as the basis of social philosophy because they linked the realization of the individual origin with the establishment of a certain perfect form of social coexistence. Sharing faith in the expected harmony of life, they were convinced of the possibility of finding a form that would unite all people with “bonds of harmonious unity” and allow a person to fully realize themselves. As an example of such an understanding of the social ideal P.I. Novgorodtsev calls the theory of people's sovereignty, which “at one time was at the center of all political beliefs and hopes” [16, p. 47-48].

P.I. Novgorodtsev argued that the content of the social ideal should be established in accordance with the basic norm of morality, which is “the concept of the person in its unconditional meaning and infinite vocation”. At the same time, Pavlo Ivanovych noted that being a member of a social union, embarking on the path of social progress, a person does not lose his unconditional significance. For a person, society does not become a higher goal, which imposes moral norms on him, and accordingly a person does not become a means. After all, society itself has no ethical significance outside the principle of personality, as society is understood as a union of persons. That is, the quality of society in one way or another depends on the quality of its components. If we consider that the person is not a moral value, then society

itself is deprived of this value. Even if we consider society as the interaction of persons, which is enshrined in certain norms of coexistence, such as customs and traditions, which receive a kind of separate life from a human being. However, as noted by P.I. Novgorodtsev, even in this case, society depends on the interaction of people, which adds a subjective element to the forms of social coexistence: will and consciousness. And, again, not in these variable and conditional forms is the embodiment of the social ideal, but “in living and conscious individuals, who in their endless pursuit of the ideal influence the change of external forms” [16, p. 103-104].

Important for understanding the relationship between individual and collective, the foundations of law and the law is the following thesis of the eminent philosopher of law: the difficulty of the issue of interaction of a person and society is that they are seen as self-sufficient substances that are being in antagonism with each other. Accordingly, the synthesis of personal and social origins will look like an oxymoron, because their relationship is depicted as “external self-limitation of the forces of collision”. However, this mechanistic approach should be changed with the organic one: “the individual and society should be seen as having common roots. Such a root can only be a living human spirit, which gives life and unites people in unions”.

However, the principle of personality should not be considered as a self-sufficient, abstract and self-contained origin. So far as with such an approach a person becomes an obstacle to the development of society. In addition, such a society (according to the approach under consideration) becomes unnecessary for a person, and therefore it is impossible to talk about any social ideal [16, p. 105].

P.I. Novgorodtsev criticizes positive law, noting that it is perceived as a mandatory and indisputable norm of social relations; in addition, such a rule implicitly includes a provision on the supreme law-making source, which “is above all social elements and can unite them under a single universally binding law. In other words, the notion of a legal norm presupposes that it prevails regardless of the perception or non-perception of individuals, the sanction of which, as well as the obligation to obey it, are established by some sovereign body that rises above the arbitrariness of individual wills. As noted by the philosopher of law, referring to the words of Pollock, in this case, “law and lawlessness in the legal sense is only what the state has allowed and prohibited and nothing more”” [17, p. 408]. From this approach, we can con-

clude that the factor in the validity of laws is not their reasonable and fair content, but the state's availability of the means of implementation – coercion.

The search for the scientific concept of law, according to P.I. Novgorodtsev, should be carried out not on the basis of analysis of the legislation, even taking into account certain historical frameworks as it will not give the answer to a question, and is, on the contrary, evasion of the answer, and on condition of going beyond formal jurisprudence and consideration of law in connection not with formal, but real sources. This is the only way to guide the diversity of scientific characteristics of law – historical, sociological, psychological, and philosophical.

In addition, with a formal and legal approach, as noted P.I. Novgorodtsev, philosophically and scientifically “the construction of law and the state hangs in the air, detached from their real positions and life roots”. The central element of this understanding is the state, but this provision needs both scientific and philosophical justification. This theory can provide answers to issues about law and remain consistent only within the general concepts that generally do not go beyond the understanding of the state. “But it is only necessary to raise the issue of law on a broader basis, as at the same time we will take a step aside”. In these circumstances, we will feel the need to use sources other than those indicated by the supporters of the formal and legal approach. And this need will be even stronger when we take into account not only the formal basis of law, but its connection with the material basis of legal consciousness. “Then there is a need to depart from the strict limits of the formal and legal method and move to such constructions that fit into the category of natural law” [17, p. 420-421].

The practice of the European Court of Human Rights is informative in this respect. Thus, the Convention for the Protection of Human Rights and Fundamental Freedoms enshrines a number of human rights, both absolute and relative. At the same time, as the grounds for restricting the latter, it cites not only legality (compliance with the law), but also the need for such a restriction in a democratic society.

In accordance with Part 2 of Art. 8 of the Convention for the Protection of Human Rights and Fundamental Freedoms, for example, “Public authorities may not interfere with the exercise of this right, except where interference is carried out in accordance with the law and is necessary in a democrat-

ic society in the interests of national and public security or the economic well-being of the country, to prevent riots or crimes, to protect health or morals or to protect the rights and freedoms of other people” [18].

Similar provisions are contained in Articles 9-11 of the Convention for the Protection of Human Rights and Fundamental Freedoms. That is, legal grounds alone are not enough to restrict a certain human right. Such a restriction should be necessary in a democratic society, meet the principle of proportionality.

It should be noted that in the case of “Tolstoy Miloslavsky v. The United Kingdom”, the European Court of Human Rights noted that in the case of defamation of the High Court jury, compensation for moral harm in the amount of 1.5 million pounds, although it meets the requirement “in accordance with the law” does not meet the requirement of “necessity in a democratic society” [19].

It is also appropriate in the context of the issue under consideration to point out that the European Court of Human Rights has developed an approach to understanding the concept of “the law” in its practice. Thus, in *Sunday Times v. the United Kingdom* case, the Court noted that the word “the law” in the phrase “prescribed by law” covers not only statutes but also unwritten law. If it is considered that a restriction imposed by common law does not apply to “prescribed by law” merely on the ground that it is not enshrined in the law, this deprives the State party to the Convention in which the common law applies, protection of Part 2 of Art. 10 and undermines the very roots of the legal system of this state. And this would be contrary to the intentions of the drafters of the Convention.

In “*Sunday Times v. The United Kingdom*” case, the applicants did not claim that the “statutory” formula required legislation in each case; it is necessary only if, as in the present case, the rules of common law are so vague that they do not comply with the principle of legal certainty, which, according to the applicants, constitutes the essence of the concept set out in this phrase.

The European Court of Human Rights has stated that in paragraphs 2 of Articles 9, 10 and 11 of the Convention, both the French and the English texts use the equivalent expression “provided by law” (*pruvues par la lois* and *prescribed by law*). However, in the French text the same expression is used in Article 8 part 2 of the Convention, in Article 1 of Protocol No. 1 and in

Article 2 of Protocol No. 4, and the English text, respectively, says otherwise: “in accordance with the law” the law), “provided for by law” and “in accordance with law”. Thus, faced with several versions of the international treaty, which are authentic but not exactly, the same, the Court was forced to interpret them, which would bring them as close as possible and would contribute to the goals and objectives of the treaty. In the Court's view, the following two requirements follow from the phrase “prescribed by law”. First, law should be adequately accessible: citizens should have the appropriate to the circumstances ability to find out which legal rules are applied to the case. Second, a rule cannot be considered “a law” until it has been formulated with a sufficient degree of precision to enable a citizen to agree with it: he should be able, with advice if necessary, to predict, in a reasonable manner according to the circumstances, consequences that may be caused by one or another action. It is not necessary to predict these consequences with absolute certainty: experience shows that such a goal is unattainable. Moreover, although certainty is highly desirable, it may be accompanied by “signs of fossilization”, while law should be able to keep up with changing circumstances. Accordingly, a number of laws inevitably use more or less “vague terms”: their interpretation and application is the task of practice [20].

This approach was also emphasized in the European Court of Human Rights' judgment in *Malone v. The United Kingdom* case: the phrase “in accordance with the law” should be interpreted on the basis of two principles. The first principle assumes that the term “the law” encompasses not only the written law. The second principle, recognized by the Commission, the authorities and the applicant, provides that the alleged interference should have some basis in national law. In addition, the Court noted that the words “in accordance with the law” not only refer to domestic law, but also to the quality of the law, requiring it to comply with the rule of law, which is explicitly stated in the Preamble to the Convention [21].

In addition, the Court found a violation of Art. 8 of the Convention regarding the violation by public authorities of the requirement of “necessity in a democratic society”, noting that the existence in the state of legislation providing for the use of covert means to obtain information by criminal police in order to perform its tasks “is generally necessary to maintain order and prevent criminal offenses”. However, in a democratic society, the use of a system of such means (in particular the decision to intercept mail and tele-

phone messages) should be accompanied by sufficient safeguards to prevent abuse by public authorities [21].

It is necessary to mention another decision of the Court in the case “Zayichenko v. Ukraine” (Zayichenko v. Ukraine) in terms of resolving the issue of violation of Art. 5 of the Convention. Recognizing the violation of paragraph 1 of Art. 5 of the Convention, it was emphasized: “The Court has repeatedly held that detention is such a serious measure that its application is justified only when other, less severe, measures have been considered and found insufficient to safeguard the interests of the individual or society that may require the detention of the person concerned. This means that compliance of the detention with national legislation is insufficient; it should also be necessary in the specific circumstances” [22].

It should be noted that characterizing the formal and legal approach P.I. Novgorodtsev points to its application in English law. At the same time, the latter provides in fact only one exception to the principle of the rule of law - the possibility of popular resistance, which is traditionally mentioned by the analytical school of law. However, Pavlo Ivanovich's analysis of the British responses to such resistance allowed him to remark: “The calmness with which modern English jurists speak of resistance shows that in reality this perspective is for them an abstract assumption rather than a real possibility”. Therefore, it seems that English lawyers treat the issue of state and law as a means, purely mechanistic; without investing in their content any moral principles. They do not question the conformity of the government's actions to the goal it should pursue – the public good. Therefore, English lawyers have a certain distrust of the natural law doctrines of continental Europe. “The appeal to the right of reason against the right of the state seems to them either superfluous or understandable only under certain conditions, for example, a heroic means at a critical time. Although, as indicated by P.I. Novgorodtsev, even in England, the theory of natural law was relevant during the struggle for civil liberty [17, p. 412-414].

In this connection, the position of the European Court of Human Rights in “Bączkowski and others v. Poland” should be mentioned: “As has been stated many times in the Court's judgments, not only democracy is a key feature of the European social order, but the Convention was designed to promote and uphold the ideals and values of a democratic society. Democracy, as the Court emphasized, is the only political model provided for in the Con-

vention and the only one compatible with it. According to the wording of the second paragraph of Article 11, as well as Articles 8, 9 and 10 of the Convention, the only necessity capable of justifying interference with any of the rights enshrined in those Articles is that which may flow from a “democratic society”.

It should be noted that according to some domestic lawyers, special relevance natural and law doctrine “reached during periods of intensification of social movements to change their lives for the better - in the Renaissance, liberal and democratic revolutions, the collapse of totalitarian regimes and law-based states forming” [24, p. 33].

As P.I. Novgorodtsev noted, lawyers of the historical school of law, criticizing the natural law theory, put forward two main provisions, which, according to P.I. Novgorodtsev, were rightly criticized by the historical school. The author in particular means, first, the doctrine of the arbitrary formation of law; second, the assumption of the possibility of finding a system of norms that are equally suitable for all peoples at all times. Subsequently, another important shortcoming of natural law understanding was identified: the desire to give subjective legal ideals direct significance. However, as Pavlo Ivanovych notes, the essence of the natural and law understanding of law is not limited to these three postulates, otherwise it would have long been denied by the spread of historical views and accurate ideas about law [25, p. 6].

REFERENCES:

1. Vologzhanin M. From China with horror. URL: m.maximonline.ru/longreads/get-smart/_article/shinese-totalitarianism.
2. Chetvernin V.A. Institutional theory of law. URL: teoriaprava.hse.ru/files/institution.pdf
3. Kozyubra MI Legal understanding: concepts, types and levels. Law of Ukraine. 2010. № 4. pp. 10–21.
4. Fuller Lon L. Anatomy of Law: Per. from English H.Комарова. Kyiv: Sfera, 1999. 144 p.
5. Ivanov VM The Nuremberg Trials: Historical and Legal Significance (to the 70th Anniversary of the International Military Tribunal). Journal of Kyiv University of Law. 2015. № 3. P.24-28.

6. Chetvernin V.A. Modern concepts of natural law. Moscow: Nauka, 1988. 144 p.

7. Kryshchtop L.E. Morality and law: two sides of the same postulate. Philosophy. Politics. Culture: materials of the school of the young philosopher, timed to the 20th anniversary of the formation of the CIS (Moscow region, June 20-25, 2011). Moscow: Progress-Tradition, 2011. S. 104-108.

8. Belyaeva OM Political and legal views of I. Kant. Bulletin of Perm University. 2014. Issue. 1 (23). Pp. 23-28.

9. Kant I. Fundamentals of the metaphysics of morals // Kant I. Essays in 4 volumes in German and Russian / Prepared for ed. E. Soloviev and A. Sudakov (Moscow), B. Tushling and W. Vogel (Marburg). Moscow: Moscow Philosophical Foundation, 1997. Vol. III. 784 s.

10. Kant I. Lectures on ethics: Per. with him. / Общ. ed., comp. and introduction. Art. A.A. Гусейнова. Moscow: Respublika, 2000. 431 p.

11. Kant IK eternal peace. URL: http://www.civisbook.ru/files/File/Kant.K_vechnomu_miru.pdf.

12. Mukhutdinov O.M. About the imaginary right to lie and the right to hide the truth. Proceedings of the Ural Federal University. Ser. 3. Social sciences. 2016. № 2 (152). Pp. 175-180.

12. Dreier, Horst. Natural law and legal positivism. Pauschalurteile, Vorurteile, Fehlurteile. From the right, that with us geboren ist. Current problems of natural law. Wilfried Härle, Bernhard Vogel (Hrsg.) Herausgegeben im Auftrag der Konrad-Adenauer-Stiftung e.V. p. 127-170.

14. Chicherin B. Philosophy of law. Moscow: Typo-lithography of the Society IN Kushnerev and K, 1900. 336 p.

15. Rudenko DA Natural and legal views of BN Chicherina: the relationship between liberalism and legal understanding. Proceedings of the Russian State Pedagogical University named after AI Herzen 2007. №24. T. 6. S. 72-76.

16. Novgorodtsev PI About the social ideal. Moscow: Press Publishing House, 1991. 640 p.

17. Novgorodtsev, P. State and law. Questions of philosophy and psychology. Moscow, 1904. XV, book. 74 (IV). Pp. 397-450.

18. Council of Europe. (1950). Convention for the Protection of Human Rights and Fundamental Freedoms.

19. Case of Tolstoy Miloslavsky v. the United Kingdom, Application no 18139 / 91, Council of Europe: European Court of Human Rights, 13 July 1995, available at <http://hudoc.echr.coe.int/eng?i=001-57947>.

20. Case of Sunday Times v. United Kingdom, Application no 6538/74 Council of Europe: European Court of Human Rights, 26 April 1979, available at: <http://hudoc.echr.coe.int/eng?i=001-57584>.

21. Case of Malone v. the United Kingdom, Application no 8691/79 Council of Europe: European Court of Human Rights, 2 August 1984, available at: hudoc.echr.coe.int/rus?i=001-57533.

22. Case of Zaichenko v. Ukraine (№ 2), Application no 4579/09 Council of Europe: European Court of Human Rights, 26 February 2015, available at: <http://hudoc.echr.coe.int/eng?i=001-152598>.

23. Case of Bączkowski and others v. Poland, Application no 1543/06, Council of Europe: European Court of Human Rights, 24 September 2007, available at: <http://hudoc.echr.coe.int/eng?i=001-80464>.

24. General theory of law / Ed. E. Kozyubri. Kyiv: Vaite, 2016. 392 p.

25. Novgorodtsev P.I. Historical school of lawyers. Its origin and destiny. German historical school of law. Chelyabinsk: Socium, 2010. S. 1-227.

§ 1.2. Information rights during the pandemic in the conditions of global changes: restrictions or protection

Despite borders, climate, religious and cultural differences, over the past few decades, humanity has begun to globalize. The Internet, business development, transport and tourism are constantly reducing distances and obstacles between people. The world becomes interpenetrated. This provides unlimited opportunities, and at the same time increases the risks. If any danger occurs in one place, it can potentially threaten everyone. No country, even the most developed or closed country in the world, can feel safe if there are wars going on somewhere, someone is suffering from hunger, or infections like coronavirus break out.

Until today, humanity has not yet faced a pandemic in a globalized world in the context of extremely rapid dissemination of information. Therefore, coverage of events related to quarantine is under close attention around

the world. Many people try to find a sensation in modern events, from time to time distorting information about quarantine and its consequences, replacing the main emphasis with secondary ones. The consequence of this is the spread of panic among the population, which makes it vulnerable to misinformation, and information relations in the state are thus developing in the wrong direction. That is why the issue of inviolability of the principles of information relations during quarantine becomes relevant as the basis on which everyone involved in informing society should rely. The realization of information rights, freedom of speech, and privacy are the most important mechanisms for protecting human rights.

“Right to information” and “information rights” are not identical concepts. The concept of “information rights and freedoms of a person and citizen” is a broader concept, since it covers not only the possibility of “freely collecting, storing, using and distributing information in any way of your choice” or even “the possibility of freely receiving, using, distributing, storing and protecting information necessary for the realization of your rights, freedoms and legitimate interests”, but these are all human and civil rights and freedoms of an informational nature [1; 117].

Human information rights are the main, fundamental capabilities of a person that are necessary for his normal existence, development and satisfaction of information needs. They are inalienable and equal to all. They are priority, universal, guaranteed by the state, meet international standards and are protected by public authorities. Human information rights can be known exclusively through the prism of their systemic properties, which is manifested in the presence of information rights and freedoms in various spheres of society’s life [2; 158].

Article 2 of the Law of Ukraine “On information” indicates such principles of information relations as: guarantee of the right to information; openness, availability of information, freedom of exchange of information; reliability and completeness of information; freedom of expression and beliefs; legality of receiving, using, distributing, storing and protecting information; protection of a person from interference in his personal and family life [3].

In the modern world, governments around the world, given the growing influence of the Internet on various spheres of public relations, are trying to develop “rules of the game”, including those that can interfere with rights and

freedoms. And in these processes, the question of proportionality and balance of such regulation and possible restrictions become difficult and extremely important. Under the pretext of the need to protect themselves from the rapid spread of the disease, nations around the world agree to narrow human rights, often without legal grounds.

In the EU, there is a general rule for all member states that requires obtaining consent to the processing of personal data. It is established by the General Data Protection Regulation – GDPR. Failure to comply with the rules entails serious sanctions. Consent must be voluntary, with the right to refuse, and the information received must be protected and used only for the intended purposes. That is why European countries have urgently begun to make changes to domestic legislation in order to give the right to use data in the event of a pandemic or man-made disaster.

The information legislation of Ukraine, on the one hand, regulates the rights of citizens to collect, receive, use and distribute information, sets requirements for the processing of personal data. Thus, according to Article 7 of the Law of Ukraine “On personal data protection”, it is prohibited to process personal data on the state of health of a person without his consent [4]. Taking into account the constitutionality of this right, a person has the right to know who and where processes his personal data, to grant or not to grant permission for their transfer or storage. In today’s realities, the protection of personal data of each individual should be interpreted as one of the aspects that is the basis for the existence of a democratic society. However, in case of emergency situations, in particular, during the COVID-19 pandemic, the government can make a decision on changes in legislation, as happened during the quarantine period. April 13, 2020 the Law of Ukraine “On amendments to the law of Ukraine “On protection of the population from infectious diseases” on preventing the spread of coronavirus disease (COVID-19)” No. 555-IX was adopted [5], which, in particular, allowed the processing of personal data without the consent of a person.

The actions of the authorities were aimed at obtaining as much data as possible on patients with COVID-19, so that, having this information, it is possible to implement measures that will contain the spread of this disease as effectively as possible. In particular, this concerned data on the state of health, place of hospitalization, place of residence and work of the person. These measures were argued as an opportunity to effectively take preventive

measures, for example, by testing for COVID-19 among visitors to places of frequent stay of the patient before hospitalization. Most often, these are co-habitants, neighbours and colleagues. In this way, it is possible to identify more infected people, isolate them and contain the spread of the disease. In this case, the introduction of the law, on the one hand, violates the rights of citizens to the confidentiality of personal data, and on the other hand, it is quite justified during the quarantine period.

However, it is not yet known how these data will be stored in the future and whether this observation will stop in the post-quarantine period. There is an assumption that the epidemic may lead to a decrease in human rights, in particular, the right of everyone to information security (the right to receive and transmit information without the intervention of public authorities) is under threat.

After all, a similar situation can be traced in many countries of the world, where authorities collect data on the movement of citizens in order to understand where the places of the greatest congestion of people are formed. The data is taken from the advertising industry, which often gets access to people's geolocation when they sign up for certain apps. Close cooperation with the advertising technology industry to track the location of citizens raises some concerns. This sector, in general, is known for its opacity, and many users will not know that these programs are monitoring their movement.

In an effort to slow the spread of COVID-19, governments around the world are also taking increasingly large-scale physical surveillance measures. These include: the active use of facial recognition cameras equipped with thermal sensors; the use of drones to monitor the movement of citizens and extensive video surveillance networks to ensure compliance with curfews [6].

With digital and physical surveillance, there are significant privacy concerns. For example: the identity of an infected person and their medical information were disclosed by media representatives, which led to riots near her home and public pressure; the woman stopped visiting a bar popular with lesbians, fearing that in case of infection, the whole country would know that she was of non-traditional sexual orientation.

However, there are grounds and cases when restrictions on human rights in the field of information are still justified. Thus, Article 29 of the Universal Declaration of human rights indicates that in the exercise of their rights and freedoms, everyone can be subject to restrictions established by

law solely for the purpose of ensuring proper recognition and respect for the rights and freedoms of others and ensuring fair requirements of morality, public order and general welfare in a democratic society, and also notes that the exercise of the relevant rights and freedoms should in no case be contrary to the purposes and principles of the United Nations [7].

Based on these facts, three main features have been identified that, taken together, can become grounds for restricting human rights and freedoms: ensuring the rights and freedoms of third parties or morals, public order and general well-being, and, importantly, only in the sense that exists within a democratic society; ensuring compliance with the goals and principles of the UN and the existence of direct legal prescriptions regulating the application of such restrictions.

Also, according to the Convention for the protection of human rights and fundamental freedoms, Article 8 states that public authorities may not interfere with the exercise of the right to respect for private and family life “other than under the law and when necessary in a democratic society in the interests of national and public safety or the economic well-being of the country, for the purpose of preventing disorder or crime, for the protection of health or morals, or for the purpose of protecting the rights and freedoms of others” [8].

A goal such as countering the COVID-19 pandemic certainly falls within the goal of protecting public health. However, other criteria for restricting human rights must also be met: first of all, privacy restrictions must be established by law and not rely on indefinite discretionary powers of law enforcement or executive bodies.

However, the Ukrainian Constitution clearly provides that when adopting new or making changes to existing laws, it is not allowed to narrow the content and scope of existing rights and freedoms. This norm is absolute. Some exceptions can only occur if martial law or a state of emergency is imposed, as is again provided for in the Constitution. In addition, according to Article 92 of the Constitution of Ukraine, only the laws of Ukraine define the rights and freedoms of human and citizen, guarantees of these rights and freedoms; the main duties of a citizen, the legal basis and guarantees of entrepreneurship.

But in the fight against the pandemic, it was by-laws that imposed many new duties on citizens that were not provided for by the laws of

Ukraine, as well as limited and changed the legal basis of entrepreneurship, the legal regime of the state border, and ensuring public order. And not all of them were subsequently duplicated in the emergency law “On combating coronavirus” [9].

Taking into account the numerous practices of the ECHR regarding state interference with individual rights, the court notes that in order for the interference to be justified, the presence of 3 factors is necessary:

- quality law – national legislation must be clear, predictable and appropriately accessible. The requirement of clarity applies to the scope of discretionary powers vested in state bodies. National law must reasonably clearly define the scope and manner of exercise of the relevant powers entrusted to public authorities in order to guarantee individuals the minimum level of protection they are endowed with in a democratic society in accordance with the rule of law;

- a legitimate justified goal is to set specific, measurable, achievable, realistic and time-based goals to change and improve the situation in the future;

- social necessity – compliance of the balance of the rights of one person with the balance of the rights of the entire nation to a healthy existence and a safe environment. For example, the balance of individual and public health interests is reflected in the case “Solomakhin against Ukraine”, 2012 (p. 36), where the court noted that the violation of the applicant’s physical integrity can be considered justified by public health considerations and the need to control the spread of an infectious disease in the region [10].

The ECHR pointed out in its explanations that due consideration was given to factors such as: the nature of the rights affected by derogation from obligations, the circumstances leading to an emergency and its duration; whether ordinary law would have been sufficient to deal with the threat posed by a public danger; whether the measures were a valid response to an emergency; whether the measures had been used for the purpose for which they had been authorised; whether safeguards against abuse had been provided.

The state should notify the Secretary-General of the Council of Europe of the duration of the waiver of obligations, the nature of the measures taken and the grounds for extending their application. The European Court of justice, when considering cases of violations of human rights by states during a

pandemic, will take into account the existence of such a notification and this may affect the results of decisions.

In the current situation, the attack on human rights is a test of society for tolerance, a kind of large-scale social experiment. There are fundamental things and inviolable rights that do not depend on conditions and a “good goal”. It is the inviolability of human rights that is an axiom. And if humanity does not stand up for such rights now, it will be even more difficult to do so in the future. And it doesn’t matter the reason under which certain rights are restricted, if it is illegal. Even if such a reason sounds very global – “prevent a pandemic and save humanity”.

In the context of the development of the global information-communication space, the development of telecommunications systems and networks and modern digital transformations, the problem of finding common approaches and legislative definition or clarification in international and national regulatory legal acts of the necessary categorical-conceptual apparatus, in particular, the terms “Privacy”, “information privacy”, “private personal data”, “security of private personal data”, etc. is being updated. At the same time, the list of confidential information about a person that should be subject to legal protection guarantees requires clarification and legal consolidation, as well as effective digital systems for technical protection of this information have been developed and implemented [11; 79].

An equally important problem of violation of rights in the information sphere is the use of false, fake information in information confrontation and conducting special information operations against certain groups or states. There is even a new term – infodemia – an avalanche of misinformation, whipping up and intimidation in the desire of mass media to raise their own ratings, pseudoscientific advice and interpretations, which covers the world and seriously complicates the fight against the real problem of stopping and overcoming the disease [12].

UN Secretary-General A. Guterres, in his special video address, noted that “The world today has united in the fight against the COVID-19 pandemic, which has led to a crisis that it has not known since the Second World War. But today we are witnessing another dangerous epidemic – the epidemic of disinformation” [13].

The society faced with the challenge of information forgeries, false news and provocations about the coronavirus, which led to a number of nega-

tive consequences: from intensifying protest behaviour and ignoring quarantine measures to damaging important infrastructure facilities. For example, in Britain, mobile communication stations that transmit a 5G signal are set on fire because of the fake that such stations spread Covid-19. World Health Organization even created a special section on its website to refute the main fakes about the disease. There were also fakes that: “quarantine is artificially invented, so you need to go out on the streets and continue your normal life”; “COVID-19 is a mild illness that can be treated with traditional medicine”; “the coronavirus vaccine will contain chips that will be implanted in a person during vaccination”.

As a result, the spread of misinformation about the coronavirus disease (COVID-19) is accompanied by:

- whipping up fear, hopelessness, pessimistic forecasts;
- displays of aggression and hatred towards: foreigners, migrants and refugees considered as a source of spread of the virus, with subsequent calls to deprive them of medical care; elderly people manifesting through offensive calls and images equating them to the status of low value;
- arrest of journalists [14; 79].

“Hate speech” appears. For potential victims, it is with its help that an atmosphere of hopelessness, despondency, apathy, and pessimism is created.

As it often happens in such situations, states try to regulate the spread of disinformation in the simplest way – by restrictions, prohibitions and punishments. A number of states apply legislation already adopted earlier: fakes are jailed in Cambodia, Thailand, and Malaysia. In Hungary, the law also introduces liability for spreading disinformation during a pandemic – up to five years in prison. In Russia, against the background of the pandemic, an administrative penalty was introduced for “public dissemination of deliberately false information under the guise of reliable reports about circumstances that may pose a threat to the life and health of citizens”, with several million fines in rubbles for violators, as well as criminal liability if the spread of fakes leads to serious consequences for a person’s health or death, with a potential prison sentence of up to five years. Armenia generally deviated from its obligations under the European Convention on human rights and in a corresponding statement noted that any information about the coronavirus, including the number of patients, their state of health, the number of tests performed, can

be published exclusively with links to official data, and any information that does not correspond to official data should be immediately deleted by the people who disseminated it [15].

Among the documents the Action plan against disinformation should be noted [16], developed jointly by the European Parliament, the European Council, the European Economic and Social Committee and the committee of regions, as well as the code of practice against disinformation [17], by which representatives of internet platforms, leading social networks, advertisers and the advertising industry agreed on a code of practice with the ability to self-regulate in order to address the issue of spreading disinformation on the Internet.

Private international companies make a significant contribution to countering fakes about COVID-19. So, for search queries about COVID-19, the Google search service provides an answer about tips that have proven their effectiveness, information about the symptoms of the disease, links to the authorities of many countries (the Ministry of Health in the case of Ukraine) and up-to-date statistics on the course of the epidemic. Similarly, Facebook has launched a user awareness campaign called “The Coronavirus Information Centre [18], which also publishes the latest news and current data on the course of the epidemic.

Among other things, large-scale measures are being implemented at the state level in many countries to improve the information literacy of citizens, including programs to improve media hygiene. It is the ability of a person to take information from reliable sources, compare, analyse, critically comprehend, give reasoned evidence, and not succumb to provocations that creates a safe information environment.

According to Article 17 of the Law of Ukraine “On protection of the population from infectious diseases”, citizens and their associations have the right to receive reliable information about the epidemic situation in Ukraine. Executive authorities and local self-government bodies, state sanitary-epidemiological service bodies and health care institutions are required to periodically report through the mass media about the epidemic situation and anti-epidemic measures being implemented [19].

At the beginning of the epidemic, Ukraine, like many other countries around the world, was not ready for proactive disclosure of information. But as of today, the Ministry of Health publishes daily and regularly updates sta-

tistics on the total number of patients, deaths and those who have recovered, as well as on the number of tests performed and the readiness of health care institutions to further counteract the virus. The same information is available in the form of open data, which allows its convenient processing for analytical and other purposes. In addition, the government has dedicated a website to informing about how best to behave during the virus in order to protect against infection, who are at risk and how it is transmitted.

Any information documented by any means and on any media about the epidemic that is in the possession of managers is considered public. The question is whether it is restricted or open. And here, first of all, it should be mentioned that the law on access to public information contains the presumption of openness of information: “Public information is open, except in cases established by law” (Part 2 of Article 1 of the Law). The law defines three categories of information with restricted access: confidential, official and secret information. In the context of a threat or spread of an epidemic, such restrictions may apply, for example, in terms of medical confidentiality of specific people and their personal/confidential data (residential address, last name, first name and patronymic, date of birth, property status, etc.). Nothing else can get into the status of “limited”, given the level of public significance of the topic [20].

So, almost everything that the authorities and local self-government bodies really have “in their hands” (documented) regarding the epidemic, developments, and events is public information with an open access procedure. This is the number of artificial respiration devices, and the number of certain drugs available and needed, and the amount of budget funds of any level that is spent and planned to be spent on what exactly, and who is the supplier, and response plans, and certain parameters regarding the state of the health system at any level, and the number of patients, and the number of suspected diseases, and information about the prices of drugs, masks, etc.

The European Open Data Portal, which collects information from all EU portals, has created a separate section dedicated to COVID-19. There you can find data sets about the virus and related issues from different EU countries, as well as initiatives and projects that are built on the basis of data, analyse data, collect data, etc.

If a state of emergency is introduced, the format for receiving public information may change. The Law of Ukraine “On the legal regime of the state

of emergency” does not contain any special guarantees or grounds for restrictions. However, they are provided for the information sphere and only for cases of mass violations of public order (Article 18). They may consist in: banning the production and distribution of information materials that may destabilize the situation; regulation of the operation of civil television and radio centres, prohibition of the operation of amateur radio transmitting devices and radio - emitting devices for personal and collective use; special rules for the use of communications and the transmission of information through computer networks.

They can, because the specific configuration of measures, types, and region of application must be defined in the Presidential Decree, which must be supported by the Verkhovna Rada of Ukraine within two days from the date of publication.

At the same time, the introduction of such a regime, which is even tougher from the point of view of human rights compared to quarantine, will indicate an even higher level of public significance of the topic.

Most people move their activities to the field of information-communication technologies with a wide audience, which most of the time is online, where, among other things, there is a search for dissatisfied and desperate people as potential victims of information manipulation. There is another global problem of access to personal information – cybercrime. INTERPOL among the most common types are: phone fraud, when criminals call themselves employees of a polyclinic or hospital and claim that a relative of the victim has contracted a virus and demands payment for medical treatment, and fishing – emails that allegedly come from national or global health authorities in order to deceive victims to provide personal data, payment data or open an application containing malware [21].

One of the most popular methods of activity of cybercriminals is spam mailing. At the moment, it is best suited for adapting to disguise infected emails as official government messages about COVID-19, or as materials that allegedly have sensational news about the coronavirus.

Spam mailing can be carried out via email, as well as through messengers or communities in social networks. The main task of criminals in this case is to make sure that the user opens the message or clicks on the link that will be indicated in the message body.

Information technology crimes are often international, meaning that criminals operate in one state and their victims are located in another state. International cooperation is therefore of particular importance in combating such crimes.

The Council of Europe Convention on Computer Information crime ETS No. 185 was signed on November 23, 2001 in Budapest [22]. It is open for signature by both member states of the Council of Europe and those states that are not members of it, but participated in its development. In particular, it was signed by the United States and Japan. Ukraine is a signatory country to this convention.

Also, the UN Economic and Social Council adopted resolutions “International cooperation in the prevention and investigation of fraud, criminal misuse and falsification of personal data and related crimes, as well as prosecution and punishment for them” of July 26, 2007 [23; 47].

So, human information rights are state – guaranteed opportunities for a person to meet their needs in obtaining, using, distributing, protecting and protecting the amount of information necessary for life. The introduction of quarantine certainly entails certain violations of human rights, but this is justified by the state of the need to protect the entire population. Awareness of the need to limit your own freedom of movement and communication is a test, but love for your loved ones, unwillingness to get sick yourself or infect someone else are strong incentives.

Even Democratic states apply administrative levers of influence to citizens who violate the rules of quarantine, but this should only be regarded as an exceptional temporary measure. The rights and freedoms of people who are temporarily restricted in the face of the threat of an epidemic should be fully restored as soon as the danger is overcome.

It would be advisable to develop at the level of information legislation changes to the rights and obligations of citizens regarding the preservation and provision of personal data by individuals, the provision of data by legal entities for the period of dealing with emergency situations. In particular, to regulate the procedure for receiving, storing, using and protecting from access by third parties, data of individuals and legal entities collected during an emergency. Also, describe the appropriate procedure for liquidating or storing data obtained during quarantine. These changes to the information legis-

lation will allow the authorities to respond more quickly to the occurrence of such emergencies and implement appropriate measures more effectively.

Thus, we must understand that humanity has become global, we are all very dependent on each other and there is no turning back. This applies to health, climate change, and collective security. Elites in rich countries need to understand that it is necessary to build health systems in poor countries, because unknown viruses will come from there and grow there before the pandemic. Thus, the UN General Assembly, in its resolution “Global solidarity to counter Covid-19”, called for the intensification of international cooperation to defeat the pandemic, in particular through the exchange of information, scientific data and best practices.

The post-pandemic world order should ideally be the result of a consolidated solution involving influential international organizations, national governments, and representatives of civil society institutions and organizations. However, whether it can be an equal and effective partner of official institutions in building a new world will depend not only on the prospects for maintaining the democratic political process, but also on the ability of civil society itself – both directly in the fight against the coronavirus pandemic and its consequences, and at the stage of post-crisis dialogue between the authorities and society.

REFERENCES:

1. Diorditsa, I. (2016). Classification of information rights and freedoms of human and citizen. *Entrepreneurship, Economy and Law*, 7.
2. Vakarchuk, L. (2018). Basic approaches to understanding the concept of “Human information rights”. *Entrepreneurship, Economy and Law*, 2.
3. About Information: The Law of Ukraine No. 2657-XII of 02.10.1992. / Verkhovna Rada of Ukraine. 1992. No. 48. article 650. Available online: <https://zakon.rada.gov.ua/laws/show/2657-12>
4. On personal data protection: The Law of Ukraine No. 2297-VI of 01.06.2010. Available online: <https://zakon.rada.gov.ua/laws/show/2297-17>
5. On amendments to the Law of Ukraine “On protection of the population from infectious diseases” concerning the Prevention of the spread of coronavirus disease (COVID-19): Law of Ukraine No. 555-IX of 13.04.2020. Available online: <https://zakon.rada.gov.ua/laws/show/555-20>
6. Apetik, A. How do COVID-19 surveillance tools violate the rights of

people in the world? Available online: <https://ecpl.com.ua/news/yak-instrumenty-stezhennia-za-covid-19-porushuiut-prava-liudey-u-sviti>

7. Universal Declaration of human rights of 10 December 1948. Available online: <https://zakon.rada.gov.ua/laws/show/995%20015#Text>

8. European Convention for the protection of human rights and fundamental freedoms of 3 September 1953. Available online: https://www.echr.coe.int/Documents/Convention_UKR.pdf

9. Yarovoy, A. Human rights violations during the pandemic: where is the limit? Available online: https://rus.lb.ua/blog/anatolii_yarovyi/453463_porushennya_prav_lyudini_pid_chas.html

10. Human rights interference during the pandemic. *Yurydychna hazeta [Juridical newspaper]*. March 27, 2020. Available online: <https://yur-gazeta.com/publications/practice/inshe/vtruchannya-v-prava-lyudini-pid-chas-pandemiyi.html>

11. Pylypchuk, V. H. (2020). Problems of protecting human privacy, rights and security in modern conditions of digital transformations. *Protection of human rights, freedoms and security in the information sphere in modern conditions*: Proceedings of the second scientific and practical conference. May 21, 2020, Kiev.

12. Doroshenko, K. World intellectuals on the consequences of the coronavirus pandemic for humanity. Available online: <https://suspilne.media/20654-svitovi-intelektuali-pro-naslidki-pandemii-koronavirusu-dla-ludstva/>

13. UN chief: we must counter the lies about COVID-19 with facts and scientific data. Available online: <http://news.un.org/ru/story/2020/041376212>

14. Zabara, I. M. (2020). Actual issues of security and protection of human rights in the information sphere in the context of quarantine measures: assessments, position and initiatives of the UN. *Protection of human rights, freedoms and security in the information sphere in modern conditions*: Proceedings of the second scientific and practical conference. May 21, 2020, Kiev

15. Dvorovoy, M. Pandemic (for) digital rights: how Ukraine and the world are responding to new challenges. Available online: <https://zmina.info/articles/pandemiya-dlya-czyfrovyh-prav-yak-ukrayina-ta-svit-vidpovidayut-na-novi-vyklyky/>

16. Action Plan against Disinformation. Joint Communication to The European Parliament, The European Council, The Council, The European Economic And Social Committee And The Committee Of The Regions. Brussels, 5.12.2018. Available online:

<https://ec.europa.eu/newsroom/dae/document.cfm?docid=56166>

17. Code of Practice on Disinformation. European Commission. Available online: <https://ec.europa.eu/digital-single-market/en/news/code-practice-disinformation>

18. Facebook. Coronavirus (COVID-19) Information Centre. Available online: https://www.facebook.com/coronavirus_info

19. On the protection of the population from infectious diseases: Law of Ukraine No. 1645-III of April 06, 2000. Available online: <https://zakon.rada.gov.ua/laws/show/1645-14>

20. Access to information during quarantine – guarantees or restrictions? *Access to the truth*. Available online: <https://dostup.pravda.com.ua/news/publications/dostup-do-informatsii-pid-chas-karantynu-harantii-chy-obmezhennia>

21. INTERPOL. Available online: <https://www.interpol.int/en/News-and-Events/News/2020/INTERPOL-warns-of-financial-fraud-linked-to-COVID-19>

22. Convention on Cybercrime of 23.11.2001 (2007). *Ofitsiinyi visnyk Ukrainy [Official herald of Ukraine]*, 65. Available online: https://zakon.rada.gov.ua/laws/show/994_575

23. Anufriev, M. I.; Kisilevych-Chornoivan, O. M. (2017). International legal bases of cooperation in the fight against cybercrime. *Our law*, 3.

Chapter 2.

APPLIED ASPECTS OF REALIZATION OF THE CONCEPT OF LEGAL STATE IN UKRAINE

§ 2.1. Experience of foreign countries in countering the legalization of criminal proceeds by financial intelligence units and law enforce- ment agencies

The article is devoted to the study of the experience of foreign countries in countering the legalization of criminal proceeds by financial intelligence units and law enforcement agencies. The urgency of the problem presented in the article is explained by the spread of economic crime in every country in the world. Moreover, the recognition by the world community that the legalization (laundering) of proceeds from crime is a global threat to economic security, necessitates the study of the experience of other countries in this area. The article defines the role of the State Financial Monitoring Service of Ukraine in countering the legalization of criminal proceeds and establishes the features of its interaction with law enforcement agencies. It has been established that in the United States it has been established and operates the most effective system for countering the legalization of criminal proceeds, due to the existence of a well-established centralized data exchange at all levels, including at the level of financial intelligence and law enforcement. It is noted that within the system of countering the legalization of criminal proceeds in Italy, the Financial Guard carries out operational and investigative activities, while the functions of the financial intelligence unit are reduced mainly to information and analytical support. It is proved that the French mechanism for counteracting the legalization of proceeds from crime is fully in line with international standards, as it involves the interaction of authorized bodies at three levels. It is emphasized that in the Russian Federation, shortcomings in the information exchange between the financial intelligence unit and law enforcement reduce the quality of the investigation of the facts of money laundering. It is concluded that the above analysis of foreign experience can be implemented in Ukraine only taking into account national characteristics. The State Financial Monitoring Service of Ukraine should play not only a purely coordinating role, but also actively cooperate with law

enforcement agencies and assist them in every possible way in investigating the facts of money laundering. It is also urgent to adopt a legislative act that would regulate in detail the procedure for interaction of the financial intelligence unit with the law enforcement sector.

Ensuring financial-economic security in today's conditions is an urgent issue for every country, which is due to the spread of economic crime, in particular by committing crimes aimed at legalizing criminal proceeds. Thus, according to some experts, transnational criminal corporations reinvest between 500 and 1.5 trillion dollars in the USA annually obtained illegally. And such a volume of funds of illegal origin certainly attracts the attention of the entire world community, since it accounts for almost 5% of the world's gross product [1, p. 257]. Accordingly, each state should ensure the ability of law enforcement agencies to investigate and counter the laundering of proceeds from crime, to cooperate with financial intelligence units, which are a kind of centre for collecting and processing information related to the legalization of criminal proceeds. Given the above, the issue of countering this crime by financial intelligence units and law enforcement agencies is relevant and requires attention from the scientific community. At the same time, the study of foreign experience in countering money laundering will reveal some trends in the interaction of financial intelligence units with law enforcement officers, which, in turn, will make it possible to use this experience in Ukraine.

Today, a significant number of scientific papers are devoted to the issue of countering the legalization of criminal proceeds. At the same time, the issue of foreign experience in countering this crime by financial intelligence units and law enforcement agencies was the subject of study by such scientists as Ye. V. Zolotariev, V. V. Kovalenko, M. V. Koldovskyi, L. V. Kryvonos, A. A. Krylov, Ye. H. Sakharova, D. H. Shelestynsky and others.

The problem of money laundering has become an international one in recent years. At the same time, the international community recognizes that the legalization (laundering) of proceeds from criminal activity has become a global threat to economic security, and therefore states are required to take coordinated measures to combat this socially dangerous activity both at the national and international level [2]. At the same time, N. Reeder and others draw attention to the importance of interaction between state management bodies and law enforcement agencies in the fight against financial offenses,

since in the context of an economic crisis, the financial system of each country is exposed to a number of factors that create conditions for illegal encroachments on the financial interests of states [3]. Therefore, the need for interaction of financial intelligence units with law enforcement agencies in order to counter money laundering is obvious and recognized at the international level.

Before proceeding directly to the study of foreign experience in countering the legalization of criminal proceeds by financial intelligence units and law enforcement agencies, we note that in Ukraine, the State financial monitoring service of Ukraine acts as a financial intelligence unit. Its role is to ensure consistency between the activities of law enforcement agencies and financial institutions during their interaction in the field of countering the legalization of criminal proceeds, in particular in terms of information exchange. The coordinating role of the State financial monitoring service of Ukraine is also manifested in the fact that it processes a large array of information received from financial institutions, and this, as a result, reduces the burden on law enforcement agencies in terms of checking all information about suspicious financial transactions, because information is transmitted in a generalized form [4, p. 179]. Hence, the main form of interaction between the State financial monitoring service of Ukraine and law enforcement agencies is the exchange of information. At the same time, the features of such interaction include the following: regulated mainly by the norms of administrative law; consistency of actions in time and place; the subjects of interaction are independent of each other, and for one of them (specifically for law enforcement agencies), the fight against crime is the main task; cooperation is based on achieving a common goal – countering the legalization of criminal proceeds [5, p. 86-86].

Turning to foreign experience, we note that the United States of America has the richest experience in countering the legalization (laundering) of proceeds from crime, since in 1970 it was in this country that an active fight against the laundering of “dirty” money began [2]. The financial intelligence unit is FinCEN (Office for combating financial crimes), which operates within the structure of the United States Department of the Treasury. Its main function is to assist law enforcement agencies in their anti-legalization activities both in the United States and internationally [6]. Information about rele-

vant financial transactions is provided by the specified financial intelligence unit to law enforcement agencies at their request or on its own initiative [7].

In other words, FinCEN is an information-analytical centre that collects, processes, analyses and classifies financial information, and then transmits it to the competent authorities. Independently, FinCEN does not investigate crimes related to the legalization (laundering) of proceeds from crime, but only provides information support to special services and law enforcement agencies [8, p. 213]. In addition, in the United States of America, there is a Federal Data-Base, which accumulates information about suspicious banking operations and other data related to the legalization of criminal proceeds, access to which is also provided to law enforcement agencies, which undoubtedly greatly facilitates the investigation of such a negative phenomenon as the laundering of “dirty” income.

So, the above-mentioned state has the most effective system of countering the legalization of criminal proceeds. This is due, in our opinion, to the fact that the United States has established centralized data exchange at all levels, including at the level of the financial intelligence unit and law enforcement agencies. Moreover, providing access to databases contributes to a faster and more complete investigation of the circumstances of the case.

In Italy, the fight against financial crimes was launched earlier than in many other European countries. Thus, in 1982, Law No. 646 “On combating the mafia” was adopted, which allowed checking the bank accounts of people suspected of involvement in criminal groups [9, p. 90].

At the same time, the current system of countering the legalization of criminal proceeds in Italy is based on the principles of interaction between financial, intelligence institutions and law enforcement agencies. For example, the Ufficio Italianodei Cambi (UIC) is an organ of the Bank of Italy that performs financial intelligence functions and works closely with units of the Italian financial guard (Guardiadi Finanza), which is a law enforcement agency and specializes in all economic crimes. The financial guard carries out operational search activities in the field of money laundering, while the functions of the financial intelligence unit are limited to information and analytical work in this area [10].

Ufficio Italianodei Cambi does not conduct independent investigations, but performs the functions of collecting information; analysing information; deciding whether to send information to the investigative authorities; ex-

changing information with financial intelligence units of other countries. In some cases, the financial intelligence unit is authorized to suspend suspicious transactions for up to 5 business days at the request of the Financial guard, the anti-Mafia Bureau, or on its own initiative, provided that this does not affect the investigation that is already underway [11]. So, within the framework of the system of countering the legalization of criminal proceeds in Italy, the Financial guard carries out operational search activities, while the functions of the financial intelligence unit are mainly reduced to information and analytical support.

In France, the system of countering the legalization of criminal proceeds has a three-level structure. The French financial intelligence unit is TRACFIN. Its tasks include collecting, analysing and objectively evaluating information about the sources and directions of cash flow in the accounts of credit institutions. TRACFIN also provides mutually beneficial cooperation with special services, including customs control bodies, police, courts and other financial monitoring services. In addition, this financial intelligence unit is actively involved in international cooperation with foreign bodies that perform similar functions. TRACFIN can initiate criminal proceedings when confirming incriminating materials against bank customers. In turn, law enforcement and judicial authorities inform TRACFIN about the final verdict based on the results of checking operational accounting cases [12, p. 86-87].

Moreover, the French financial intelligence Unit works closely with the Central Directorate of the criminal police and the General Directorate for combating major financial crimes (OCRGDF) established under it. The interaction of these departments is carried out at two levels: during the investigation, where there is a systematic exchange of information aimed at determining what information a particular structure has; during the transfer of the TRACFIN case to the prosecutor's office, there may be bilateral or trilateral meetings to assess the content of the information received [12, p. 89].

So, the French mechanism for countering the legalization of proceeds from crime fully complies with international standards, because it includes the interaction of authorized bodies at three levels. The success of this country also lies in the presence of feedback between the relevant authorities during the exchange of information, as well as regular meetings aimed at assessing the content of information on the facts of money laundering.

The last country whose experience we will consider is the Russian Federation. In this country, the functions of the financial intelligence unit are assigned to the Federal Financial Monitoring Service (Rosfinmonitoring), which, as in Ukraine, performs a coordinating role, coordinating the interaction of law enforcement and financial entities. However, Rosfinmonitoring's activities are not limited to a coordinating role. This division, together with law enforcement agencies, performs a number of tasks aimed at achieving the goals of the system of countering the legalization of criminal proceeds.

Thus, the most urgent tasks of joint activities of the Federal Financial Monitoring Service and law enforcement agencies are:

- 1) increasing the demand for law enforcement and supervisory authorities results of financial investigations;
- 2) conducting an investigation of such acts as laundering of proceeds from crime and financing of terrorism;
- 3) confiscation of proceeds of crime and means of committing crimes [13, p. 108].

At the same time, the Russian legislator fixed the obligation of Rosfinmonitoring to interact with law enforcement officers by exchanging information. The main provisions regarding such an exchange are set out in the Instructions for organizing information interaction in the field of countering the legalization (laundering) of proceeds from crime. However, in order for the effectiveness of such an exchange to be maximized, there must be feedback, where each of the parties would inform each other about the results of reviewing the information received.

Recently, as studies show, in Russia there is a decrease in the effectiveness of the activities of internal affairs bodies in the field of countering the legalization (laundering) of funds or other property acquired by criminal means, one of the reasons for which is the low efficiency of the use by internal affairs bodies of information coming from the divisions of the Federal Financial Monitoring Service [14, p. 241]. Also, when interacting with the Russian financial intelligence unit and law enforcement agencies, there are a number of shortcomings in sending and executing requests that affect the effectiveness of interaction. Ye. H. Sakharova considers such shortcomings to be:

- 1) requests sent by law enforcement agencies on their content do not allow for a full and high-quality verification of people;

2) it is not specified what exactly the illegal actions of the perpetrators are;

3) the absence of a predicate crime plot in the requests;

4) indication in requests as the purpose of the investigation only to establish the volume of non-cash monetary transactions committed by the guilty person and the existence of dubious transactions without connection with legalization or a specific crime;

5) the absence of information on the amount of stolen income in requests, which does not allow identifying the relationship of operations with the legalization of funds and other property obtained by criminal means;

6) when requesting information about the accounts of individuals and legal entities, their binding to any information about their receipt of criminal income, commission of a predicate crime, or the actual circumstances of verification is not indicated;

7) the periods of commission of crimes are not specified or defined too broadly; there is no information about the alleged connections of verified people, including with legal entities or public organizations [13, p. 110]. It is obvious that such shortcomings in information exchange reduce the quality of investigation of the facts of money laundering.

Thus, the issue of countering the legalization of criminal proceeds as the main threat to the financial and economic security of the country is relevant for all countries, and Ukraine is no exception. At the same time, practical counteraction to criminal money laundering is in the plane of interaction between the financial intelligence unit and law enforcement agencies. Successful practices and features of interaction of these entities in the field of countering the legalization of criminal proceeds in the countries under consideration are a multi-level system of information exchange, the presence of feedback when exchanging information, the existence of databases on suspicious financial transactions, the holder of which is financial intelligence units, and access to them by law enforcement officers. At the same time, it is worth noting that success in countering money laundering depends on a developed regulatory framework that regulates interaction in general and the exchange of information, in particular, between the subjects of the system of countering the legalization of proceeds from crime.

The above analysis of foreign experience can be implemented in Ukraine only taking into account national characteristics. The state financial

monitoring service of Ukraine should play not only a coordinating role, but also actively interact with law enforcement officers and help them in every possible way in investigating the facts of money laundering. It is also urgent to adopt a legislative act that would regulate in detail the procedure for interaction of the financial intelligence unit with the law enforcement sector.

REFERENCES:

1. Shkurko, V. I. (2019). History of formation and development of legal regulation of cooperation between EU member states on countering the legalization of proceeds from crime. *Problems of legality*, 145, pp. 256–267. Available online: <https://doi.org/10.21564/2414-990x.145.163662>

2. Kryvonos, L. V. (2014). International experience of state mechanisms for preventing and countering the legalization (laundering) of proceeds from crime. *Derzhavne upravlinnya: udoskonalennya ta rozvytok [Public administration: improvement and development]*, 6. Available online: <http://www.dy.nayka.com.ua/?op=1&z=730>

3. Ryder, N., Turksen, U., Hassier, S. (2014). *Fighting Financial Crime in the Global Economic Crisis*. Book.

4. Steblianko, A.V. (2019). Information exchange as the main form of coordination of law enforcement agencies' activities with financial institutions during their interaction in the field of countering the legalization of criminal proceeds. *Prykarpatskyi yurydychnyi visnyk [Subcarpathian Law Herald]*, 1 (26), pp. 177–180.

5. Rieznik, O.M., Bertsiukh, A. O. (2020). The concept and features of interaction between the State financial monitoring service of Ukraine and law enforcement agencies on countering the legalization of criminal proceeds. *Legal horizons*, 22 (35), pp. 82–86.

6. Koldovskyi, M. V. (2008). World experience in combating money laundering in the banking sector in modern conditions of globalization of financial markets. *European vector of economic development: Sat. Nauk. PR. D.: DUET*, 1 (4), pp. 26–32.

7. Kovalenko, V. V., Dmytrov, S. A., Yezhov A.V. (2007). *International experience in preventing and countering money laundering of proceeds from crime and terrorist financing*: monograph. Sumy: UABS NBU.

8. Moskalenko, N. V. (2014). The USA experience in building a system for preventing and countering the legalization of proceeds from crime. *Finansy, uchet, banky [Finance, accounting, banks]*, 1 (20), pp. 209–214.

9. Shamanina, E. I. (2014). *Counteraction to legalization of illegal income in the banking system of the Russian Federation: experience and ways of development*: diss. ... Candidate of Economical sciences: 08.00.10. Moscow.

10. Goriukova, O. V. (2014). *Bases of financial monitoring in credit institutions*: manual for undergraduates in the field of training 080300 “Finance and credit”. M.: Direct-Media.

11. Shelestinskii, D. G., Burtasova, A. V. (2018). Practice of the Italian Republic in the field of combating the legalization of income obtained by illegal means. *Financial law and management*, 2, pp. 17–24. Available online: 10.7256/2454-0765.2018.2.24155.

12. Zolotarev, E. V. (2014). *Improving the system of countering the legalization of criminal proceeds and control mechanisms in credit organizations*: diss. ... Candidate of Economical sciences: 08.00.10. Moscow.

13. Sakharova, E. G. (2018). The use of law enforcement capabilities of the Federal financial monitoring service in the investigation of legalization of proceeds of crime. *Legal science and law enforcement practice*, 4 (46), pp. 106–113.

14. Krylov, A. A. (2017). Interaction of the internal Affairs Department with the Federal service for financial monitoring in the field of countering money laundering within the framework of the Eurasian economic Union. *Bulletin of the Moscow University of the Ministry of internal Affairs of Russia*, 6, pp. 240–243.

§ 2.2. Problematic issues of legal regulation of the use of bill in the modern system of financial services in Ukraine in the context of globalization

Taking into account the rapid development of information-communication technologies in the world and the steady trend towards unification of legal regulation of financial services markets in the context of globalization, building a state governed by the rule of law in Ukraine, not least, requires rethinking approaches to legal regulation of operations in these markets, taking into account the needs associated with the realities of globalization.

Scientific studies of the current state of regulation of the financial services market in Ukraine indicate an important place occupied by the problems of legal regulation of relations in the securities market in the field of regulation of the financial services market.

According to Article 1 of the Law of Ukraine “On financial services and state regulation of financial services markets”, financial services markets, among others, also include operations with securities [1].

Qualitative changes in the legal regulation of relations in the field of securities issuance and circulation, which have already taken place in our country and the world experience in the field of legal regulation of the securities market, indicate the existence of a number of problems in this area, which are primarily related to the peculiarities of the development of national and global financial services markets.

In particular, it should be emphasized that the European financial services markets in terms of operations with securities are the result of the development of traditional, stable economies, and that is why borrowing the world experience with separate parts of individual norms of European legislation with their subsequent inclusion in the national legislation of Ukraine leads to problems of legal regulation of relations in the financial services market, including in relation to operations with securities in Ukraine. Being focused on different models of legal regulation of the securities market, certain novelties of domestic legislation in this area lead to inconsistency of the implemented norms with the norms of other national laws and bylaws.

Examples of such inconsistency are the problems of legal regulation of the use of bills in the system of financial services regulated by Article 3 of the Law of Ukraine “On financial services and state regulation of financial services markets”, in particular related to the functioning of financial bills as well as operations that banks can carry out with bills in modern economic conditions.

Unlike other operations with securities in the financial services market, the problems of using bills in the financial services market in the system of operations with securities in Ukraine in modern conditions of globalization are the least studied, which makes it necessary to pay special attention to them.

According to Article 3 of the Law of Ukraine “On financial services and state regulation of financial services markets”, financial services are considered to be the issuance of payment documents, payment cards, traveler’s checks and/or their maintenance, clearing, and other forms of payment security. One of the oldest financial services that remains very popular to this day,

both in European countries, as well as in the USA and Great Britain, is services for issuing bills as a form of payment security.

In Ukraine, at the present stage, unfortunately, the provision of financial services related to the use of bills just begins to be investigated, which in the future will make it possible to use the unique properties of bills more widely in the financial services market.

In the legal and economic literature, certain aspects of this form of payment support were studied by H. F. Shershenevych, Yu.V. Kravchenko, I. I. Pylypenko, O. P. Zhuk and others.

It should be noted that the legal regulation of bill circulation was one of the first to undergo significant unification, which began at the beginning of the XX century with an attempt to globally unite national bill legislation made at the International Conference on the unification of bill legislation, held in the Hague in 1910 and 1912. As a result of its work, 29 states signed the convention, which contained a charter on bills of exchange and promissory notes.

However the Geneva Conference of the league of Nations member states in 1930 was really successful, at which three bill conventions were adopted on June 7 of this year, and the Unified law "On bills of exchange and promissory notes" became an annex to one of them (Convention No. 358). It is this law that has been ensuring uniform legal regulation of the circulation and use of bills on the territory of almost all European states for almost 90 years and, among other things, operates today as part of the national legislation of Ukraine.

Studying the formation of the contours of "Global Law", A. Badyda and V. Lemak rightly note that thanks to globalization, new forms of interaction of international, supranational and national legal orders are created, which determines the gradual formation of a common legal space at the global level [2, p. 301]. Relations of bill circulation are a vivid example of the creation of global legal regulation, which led, on the one hand, to simplify and increase the share of the use of bills in the implementation of activities by business entities of the countries participating in the Geneva bill convention, on the other hand, to reduce the riskiness of the use of bills and, as a result, to minimize legal disputes due to conflicts in the field of legal regulation of bill circulation.

At the same time, it should be noted that Ukraine, using the right granted to it, made reservations about the specifics of the operation of certain provisions of this law on its territory, as well as ensured the adoption of a number of other regulatory acts that caused certain differences in the legal regulation of the circulation of bills, and limited some of the functionality inherent in the bill as a security.

Indeed, researchers of the transformation of the national legal system in the context of globalization warn against the unconditional introduction of international standards, emphasizing the search for a reasonable balance between international and national law, taking into account such factors as legal awareness, legal culture, legal mentality, historical features, the availability of economic resources and political potential [3, p. 201].

At the same time, it should be noted that some “national amendments” were extremely unsuccessful and, as a result, led to an imbalance in their use in the financial services sector.

Focusing on the analysis of the current state of legal regulation of the provision of financial services related to the use of bills, it should be noted that the current legislation does not call into question the fact that the issue of bills is a form of securing settlements. Thus, according to Article 4 of the Law of Ukraine “On the circulation of bills in Ukraine”, bills are issued for processing debts for goods, works or services actually delivered [4].

In addition, in accordance with clause 8.1. clause 8 of the Regulation “On the procedure for banks to perform operations with bills in national currency on the territory of Ukraine”, the issue of bills for processing debt by promissory notes is classified as settlement operations with this security [5]. As it can be seen from the mentioned Regulation, such operations include, in particular, the bank’s acceptance of bills of exchange and the issuance of promissory notes.

The simplicity and convenience of operations for accepting bills of exchange by the bank is manifested in the fact that the acceptance of a bill of exchange is issued as a simple inscription on the bill, for example, “accepted”, “accepted for payment” or another equivalent inscription. Also, only the signature of the trace on the front side of the bill is sufficient for acceptance.

At the same time, it should also be noted that the acceptance comes into force only after the transfer of the bill or after notification of acceptance made by the tracer in writing to the bill holder or one of the signatories of the

bill. In the latter case, the trasat is liable in accordance with the terms of its acceptance only to the person to whom it has sent or served such notification.

A bill of exchange that is subject to payment within a certain period of time after presentation has certain features, since the Unified law “On bills of exchange and promissory notes” provides for mandatory dating of acceptance of such bills. In cases where the acceptor does not specify the date of acceptance, the bill holder has the right to apply for a protest against non-acceptance of the acceptance. After the protest is made, its date will be considered the date of presentation for acceptance. But even if the holder did not apply for a protest, such an undated acceptance will be considered in relation to the acceptor made on the last day of the deadline that is provided for presentation for acceptance.

The issue of a bill for payment for goods delivered or services rendered terminates the obligation to pay for such goods or services is equivalent to the settlement made in cash, but unlike the monetary settlement, the bill form of payment provides for the termination of the obligation to pay for goods in the form of an innovation within the meaning of Article 604 of the Civil Code of Ukraine. Thus, even if the bill holder is refused payment, the latter does not have the right to make claims for payment for previously delivered goods, but only has the right to file a claim for debt collection on an unpaid bill.

In view of the above, it should be noted that at different times in the literature various opinions were expressed about the “legality” of attributing a bill to a settlement function as such. In particular, A.V. Habov in his research reasonably points out that the bill does not belong to the circle of legal means of payment and the settlement function belongs to the bill exclusively according to business practices. At the same time, in his opinion, the bill, being by its nature a security, rather performs the function of a monetary surrogate (substitute for money) [6, p. 93, 95]. We cannot agree with this understanding, because, in our opinion, money and securities are objects of different legal nature and therefore cannot replace each other in functional terms.

An even more categorical position is taken by O. P. Podtserkovny, who, considering a bill as an obligation of one person to another, believes that the recognition of a bill as a means of payment in the economic sense will mean the need to recognize as means of payment any obligations that arise to replace those that existed before, that is, any contractual property ob-

ligations. In addition, according to the scientist, without a monetary payment, a bill obligation cannot be realized, so we should talk about a bill not as a means of payment (surrogate money), but as a calculation tool within the framework of an integrative form of settlement relations [7, p. 258].

Sharing the author's position on the inadmissibility of assigning a bill to legal means of payment, we still consider it necessary to pay attention to the fact that in these positions there is a opposition between the concept of "Bill of exchange as means of settlement" and the concept of "legal means of payment", which, in our opinion, does not lead to the characterization of its payment function, which is a consequence of the influence of the bill on property relations.

Other scientists are inclined to believe that a bill should be considered as a commodity – a thing that is exchanged, transferred to replace another thing – a product, under a purchase and sale agreement, in which the calculation is made using a bill [8]. We cannot fully agree with this position, given that this approach actually identifies a bill with property, and refers all contracts under which settlement is made by bills to barter, which, in our opinion, is wrong in principle and contradicts historical experience and world business practice on the use of promissory notes.

The negative experience associated with abuse in the use of financial bills during the first decade of independence of the Ukrainian state, caused by ill-considered legal regulation of those times, led to the total displacement of financial bills from the financial services market of Ukraine. And only now, against the background of qualitative changes that have taken place in the legislation, the problems of restoring the circulation of financial bills as an integral element in the financial services market are once again becoming extremely relevant.

At the present stage, settlement operations are provided for by the current legislation, but due to the existing artificial restrictions on the use of financial bills, they are not very common compared to similar operations in developed countries of the world. In particular, these include, as follows from the Regulation "On the procedure for banks to perform operations with bills in the national currency on the territory of Ukraine", settlement operations of banks using bills.

These operations include operations on settlements by bills for repayment of accounts payable to the bank and operations on settlements by bills for repayment of accounts receivable to the bank.

The first ones provide that the bank's creditor agree to accept from the debtor-bank the fulfillment of another (bill of exchange) obligation from the payer under the bill. Such acceptance of a bill obligation occurs by transferring the bill purchased by the debtor bank to the bank's creditor.

The second ones provide for bill payments of the debtor in favor of a bank, where the creditor is a financial institution – a bank that has shown consent to accept from the debtor, who is a client of the bank, a bill purchased by the client from third parties, where a third party is identified as the payer.

As L. A. Lunts rightly noted, a payment using a bill is always assumed not as final, but as conditional. So, a bill is transferred either instead of a cash payment, or to receive a cash payment, but it is never transferred as a payment as such [9, p. 16].

This is one of the reasons that the current legislation does not yet allow the use of bills for settlements on bank loan debt. At the same time, it should be noted that outside the sphere of bank lending and in relation to financial loan services, such restrictions are not provided for by the current legislation.

At the same time, the legislation provides for other special rules, in particular regarding the fact that the acceptance or transfer of bills during bill payments is carried out using registers.

This rule applies not only to those operations that banks participate in, but also to other participants in the financial services market, given that this requirement is enshrined in the Law of Ukraine "On the circulation of bills in Ukraine".

Termination of liability of the subject of a financial service provided using a bill of exchange also has certain features. In particular, the obligation of the bank or other entity that transferred the bill for settlement, made an endorsement and did not constitute liability by an irrevocable reservation is terminated if the bill of exchange is paid by such entity by way of recourse. Consequently, the liability of such an endorser is terminated only if the bill is paid by the payer or the bill is paid by the person who signed it earlier than this endorser. This rule does not apply to cases of expiration of the statute of limitations, since, due to the ordinary nature of the terms in bill law, the expi-

ration of the statute of limitations automatically terminates the liability of the above-mentioned endorser.

So, it should be borne in mind that in addition to the provisions of the Law of Ukraine “On financial services and state regulation of financial services markets”, the legal regulation of financial services provided using bills is also carried out by the provisions of the Unified law on bills of exchange and promissory notes, the Laws of Ukraine “On securities and stock market”, “On state regulation of the securities market in Ukraine”, “On banks and banking activities”, “On the National Bank of Ukraine”, “On payment systems and money transfer in Ukraine”, “On the circulation of bills in Ukraine” and a number of bylaws.

Article 3 of the Law of Ukraine “On financial services and state regulation of financial services markets” also refers to the provision of funds on loan, including on the terms of a financial loan.

Bill lending is traditionally used in the European Union. In Ukraine, unfortunately, there was a short practical experience of using the credit function of a bill, but with the adoption of the Law of Ukraine “On financial services and state regulation of financial services markets”, the first foundations were laid for rethinking this function both by modern legal science and future rule-making practice.

The credit function of a bill has an ambiguous understanding not only in the legal but also in the economic literature.

A number of researchers have identified this function as the main function of a bill. Thus, speaking about the global role of the bill as a unique invention of mankind, S. M. Barats noted: “If the compass expanded the geographical horizons of man, and if money freed trade from the tight bonds of the mine, then the bill – a piece of paper that is not secured by the state’s property, developed credit – this powerful force and the basis of the entire industry” [10, p. 2].

The question of the advantages of a bill loan from a bank loan is sufficiently studied in the legal and economic literature. At the same time, the specifics and significance of this function in relation to financial services have not been previously studied.

Comparing with the credit function of an interest-bearing bond, researchers claim that the interest for using a loan issued by a bill is usually

significantly lower than the interest accrued on bonds issued for the purpose of raising funds by their issuer [11, p. 64].

Considering the advantages of the credit function of a bill in comparison with a similar function of other securities and funds, V. M. Alekseev wrote that bills are more convenient than other debt documents, since in case of early need for money, they can be transferred to other people and are more reliable, since they can be used to collect money, and the bill has an expanded circle of potential defendants [12, p. 46].

Sharing this approach to understanding the advantages of the credit function of a bill, we can come to the idea that it is necessary to attribute to the features of the credit function of a bill, its connection with the endorsement, which really provides an opportunity for the lender to use alternative options for terminating the credit nature of relations with the drawee by using the bill of exchange in settlements or by accounting it in the bank, without ceasing the credit value of the bill for the drawee.

H. F. Shershenevych also pointed out the special importance of an endorsement when a bill performs a credit function [13, p. 53], who paid attention, first of all, to the increase in the creditworthiness of a bill as the approval series increases.

Comparing this feature of the credit function of a bill with other securities, in particular, bonds, savings certificates, we must agree with the opinion that only a bill as a security is characterized by an increase in creditworthiness as it is transferred under an endorsement, while the transfer under an endorsement of the above-mentioned securities does not affect their creditworthiness.

The current legislation provides for the possibility of conducting credit operations with bills for banking institutions. At the same time, the procedure provides that the bank can accept a bill for accounting or as collateral only if the bill has the signatures of at least two persons and that the bill is duly approved. At the same time, a corresponding inscription must be made on bills partially paid before the deadline.

One of the well-known forms of lending using bills is lending by a bank to a legal entity or individual, which is implemented by purchasing a bill before the due date for payment on it at a discount for cash in order to make a profit from repayment of the bill in full.

By its very nature, accounting for bills is a credit transaction. Taking into account the bill, the bank provides the bill holder-bearer with a term loan. As a rule, promissory notes for a certain payment period can be accounted for.

The current procedure provides that a bill holder who wants to present bills for accounting submits an application to the bank according to the sample established by the bank. At the request of the bank, other documents may be attached to such an application, in particular, describing the financial position of the bill holder, his creditworthiness, as well as the transactions on the basis of which the bills were purchased. Accounting is carried out on the basis of an agreement concluded with the bill holder on their accounting. On the bills themselves, the bearer is obliged, at the request of the bank, to execute a full or blank endorsement, even if the last endorsement is blank or bearer. The only exceptions are those bills that are submitted for non-current accounting. When accepting registers, the bank verifies that the bearer's data corresponds to the bill details. Registers with incorrect data are returned for reissue.

In cases where the bills are accepted by the bank for consideration, the bearer is issued a receipt for receipt of the bills and assigned an approximate loan term or the day on which he must pick up the unaccounted bills. Those bills that do not meet the requirements, including those established by the bank, are deleted from the registers for return to the bearer.

After the bank makes a positive decision on accounting for all or individual bills, the amount of the discount and other deductions from the client for each bill is set, and an agreement on accounting for promissory notes is concluded with the client.

A loan in the form of accounting for bills is provided by:

- transfer to the current account of the bearer within the time period established in the accounting agreement, the amount due for payment to the bearer of the bill;

- payment of the bearer's accounts payable to other creditors, subject to the submission of documents confirming the existence of such debt (debt reconciliation report, contracts for the supply of products, consignment notes, etc.) within the amount to be paid to the bearer of the bill. In this case, the bank transfers funds to the current account of the relevant bearer creditor in accordance with the procedure established by the current legislation.

In banking practice, the types of accounting include non-current accounting and reverse accounting, which differ from ordinary accounting in the order and scope of liability of the bearer of the bill.

Regarding lending secured by bills, it should be noted that the bank's provision of loans secured by bills is a credit operation and is carried out on the general principles of bank lending.

A special feature of this type of lending is the procedure for providing, storing and selling collateral, which is bills. Bills issued only for processing monetary debt for goods actually delivered, works performed, and services rendered are accepted as collateral for the loan, as required by the Law of Ukraine "On the circulation of bills in Ukraine".

The bank accepts bills as collateral on the basis of a pledge agreement concluded with the bill holder-borrower, which also establishes the place of storage of the pledged bills. The bearer may execute a pledge, full or blank endorsement, or bearer endorsement on bills. The type of endorsement is established by the pledge agreement.

If the bank receives payment on the bill before the loan debt is due, the bank may set off the payment amount as the borrower fulfills its obligation, if this is stipulated by the agreement of the parties. The difference between the amount of payment on the bill and the debt, if any, is subject to repayment to the borrower.

Foreclosure on pledged bills in case of improper performance by the borrower of its obligations under the loan is carried out by the bank in accordance with the procedure provided for in the pledge agreement and the current legislation. Foreclosure by the bank on pledged bills may be carried out by presenting the bill for payment to the obligated person, if the bill is received under a pledge or transfer endorsement, or by selling, if the bill is received under the transfer endorsement.

Article 3 of the Law of Ukraine "On financial services and state regulation of financial services markets" also includes the provision of guarantees and sureties.

Even in textbooks on commercial activities from the time of the Russian Empire, it was indicated that bills take place in credit transactions and are taken by creditors from debtors as a guarantee of their payment obligation.

From a legal point of view, the guarantee function of a bill is implemented with the help of the institute of aval, approval and acceptance [14, p. 68-69].

The importance of an endorsement for the implementation of this function is manifested in an increase in the number of persons responsible for payment on a bill, as we have already indicated when describing the components of the credit function of a bill. At the same time, it should be noted that, in our opinion, the endorsement itself as a transfer inscription does not perform a guarantee function at all, its function is to certify the fact of transfer of rights to a bill as a security, as well as when it is applied to other securities. The guarantee value of an endorsement is revealed only as a result of its interaction with the properties of a bill as a security defined by the bill legislation, which gives it the value of a component of the guarantee function of a bill as a security. Acceptance confirms the acceptance by the acceptor of the payment obligation and expands the range of people jointly and severally liable in case of non-payment by the acceptor, which follows from Article 47 of the Unified law.

At the same time, we should agree with the opinion of V. V. Hrachev that acceptance should not be absolutized from the point of view of security reliability [15, p. 27].

It should be noted that, in our opinion, unlike approval and aval, the presence or absence of which affects the level of guarantees for a bill, acceptance both in its presence and in its absence (refusal of acceptance) leads to the activation of the guarantee function of the bill as a security, granting an early and direct right to appeal to the drawee of such a bill.

Separately, it is necessary to point out the specifics of aval, which is inherent in the global bill law. As L. P. Fomichova rightly emphasized, aval is not just a bill guarantee, but a means of securing payment on a bill [16, p. 18]. At the same time, the meaning of aval, in our opinion, should be considered not only from the traditional position – as an independent means of securing obligations characteristic only of bill law, but above all, as an element of a security. Article 32 of the Unified law gives grounds to speak about the dual nature of aval guarantees, since in addition to the fact that aval is a guarantee for payment, the above norm provides an additional guarantee regarding the validity of aval itself, even in the case of invalidity of the obligation placed in the bill, except for the case of a defect in the form, which, in our

opinion, emphasizes the importance of the bill as a security, and not the obligation placed in it. This also reveals the relationship between the properties of a bill as a security and aval.

In Ukraine, there is already experience in using bill sureties in banking practice. The bank can provide aval in full or in part of the amount of payment on the bill. In this case, aval is made by the bank either on a bill or on an allong with the following inscription: “count as aval” or any other equivalent inscription. It is signed by avalist. To make an aval, only the signature of the avalist on the front side of the bill is sufficient, unless it is the signature of a trasat or trasant. The aval must contain information about who it was issued for. If there is no such indication, it is considered issued as a tracer.

The uniqueness of aval also lies in the fact that it can be issued both at the time of drawing up or issuing, and at any other stage of circulation of the bill. By making a payment on a bill, the bank that avaled it acquires the rights arising from the bill against the person whose obligations it secured and against those people who are liable to the latter person under the bill, and is also liable in the same way as the person whose obligations it secured.

As well as lending secured by bills, the bank performs avaling on the basis of an avaling agreement concluded with the borrower. The procedure for paying for the avaling service is carried out in accordance with the terms of the avaling agreement. The bank also has the right to deduct a commission from the borrower for the obligation to provide an emergency loan.

The bank is obliged to pay for an avaled bill in the following cases:

– if there was a refusal of the payer from payment or acceptance – against the presentation of the bill protested in non-payment or non-acceptance;

– if the trasat has stopped payments, regardless of whether it has accepted or not, or in case of unsuccessful foreclosure on its property – against the presentation of the protested bill;

– if the tracer is declared bankrupt, regardless of whether it has accepted or not, or if the tracer is declared bankrupt on a bill that is not subject to acceptance – against a court decision declaring it bankrupt.

These provisions are reflected in the new bankruptcy legislation [17].

If the aval is provided for the acceptor or drawee of a bill, then a protest is not required to apply to the avalist bank. The bank may require the holder of the bill to provide proper proof that he applied for payment or acceptance,

but this was refused. If a claim for payment is made to the bank not by the last bill holder, but by the signatory who purchased the bill by recourse, then the bank is responsible only to the signatory who signed it after the borrower. After payment of the bill, the avalist bank acquires the right of recourse against the person for whom it provided the aval, as well as against all people obligated to this person as joint and several debtors.

The transfer of funds is also referred to Article 3 of the Law of Ukraine “On financial services and state regulation of financial services markets” as financial services. One of the oldest functions of a bill is the function of transferring money.

The function of money transfer, in our opinion, cannot be replaced by other securities, since it emphasizes the independent value of, at least, bills.

The independence of the meaning of bills of exchange was emphasized by D. I. Meyer, who carried out a legal study of the commercial life of Odesa in the middle of the XVIII century. In particular, he pointed out that the use of bills of exchange implies a certain balance between the debts and the receipt of two trading places, especially if both or one of them is not in significant trade relations with other trading points [18].

In our opinion, the revival of this function would be useful and beneficial for participants in bill legal relations in the field of money transfers abroad and from abroad. The issue of the possibility of using a bill of exchange as a means of transferring money from other countries of the world to Ukraine and vice versa is particularly relevant against the background of the significant cost of existing money transfer systems. With the help of a bill of exchange, this issue could theoretically be solved much cheaper.

In any case, even today, a bill as a security moves the funds and goods for which it was issued – both in space and in time.

As L. Yu. Dobrynina rightly pointed out, the main advantage of a bill as a means of money transfer is that a bill, unlike checks and other payment and settlement documents, can be freely in circulation without the intervention of banks [14, p. 46]. Agreeing with this position, it should also be added that, in our opinion, the function of transferring money using a bill is characteristic of a modern bill as a security and is able to distinguish a bill as a security from other types of securities in their system.

Describing the modern meaning of this function of a bill, it should be noted that the transfer of money, which was carried out using historical types

of bills, was aimed at reducing risks during the transportation of funds, while at the present stage this function of a bill is manifested in the ability to mediate commodity-money exchange and has an impact on the process of distribution and redistribution of funds, ensuring the transfer of values from one person to another – both in time and in space.

So, at the present stage, the process of globalization has led to the unification of the world bill legislation, dividing it into three main components: the Geneva bill system, the Anglo-American and the national one. The latter is represented by countries (usually countries with weak economies) where specific domestic national bill legislation remains, and the number of such countries has a steady downward trend. The formation of a unified legal regulation of bill circulation at the global level and, as a result, the expansion of the functionality of using bills in the financial services system of Ukraine, is, in our opinion, not a matter of expediency, but only a matter of time and a matter of our readiness to bring national legislation to the standards of unified bill law.

Based on the above, it can be concluded that, having such a “natural” functional ability, a bill, unlike other types of securities, including debt (bonds, savings (deposit) certificates), not only plays a special role in private relations (between participants in the circulation of a particular bill), but also has an important influence on the nature of the functions of the entire national securities system regarding the distribution and redistribution of goods and capital. At the same time, it should be noted that unfortunately, unlike in European countries, Ukraine still has “excessively limited” legal opportunities for using financial bills, including in the banking sector, which certainly has its own objective reasons, however, it is seen that the issue of revising these “restrictions” requires separate further scientific research.

REFERENCES:

1. On financial services and state regulation of financial services markets: Law of Ukraine No. 2664-III of July 12, 2001. (2002). *Vidomosti Verkhovnoi Rady Ukrainy [News of the Verkhovna Rada of Ukraine]*, 1, art. 1.
2. Badyda, A., Lemak, V. (2017). Globalization in the legal dimension: formation of contours of “global law”. *Bulletin of Lviv Polytechnic National University. Series “Legal Sciences”*, 876, 296–303.

3. Biriukova, A. (2018). Transformation of the national legal system in the context of globalization. *Entrepreneurship, economy and law*, 5, 198-202.

4. On the circulation of bills in Ukraine: Law of Ukraine No. 2374-III of April 5, 2001. (2001). *Vidomosti Verkhovnoi Rady Ukrainy [News of the Verkhovna Rada of Ukraine]*, 24, art. 128.

5. On the procedure for banks to perform operations with bills in national currency on the territory of Ukraine: Regulation approved by Resolution No. 508 of the Board of the National Bank of Ukraine dated 16.12.2002. Available online: <https://zakon.rada.gov.ua/laws/show/z0174-03>

6. Habov, A.V. (1999). *Bill in the system of Russian securities*: dis. ... candidate of legal Sciences: 12.00.03. Moscow.

7. Podtserkovnyi, O. P. (2005). *Monetary obligations and settlement legal relations in Ukraine*. Odessa: Studyia "Nehotsiant".

8. Rukavishnikova, I. V. (2000). *Bill as an object of civil legal relations*. Moscow: YurInFoR.

9. Lunts, L. A. (1948). *Monetary obligation in the civil and conflict of laws of capitalist countries*. Moscow: Legal publishing house of the Ministry of justice of the USSR.

10. Barats, S. M. (1893). *Course of bill law*. Saint-Petersburg: The partnership "Public benefit".

11. Tregubenko, E. Yu. (2003). *Order securities*: dis. ... candidate of legal sciences: 12.00.03. Yaroslavl.

12. Aleksev, V. M. (1914). *General commercial information and calculations. For higher primary schools and trade classes*. Moscow: A. P. Poplavsky Type.

13. Shershenevych, G. F. (2003). *Course of commercial law*: in 4 vols. Moscow: Statute, 2003. Vol. III: Bill law. Maritime law.

14. Dobrynina, L. Yu. (1997). *Main problems of development of bill law in Russia at the present stage*: dis. ... candidate of legal sciences: 12.00.03. Yekaterinburg.

15. Grachev, V. V. (2002). *Acceptance of the bill*. Saint Petersburg: Law center Press.

16. Fomicheva, L. P. (2004). *Bills, netting and change of persons in the obligation: accounting and taxation*. Moscow: Omega-L.

17. Code of Ukraine on bankruptcy procedures No. 2597-VIII of October 18, 2018. Available online: <https://zakon.rada.gov.ua/laws/show/2597-19>
18. Meyer, D. I. (1855). *Legal research on the commercial life of Odessa. Kazan.*

§ 2.3. Regarding the issue of mobbing in labour legal relations

The regulations of the Fundamental Law of Ukraine, namely the Article 3 of the Constitution of Ukraine, determine that a person, his/her life and health, honour and dignity, inviolability and security are recognized in Ukraine as the highest social value. In turn, according to the Article 68 of the Constitution of Ukraine, the duty of everyone is to strictly observe the Constitution of Ukraine and the laws of Ukraine, not to encroach on the rights and freedoms, honour and dignity of other people [1].

The right to respect for honour and dignity refers to civil non-property rights that are inextricably linked to the person of the bearer: they cannot be alienated or transferred to other persons for any reason. Labour legislation does not provide for a mechanism for protecting the honour and dignity of an employee. One of the problems associated with the exercise of the employee's right to dignity, that is, ensuring conditions that promote normal work, is problems with psychological pressure or so-called "mobbing".

Taking into account the fact that a modern person spends a significant amount of time at work, the issue of studying mobbing as a kind of discrimination in labour relations is being updated. In Ukraine, the term "mobbing" is increasingly used in labour relations, which manifests itself in harassment of workers at work, however, quite often such cases are ignored, since in most cases they are not disclosed. This is primarily due to the lack of regulation of "mobbing" in national legislation, as well as the lack of adequate responsibility for such actions.

It should be noted that recently "mobbing" as one of the types of discrimination in the context of labour relations has become the subject of research by many representatives of the scientific community. In particular, it is necessary to highlight: K. Bataieva, M. Halsanova, L. Garashchenko, Ye. Dohaieva, V. Yevdokimova, I. Kyselova, T. Koliady, Yu. Konotoptseva,

Yu. Kravchenko, I. Lahutina, Kh. Leiman, D. Lane, K. Lorenz, L. Lutz, A. Marenych, D. Olveus, D. Sorokin, O. Soroka, O. Trukhan, N. Cherednichenko, A. Shamshieva and others.

However, in addition to studying the issue of “mobbing” in doctrinal sources, attention should also be focused on the fact that there are attempts to improve the regulatory framework governing issues in this area. In particular, in addition to the previously known Draft Laws in the field of preventing and countering mobbing, in particular:

- Draft Law on amendments to certain legislative acts of Ukraine concerning countering mobbing dated 01.03.2019 [2];

- Draft Law on amendments to certain legislative acts of Ukraine concerning the prevention and counteraction of mobbing dated 18.03.2019 [3] and

- Draft Law on amendments to certain legislative acts of Ukraine concerning countering bullying (mobbing) and other manifestations of biased attitude in the sphere of labour dated 19.03.2019 [4],

- the other day, on 02.11.2020, a Draft Law on amendments to the Code of administrative offenses of Ukraine on countering mobbing was registered at the 4th session of the IX convocation of the Verkhovna Rada of Ukraine [5].

In general, like the previous draft laws, the latter are designed to bring the norms of national legislation in line with the norms of European legislation and their standards, as well as to provide protection against any manifestations of discrimination and psychological pressure during the implementation of labour relations. In 2019, it was also proposed to amend the Code of administrative offenses of Ukraine and provide for administrative liability for the use of various types and forms of mobbing with systematic treatment of an employee.

However, the first three of the mentioned draft laws were withdrawn, and the conclusion of the Main scientific-expert department on the project noted the need for regulatory regulation of the protection of employees from mobbing, but attention was focused on the fact that the solution to this problem lies in a broader plane.

In conclusion, measures aimed at countering mobbing were identified. In particular, it was noted that it is necessary to consolidate at the legislative level the principle of individualization of the right to labour honour and busi-

ness reputation; the possibility of simplifying the procedure for dismissing an employee at the initiative of the employer, which will eliminate the threat of using psychological pressure on the employee as a compulsion to dismiss him at his own request. Comments were also made on the amendments that were proposed to be made to the Labour Code and the Law of Ukraine “On collective agreements”. Thus, this Draft Law required improvement and thoughtfulness of certain aspects in order to avoid conflicts. Unfortunately, the text of Draft Law No. 4306 is not available for public research at the moment (02.11.2020).

In general, in order to study mobbing in Ukraine, it is necessary to conduct research on its theoretical-legal characteristics: the definition of the concept, features, types, forms, as well as analyse the process of countering mobbing in foreign countries, based on best practices. The labour Code of Ukraine prohibits any discrimination that manifests itself in violation of the principle of equal rights and opportunities, as well as direct and indirect restrictions on the rights of employees in the field of labour (article 2-1) [6].

Thus, the provisions of this article establish the protection of the employee from any manifestations of discrimination in labour relations, which is one of the main forms of encroachment on the honour and dignity of workers. In turn, Part 2 of Article 26 of the European social charter establishes the right to decent treatment at work and legal protection from sexual harassment in the workplace, systematic dishonest or extremely negative and offensive actions against individual employees [7].

As A. Sorokina noted [8, p. 193], mobbing became the subject of a new research direction in the 80-90s of the XX century in the Scandinavian countries and quickly began to be studied in other countries of Western Europe, as well as in the USA, Australia and South Africa.

In general, when analysing the definition of “mobbing”, it is necessary to emphasize the pluralism of approaches. However, they all have common features, and thus characterize mobbing. In particular, L. Harashchenko suggests that mobbing should be understood as systematic harassment, psychological terror, forms of lowering authority and psychological pressure in the form of harassment of an employee in a team, usually for the purpose of his dismissal [9, p. 95].

E. Rolland, clarifying this category, suggested that “mobbing” should be understood as physical or social negative actions that are carried out sys-

tematically for a long time by one or more individuals and are directed against someone who does not have the opportunity to protect himself/herself in the current situation. E. Rolland also notes that English-speaking researchers do not use the term “mobbing”, but they use the term “bullying” to denote such a phenomenon [10, p. 23].

In turn, K. Marysiuk defined mobbing as systematic harassment, psychological terror, a form of lowering authority, a form of psychological pressure in the form of bullying an employee in a team, usually for the purpose of his dismissal [11, p. 133]. After analysing the above definitions of the term “mobbing”, it is necessary to determine that it is also used to determine manifestations of pressure on individuals within certain groups (collectives).

For the first time, the concept of “mobbing” was introduced in 1958 by biologist K. Lorenz, who described the phenomenon of a collective attack of several small animals on a larger enemy [12]. In psychology and medicine, the term “mobbing” was introduced in 1960 by Swedish physician P. Heine-mann, who described it in the book “Mobbing – group violence among children and adults” [13]. The author in this book compared the behaviour of children in relation to their peers with the aggressive behaviour of animals. Another Swedish researcher, H. Leyman later described “mobbing” as bullying based on the study of working people’s behaviour, a kind of “psychological terrorism” in which the hostile attitude of one or more people towards another person is systematically repeated [14].

It is also noteworthy that the legislation of foreign countries contains synonymous categories for “mobbing”. In particular: “moral harassment, which corresponds to the French term” *le harcèlement moral*”, actually “mobbing - pressure – more commonly used in Sweden, Germany and Italy, “workplace bullying” – the USA, Great Britain, and “psychological harassment”– in Quebec. Other synonyms can also be found in regulatory legal acts: workplace cruelty, psychological violence [15].

Thus, all the listed synonymous terms can be grouped to some extent as describing two phenomena – abuse in the workplace and bad attitude at work. In fact, the victim of this kind of bullying, “mobbing”, can be any “inconvenient” employee who for some reason were not liked by his manager or the rest of the team. In addition, an employee may become a victim of such harassment if they do not adhere to the unspoken rules of the team. Such people quickly fall into the risk group.

I. Gulis also defines that mobbing can vary from violence and can include [16, p. 70]:

- physical contacts;
- jokes, offensive expressions, gossip, shouting;
- inscriptions on the walls, obscene gestures;
- prohibition of initiative;
- not cooperation with the employee.

In accordance with paragraph 26 of Part I of the already mentioned European Social Charter (revised), all employees have the right to be treated with dignity at work [7].

In view of this, any manifestations of psychological or physical pressure among employees of the labour collective can be classified as discrimination. Mobbing is a special type of discrimination that is reflected in labour relations. One of the most important signs of mobbing is an unfavourable moral-psychological climate in the team, which manifests itself in actions that have the character of psychological influence of management or a colleague on a member of the work team.

In addition to “mobbing”, another concept has now appeared – “cyber mobbing” (“internet-mobbing” or “cyberbullying”). According to A. Triukhan, this category should be understood as deliberate insults, threats of slander and disclosure of data to other persons who have been compromised, using modern means of communication, usually over a long period of time. Cyber mobbing is carried out in the information space with the help of information-communication channels and means, including the Internet [17, p. 44].

According to statistics, more than 20% of employees have experienced mobbing in Western Europe, but taking into account that many cases are hushed up, as noted above, it can be assumed that this figure is not accurate. The most common manifestations of mobbing should be identified as bossing and bullying. Bossing occurs when a manager uses abuse of power to put pressure on a person or the entire team. Bullying also consists of cruelty, humiliation of honour and dignity, improper reference to the official incompetence of the labour collective or employer.

In the labour collective, in accordance with Leiman, it is necessary to distinguish five areas of mobbing manifestation:

- communication attacks;
- encroachment on social relations;
- encroachment on social authority;
- encroachment on the quality of the professional and life situation;
- encroachment on health.

In the context of such areas of encroachment, the following actions can be distinguished (in accordance with the areas of encroachment):

1. Communication attacks:

- limiting the ability to speak out from the manager;
- limiting the ability to speak out from colleagues;
- constant interruption; shouting or loud swearing;
- constant criticism of performance.

2. Encroachment on social relations:

- termination of communication; moving the workplace to a separate room, away from colleagues;
- prohibition of colleagues to communicate with the object of mobbing;
- treat the mobbing object as an “empty space”.

3. Encroachment on social authority:

- spreading gossip;
- mockery;
- obscene language;
- hints of sexual intimacy.

4. Encroachment on the quality of the professional and life situation:

- deprivation of any occupation in the workplace;
- assigning meaningless production tasks;
- constant assignment of new tasks;
- assigning tasks to the object that go beyond his/her qualifications.

5. Encroachment on health:

- forcing you to perform work that is harmful to your health;
- threats of physical violence;
- sexual harassment [14].

After analysing the above definitions of the concept of “mobbing”, you can determine the main features and characteristics of mobbing. In particular:

- systematic nature. This attribute means performing certain actions two or more times;

- special object and subject of mobbing. In particular, the object is an employee, subordinate, and as a subject – managers and labour collectives;
- scope – labour relations;
- having a clearly defined goal. In particular, it can be defined as releasing a mobbing object.

In turn, taking into account the main features of mobbing, we can also distinguish certain components that make up the structure of mobbing:

- an object is a person who is targeted by mobbing, that is, an employee who is subjected to pressure from the subject of mobbing, the manager, or labour collective;
- a subject is a person who exerts pressure on the object of mobbing;
- the aim is the main goal for which pressure is exerted on the object.

In France, the category of “mobbing” was originally formed based on judicial practice. However, the court later applied the norms of criminal law in cases of mobbing. In particular, according to French criminal law, a person who violates the principles of subordination of his position in relation to subordinates and exposes another to such working conditions that are incompatible with the dignity of a person is punishable by up to two years’ imprisonment and a monetary fine.

In the United Kingdom of Great Britain and Northern Ireland, in the event of mobbing phenomena, legal precedents are already known in judicial practice and used. If mobbing is detected, there is a practice of applying dismissal from work, since mobbing in the United Kingdom is considered an indirect violation of the norms of the employment contract.

German researcher of the phenomenon of mobbing B. Meshkustat notes that two-thirds of “terrorized workers” have reduced motivation to work, more than one percent miss work due to various diseases. As a result, a third of employees changes jobs within their company, 20% quit themselves, and 5% are demoted. In general, in foreign countries, “mobbing” is understood as a type of discrimination or a manifestation of psychological violence.

In France, mobbing is considered as moral pressure (Fr. “harcèlement moral”), in the United States and Great Britain – bullying in the workplace, in Sweden – “exploitation at work” (English); in Italy, Germany and other European countries – mobbing at work (English). The European Parliament’s resolution on workplace bullying (2001/2339 (INI)) states that according to a

survey of 21,500 workers conducted by the European Foundation for the advancement of living and working conditions (Dublin Foundation) in 2000, 8% of workers in the EU, equivalent to 12 million people, claim that they have been severely bullied at work in the past 12 months [18].

Sweden was the first country to pass legislation to prevent moral harassment in the workplace in 1993 with a Decree on victimization at work. Bullying at work (victimization) should be considered as constant or periodic aggressive or clearly negative actions against individual employees, which are expressed in obvious pressure and can lead to isolation of the employee from the workforce. According to this decree, the reasons for such actions are: shortcomings in the organization of work; shortcomings in the internal information system; excessive or insufficient workload of certain employees; shortcomings in personnel policy; employer's attitude to employees [19].

In Germany, the rules for protecting employees' rights from bullying are set out in local regulations. In accordance with the provisions of the articles of the law governing certain internal organizational aspects of companies, the employer and workers' organizations (if there are any) must ensure that employees are treated with dignity. Article 84 of this law gives the right to any employee who considers that he/she is being treated unfairly by an employer or his/her colleagues to file complaints.

In Spain, an employee, among other things, has the right to respect their privacy and dignity under the Spanish Civil Service Law. Failure by the employer to comply with this provision may result in a fine of 3,000 to 90,000 euros [20, p. 18].

In the UK, the Occupational Safety and Health Act of 1975 obliges all employers to ensure the health, safety and well-being of their employees. Otherwise, the individual's employment contract will be violated. The British have invented an encouraging way to combat violence in the workplace. The Government Partnership Fund rewards organizations that develop solutions to workplace harassment. Each winner can receive a maximum of 50,000 pounds sterling [20, P. 23].

In the Italian legal system, protection against mobbing is regulated by constitutional and civil law. Article 32 of the Italian Constitution establishes the right to health as a fundamental human right. Article 35 of the Italian Constitution protects labour in all its forms and manifestations. Engaging in private economic activities should not be contrary to state needs and should

not endanger security, freedom and human dignity. In the Italian vocabulary, the term “mobbing” was first used in legal practice. In 1999, a court in Turin heard the case of an employee who claimed compensation for damage caused to her as a result of biological damage (depression) as a result of harsh working conditions and constant and deliberate harassment and humiliation of the head of the department. The employee was forced to work in a narrow and closed environment and was completely isolated from her colleagues. In Italy, the term “mobbing” refers to the phenomena of psychological pressure, bad attitude, and verbal aggression. The terms “psychological pressure” and “psychological terrorism” are also used. In this country, the protection of an employee from mobbing is based on a comprehensive judicial interpretation of the need to protect the employee’s identity (article 2087 of the Italian Civil Code) [21]. According to the Italian National Institute of Social Security, mobbing is a phenomenon that knows no national or cultural boundaries and is a source of social problems and harm to individual and collective well-being, as well as to the economy [22].

According to A. Kyseliova, taking into account the experience of combating mobbing in Sweden, Belgium, Denmark, Germany, the Netherlands, Spain and the United Kingdom, it can be concluded that the rights of employees should be protected by law, and in case of their violation, the perpetrators should be held accountable. Mobbing is an extremely negative social phenomenon, as it has such serious consequences as, for example:

- stress;
- post-traumatic crisis;
- sleep disorder;
- feeling of constant fear;
- loss of self-confidence;
- depression;
- uncontrolled aggression;
- problems with alcohol and drugs;
- mental illness;
- development of suicidal thoughts.

Taking into account the danger that this phenomenon poses, in Ukraine there is a need to legislate and consolidate bullying. The analysis of experience abroad allows us to conclude that bullying should be regulated at the legislative level, that preventive measures should be applied in labour collec-

tives and material and administrative responsibility should be established [23, p. 60]. In many countries, there is a progressive system of countering mobbing, which contains legal responsibility (criminal and administrative), active interaction of subjects of social dialogue in the fight against violence at work, and state programs for the prevention of mobbing [24, p. 95].

In general, analysing the factors that could provoke mobbing, the following were identified:

- individual factors that can be applied to both the subject and the object;
- situational factors, in particular: gender inequality (dominance of male representatives in the collective), which may have a formal (status) or informal character (experience); change of manager;
- organizational factors (the manager has an authoritarian style);
- social factor (level of violent crimes; economic changes).

Depending on the relationship between the subject and the object, the following forms of mobbing can be distinguished:

- horizontal (the object of prosecution is the employee, and the subject is the employer, or vice versa);
- vertical (the object is the employee, the subject is the labour force);
- bossing (the object is labour, the subject is the employer);
- bullying (the subject and object are employees).

The most popular form of mobbing is vertical, as employees in Ukraine are afraid to complain about employers. National legislation, as mentioned above, does not define responsibility for mobbing, so employees cannot hold their manager responsible for such actions and are afraid of losing their job or increasing pressure on themselves.

Mobbing can take the following forms:

- authoritarian mobbing – carried out by the boss, who uses a destructive management style;
- repressed bullying – aggression directed against a third party, because its manifestation is too dangerous relative to the real source, and the level of frustration with the situation has exceeded the permissible limits and limits for dealing with the problem. This may be a response to authoritarian bullying.
- mobbing “initiation” – when new members appear in the team, who are subjected to attempts to “test” by older experience;

- discriminatory mobbing – its victims are people who differ from the general team in values that are important to its members, or people who do not approve of the norms established in the team;

- designalization mobbing – a form of discrimination against a person who has discovered negative facts about their colleagues and reported them to the organization (i.e., the manager) or in the environment, for which bullying is “punished” in the form of bullying of employees;

- sexual mobbing is a special form of this phenomenon, and in the case of a group, it can be a form of discriminatory bullying, in which the expression of interest is not approved by the opposite sex or thereby, depending on preferences;

- qualifying mobbing. Its goal is to deprive a person of a group. Actions become more violent until the goal is reached. It should be noted that the three forms mentioned above: “initiation”, discriminatory and qualifying are associated with the stages of the employee’s transition through the organization: entrance-transfer-exit, and the main purpose of each of them is to impose on the employee the rules of behaviour of this group and force the implementation of existing internal norms.

It is also necessary to pay attention to such forms of mobbing as deliberate conscious and unconscious mobbing. In the case of unconscious mobbing, the person turns into a mobber without realizing it - he can simply hide his irritated attitude towards one of his colleagues. Among scientists, there is a pluralism of opinions about overcoming mobbing. N. Kalashnyk claims that it is almost impossible to avoid mobbing, since any organization has objective reasons that can aggravate the situation. According to scientists, the percentage of bullying in companies varies depending on the industry. In particular, the level in education and healthcare is high [25].

After analysing the provisions of foreign countries on countering mobbing, you should pay attention to those provisions that could be implemented in national legislation. In particular, based on the experience of Germany, the employer should take preventive measures in a team, for example, organize joint meetings outside of working hours and set tasks for teamwork that require collective solutions. In Germany, workers can complain about the employer if he does not fulfil his obligations. It is necessary to guarantee protection from the state to those people who told the whistleblowers about the facts of mobbing. To do this, the status of this category of people must be de-

terminated, since only those who reported information about the crime are considered whistleblowers. In European countries, these people include those who have reported committing a socially harmful act.

Legal opportunities for ensuring effective protection of the rights and legitimate interests of employees in terms of countering mobbing or bullying can become the norms of the Institute of compensation for moral damage and the provisions prohibiting abuse of law, but these institutions themselves have their drawbacks and also need to be revised due to the gradual orientation of the entire legal system of Ukraine to ensuring human rights and freedoms [8, p. 140].

The main feature of the legislative framework of the above-mentioned countries is the protection of employees, prevention and protection from stress and psychological pressure. In Europe, mobbing problems are given great importance, since a person spends a lot of time at work. Therefore, any constant psychological terror, emotional stress and harassment in the workplace leave a negative impression on the human psyche even for a short time, and with prolonged exposure, they can turn into real physical illnesses and end tragically. In 1998, the International Labour Organization equated mobbing with rape and murder, once again highlighting the devastating negative effects of bullying on people.

Thus, mobbing should be considered as one of the types of moral violence. Most often, this type of violence becomes a means of forcing a person to leave the workplace. Currently, Ukraine does not have a legally established mechanism for protecting employees from mobbing in the workplace. Legislative support of the employer's obligation to counteract mobbing and the establishment of responsibility for such actions will be a direct embodiment of the principle of humanism in national labour legislation.

REFERENCES:

1. Constitution of Ukraine of June 28, 1996. (1996). *Vidomosti Verkhovnoi Rady Ukrainy [News of the Verkhovna Rada of Ukraine]*. No. 30. Article 141.
2. Draft law on amendments to certain legislative acts of Ukraine on countering mobbing dated 01.03.2019 No. 10118. *Vidomosti Verkhovnoi*

Rady Ukrainy [News of the Verkhovna Rada of Ukraine]. Available online: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=65602.

3. Draft law on amendments to certain legislative acts of Ukraine concerning the prevention and counteraction of mobbing dated 18.03.2019 No. 10118-1. *Vidomosti Verkhovnoi Rady Ukrainy [News of the Verkhovna Rada of Ukraine]*. Available online: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=65695.

4. Draft Law on amendments to certain legislative acts of Ukraine concerning countering bullying (mobbing) and other manifestations of biased attitude in the field of labour dated 19.03.2019 No. 10118-2. *Vidomosti Verkhovnoi Rady Ukrainy [News of the Verkhovna Rada of Ukraine]*. Available online: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=65699.

5. Draft law on amendments to the Code of administrative offences of Ukraine on countering mobbing dated 02.11.2020 № 4306. *Vidomosti Verkhovnoi Rady Ukrainy [News of the Verkhovna Rada of Ukraine]*. Available online: http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=70300.

6. Labour Code of Ukraine: the law of Ukraine dated 10.12.1971 № 322-VIII. *Vidomosti Verkhovnoi Rady Ukrainy [News of the Verkhovna Rada of Ukraine]*. Available online: <https://zakon.rada.gov.ua/laws/main/322-08>.

7. European Social Charter (revised): International Document No. 994_062 of 03.05.1996. *Vidomosti Verkhovnoi Rady Ukrainy [News of the Verkhovna Rada of Ukraine]*. Available online: https://zakon.rada.gov.ua/laws/show/994_062#Text

8. Sorokina, A. A. (2018). Mobbing and bullying in labour relations. *Molodyi vchenyi [A young scientist]*, 11 (63), pp. 139-146.

9. Harashchenko, L. (2016). Legal Regulation of the Prohibition of mobbing in the legislation of foreign countries. *Law Herald*, 3, pp. 95-96.

10. Roland, Erling (2012). *How to stop bullying in school: the psychology of mobbing*. Moskva: Henezys. 264 p.

11. Marysiuk, K. (2018). Mobbing: the concept, essence and issues of criminalization. *Bulletin of Lviv Polytechnic National University. Series "Legal Sciences"*, 5. № 889 (17), pp. 132-136.

12. Lorenz, K. (1963). *Das sogenannte Bose: Zur Naturgeschichte der Aggression*. Wien: BorothaSchoeler.

13. Skavitin, A.V. (2004). The Problem of harassment in labour areas. *Management in Russia and abroad journal*, 5, pp. 118–126.

14. Leymann, H. (1996). The content and development of mobbing at work. *European Journal of Work and Organizational Psychology*, 5 (2), pp. 165–184.

15. Rachel, A. Yuen. (2005). Beyond the Schoolyard: Workplace Bullying and Moral Harassment Law in France and Quebec. *Cornell International Law Journal*, 2, pp. 625-648.

16. Gulis, I. V. (2008). Directions and prospects of studying aggression in official relations. *Filosofiya i socialnye nauki [Philosophy and social Sciences]*, pp. 69–76.

17. Triukhan, A. (2017). Protecting employees from mobbing in the workplace. *Actual problems of native jurisprudence*, 4, pp. 42-46.

18. European Parliament resolution on harassment at the workplace (2001/2339(INI)). Available online:

https://www.europarl.europa.eu/doceo/document/TA-8-2018-0331_EN.html.

19. Ordinance on Victimization at Work. Available online: https://www.kth.se/polopoly_fs/1.527926.1550157127!/Provisions%20on%20measures%20against%20Victima.pdf

20. Lorho, F. *Bulling at work*. Available online: http://www.europarl.europa.eu/workingpapers/soci/pdf/108_en.pdf.

21. Il Codice civile italiano [Risorsa Elettronica] / Dipartimento Facoltà di Giurisprudenza. URL: http://www.jus.unitn.it/cardozo/obiter_dictum/codciv/Lib5.htm

22. Comunicati Stampa – INAS alla conferenza internazionale sul mobbing. URL: <http://www.inas.it/contenuti.php?idcontenuti=480>.

23. Kordunian, I. V., Kyseleva, O. I. (2019). Mobbing as a type of discrimination in labour relations in Ukraine and foreign countries. *Legal Horizons*, 18 (31), pp. 56–60.

24. Novikov, D. O., Lukianchikov, O.M. (2019). Legal aspects of countering violence at work (mobbing). *Porivnialno-analitychne pravo [Comparative and analytical law]*, 2. pp. 94-97.

25. Kalashnyk, N. S. (2012). Place of self-education of civil servants in the implementation of regional policy in modern conditions. *Pressing Problems of Public Administration*, 2(42), pp. 337-345.

§ 2.4. Sports law as an integral element of the legal system

In the current conditions of the development of legal doctrine, lawyers undoubtedly recognize the thesis that the nature of the objective relationship between law, law and public relations is manifested in the regulatory influence of a number of existing tools of regulatory regulation on public realities of life, because both law and law proceed primarily from the content component of the essence of public needs and public relations themselves, which in connection with these needs arise and find their development.

Marked by its impetus, it had a significant activation of transformation processes in the field of legal sciences. We are talking about the fact that the relevant sciences, trying to “keep up with the times”, showed considerable interest in the development and implementation in legal practice of various effective models of legal regulation of public relations, which find their development in various spheres of social existence. It is in this way that dynamic trends in social development have led to significant transformational processes of improving a number of structures of legal and regulatory systems.

Of course, such trends in the mobility and dynamism of social development of law and legislation in general concern various world states. At the same time, our state is no exception to the general rule, and it should be noted that for Ukraine, the starting point for the rapid development of various spheres of public life was the acquisition and declaration of its independence, which is associated with the development of processes of significant and versatile changes in the ideology of the human worldview. One way or another, this has become a prerequisite for a rapid revision of existing and development and further implementation of new theories, concepts and approaches in all spheres of human existence, in particular in the legal system of our country.

Summing up the above, these processes should be identified as the point that became the beginning of the dynamic development of legal sciences and the creation of new and updated branches, institutions, categories and concepts of national law and legislation of Ukraine on their basis.

In continuation of the opinion, we can express the position that the proper place among such improved and new legal phenomena is now occupied by sports law, as the concept of a complex branch of law has acquired sufficient signs of relative independence and is characterized by the essential complex nature of its norms, and therefore by the presence of special mechanisms and structures of legal regulation that are aimed at ensuring an effective balance between private and public elements of the relevant sphere. Thus, there was a development of mechanisms for legal regulation of sports relations, which led to the formation of a special nature of the legal regime inherent in sports law, as well as the development of the legal content of teachings on the subject, method, principles, subjects and other system – forming and identifying components of this branch of legal knowledge.

Quite naturally, in its consequence, there was an objective need for a clear definition and identification of sports law as an independent legal phenomenon. Accordingly, on the basis of this, it is necessary to emphasize the essential relevance of the research carried out in the framework of this work, as well as on a number of other legal issues facing legal science in the field of legal regulation of sports relations.

Moving along the path of doctrinal methodological-legal approaches to the characterization of the branch of law as a whole, we will begin to analyse the legal status of “sports law” by defining its place among other legal structures of the national legal system of Ukraine. Special attention should be paid to the issue of clarifying the essence of the legal nature of sports law as a legal branch.

And so, we face a significant problem, because now sports law is rather ambiguously identified among representatives of legal science, in connection with which this is not recognized as a separate branch of the legal system, which, however, is considered quite acceptable from the point of view of its novelty, which as a feature of “non-legal”, but rather socio-political nature, causes its critical perception in legal circles, as well as from the point of view of non-traditional character and accordingly – a special legal nature, which

gave grounds for the difference in the unity of approaches in understanding the relevant legal topic in the legal literature.

In the direction of solving the relevant issue, first of all, it is necessary to comprehend the topic under study as correctly as possible and refer to the review of the key methodological-legal postulates of building the structure of the legal system of Ukraine, in a certain context with which the sports law industry is located. At the same time, it should be borne in mind that one way or another, the legal structure of sports law is now at the stage of its most active phase of formation and development.

So, law in its essential nature is a certain system of legal norms that is justified from the point of view of legal science, which, according to the content of their regulatory action, are systematically integrated into legal branches, institutions, sub-sectors, etc. At the same time, quite sufficient understanding of the branch of law, from the point of view of legal science, will be such a vision, according to which law is a complex, including the branch of law, is the most voluminous element in the legal system, which is a certain clearly structured system of legal norms that regulate a certain type of qualitatively homogeneous relations that arise and unfold in modern society.

In the same connection, it should be noted that in the plane of the doctrine of legal science, there is an approach according to the content of which the concept of building a legal system is based on a mechanism for identifying independent branches of law according to two key criteria – the subject and methods of legal regulation [1; 2]. At the same time, the current level of development of public legal systems has led to the emergence of other positions, because in recent years in legal science as a whole, as well as within the framework of certain branch legal knowledge, other legal categories are used to generalize the characteristics of specific branches of law and as important system-forming factors, such as: the legal regime of the branch of law, branch legal principles, features of the subject composition of public relations.

In the context of this work, these trends are very relevant from the point of view of creating wide opportunities for full and comprehensive characterization of relatively new branches of the legal system, primarily complex ones, including sports law.

Based on the mechanism of dividing all legal elements of the legal system into branches according to the criteria of the subject and method of legal

regulation, the corresponding system provides for the understanding of the subject of the legal branch as a certain sphere of qualitatively homogeneous social relations, on the regulation and ordering of which the legal action of the norms of the corresponding specific branch of law is directed. At the same time, the method of the branch of law is nothing more than a certain legal method of regulatory influence of the norms of the branch of law on public relations that are the subject of its regulation. It is generally accepted that independent and structured branch legal methods, as a rule, are characterized by special regulatory techniques. In the same regard, we note that in the plane of legal science, it is customary to distinguish between basic branches of law that have their own subject and methods of regulation, as well as complex ones, the norms of which, as it is considered, are not connected by a single method and mechanism of regulation.

Sports law as a separate phenomenon of the legal system by its legal nature is a complex branch entity that is at the stage of its formation and development. From the point of view of this, sports law can be identified as a relatively separate branch legal system, in relation to which it is worth considering the issues of system-forming factors of sports law, in particular, its subject, method, legal regime, etc.

So, being a certain set of legal norms, sports law is aimed for its own purposes at regulating public relations that arise and develop in the field of sports, and therefore have a close and indissoluble relationship with such concepts and categories as sports, physical culture and recreation and sports activities, sports competitions, etc. Moreover, taking into account the above, there are grounds to express the position that the relevant concepts are key for sports law and legislation, and therefore their proper understanding and definition is very important, which causes an objective need for a more detailed analysis and review of them.

Therefore, we record that sports law as a branch legal phenomenon regulates a qualitatively homogeneous sphere of sports public relations, which is a system-determining factor for identifying the framework for regulating the corresponding sphere of sports and legal regulation.

In its essence, sports social relations are a certain social reality, which is the subject of regulation of sports law, as well as sports legislation. At the same time, sports relations are a rather complex legal category, including various concepts that are traditional for any branch of the legal system, in partic-

ular the subject composition, object component and content of public relations.

Based on our own research [3] and as a logical result of the above, we fix that the subject of sports law is a certain relatively homogeneous set of social relations that arise in connection with the implementation of certain organizational, social, economic and other aspects of activity in the field of sports and physical culture, as well as public relations that arise when creating conditions for the development of sports and physical culture and, in addition, related economic, property, civil, labour and financial public relations, arising in connection with the organization and conduct of targeted sports events.

Sports relations arise between various subjects (athletes, consumers of sports-entertainment events (spectators, fans), organizers of sports events, state bodies and municipal institutions, etc.) in the process of organizing and directly conducting physical culture and recreation and sports activities, in the process of organizing and implementing targeted physical culture and sports events. At the same time, the sphere of physical culture and sports, within which sports relations unfold, covers a fairly wide range of components, in particular physical education of various groups of the population, mass sports, physical culture and sports rehabilitation, children and youth sports, high-performance sports, professional sports, Olympic sports and others.

The subject structure of sports legal relations includes individuals and legal entities. Among them, we will mention various sports institutions (sports clubs, sports schools, schools of higher sports skills, Olympic training centres, etc.), public organizations of physical culture and sports orientation, international organizations in the field of physical culture and sports, organizers of physical culture and recreation or sports events, professional athletes and amateur athletes, consumers of physical culture and sports services and events (fans, spectators, etc.), state authorities, etc.

The next element of sports relations is the object component, the content of which includes certain material and non-material benefits, for which legal relations between subjects of sports law arise, change and terminate. In the same connection, it is also appropriate to mention the key goal of participation in sports events, which is the process of organizing a sports spectacle and achieving a planned sports result during its course, which acts as a quali-

tative and quantitative indicator of the implementation of training and physical and intellectual capabilities of an athlete and/or a sports team, evaluated according to clearly established criteria in sports, such as standards, rules, etc.

As for the content component of sports legal relations, this includes subjective rights and obligations, powers, responsibilities of subjects of sports relations, etc., which are specifically defined depending on the type of sport and the nature of sports legal relations.

One way or another, these components of sports legal relations, which form and reveal the essence of sports and legal regulation, can be traced in the content of normative acts of international and national sports organizations, as well as state authorities of a particular country.

Summarizing the above, we note that the subject of regulation of sports law is sports legal relations in the indissoluble unity of the following elements:

- subjects of sports legal relations that participate in physical culture, recreation and sports activities;
- objects of sports legal relations that act as public goods, about which episodes of sports activities of subjects of sports law actually arise and are carried out;
- the content component of sports legal relations, which is a set of subjective rights and obligations, powers, responsibilities, etc.

Since sports law in a separate part of regulation also concerns other branch types of public relations (civil, administrative, labour, economic, etc.), we can talk about the mechanisms of complex legal regulation and, accordingly, the presence in the sports law system of norms of other branches of the legal system.

So, sports law is a relatively independent and complex branch of the legal system, which is due to the presence in the mechanisms of sports and legal regulation of norms of both the actual sports and legal nature, which by their nature quite effectively and with objective need regulate specific sports relations that do not fall under the sphere of influence of other main branches of law, and norms of other branches of law due to the complexity of the subject of sports law.

The method of legal regulation of sports law applies traditional legal means of influencing the norms of law on public relations and is revealed in

the prism of imperative (mandatory, directive, method of mandatory prescriptions) and dispositive (autonomous, method of coordination) approaches. At the same time, the special specificity of sports and legal regulation is manifested in the development of a special legal regime for regulating public sports relations, which over time has acquired special forms of legal regime for physical culture, recreation and sports activities.

Based on this, sports law can be characterized as a complex and relatively independent branch of law, including the entire systematized set of legal norms, regulatory action is aimed at streamlining the following types of public relations:

- organizational, social, economic and other aspects related to the organization and implementation of activities in the field of physical culture and sports;

- public relations related to the holding of sports events of various types, including sports competitions;

- public relations that arise when creating conditions for the development of physical culture and sports;

- economic, civil, labour, administrative, financial and other types of public relations related to sports that arise in connection with the organization and conduct of targeted physical culture, recreation and sports events of commercial and non-commercial orientation;

- public relations between subjects of the sphere of physical culture and sports who have an amateur or professional status or are engaged in physical culture and sports to meet their personal needs, as well as relations between organizers of physical culture and recreation or sports events;

- public relations of consumption of the results of sports events (sports services of a spectacular nature, etc.).

It is interesting that the dynamics of the development of sports and legal norms and mechanisms of sports and legal regulation in general led to the emergence and development of a special legal order in this area, the basis for the functioning of which are general legal and special principles of sports law.

The general legal principles of sports law should include: the principle of legality, the principle of freedom of entrepreneurial (commercial) activity in the field of sports relations, the principle of a certain permissibility of state interference (regulation) in sports relations, etc.

As for the special principles of sports-legal regulation, these include:

- the principle of prioritizing the sphere of physical culture and sports and their recognition as necessary conditions for the comprehensive development of the individual and the formation of a healthy lifestyle of society;
- the principle of recognizing sports as an important factor in achieving physical and spiritual perfection of a person, forming patriotic feelings among citizens and a positive international image of states;
- the principle of ensuring humanistic orientation and priority of universal values, justice, mutual respect and gender equality;
- the principle of equal rights and opportunities in the field of physical culture and sports;
- the principle of ensuring the safety of life and health of people engaged in physical culture and sports, participants and spectators (fans) of sports and physical culture and recreation events;
- the principle of creating conditions for social and legal protection of participants in relations in the field of physical culture and sports;
- the principle of openness and ensuring diversity, high quality and accessibility of physical culture and sports services for people;
- the principle of ensuring access of disabled people to sports facilities;
- the principle of encouraging charitable activities in the field of physical culture and sports;
- the principle of prioritizing international standards and world experience in the field of physical culture and sports, taking into account national traditions and achievements of certain states.

The main element of sports law as a phenomenon of the legal system is the norm of sports law – it is a written and binding rule of conduct aimed at regulating public relations that arise between subjects of sports law in the process of organizing and implementing purposeful physical culture, recreation and sports events, etc.

In an effort to have a more fundamental understanding of the field of sports law, it is necessary to determine the understanding of the concepts of sports, physical culture and sports activities, as well as sports competitions, because such directly relate to the subject of this industry, and are also used in other branch legal entities and mechanisms of legal regulation. Accordingly, it is quite logical to consider the relevant concepts.

Thus, physical culture and sports activities are based on the categories of physical culture and sports, clarification of the essence of which is a necessary prerequisite for the legal characteristics of physical culture and sports activities related to the human right to free access to physical education and sports. At the same time, it should be mentioned that from the point of view of the normative approach, in particular Article 1 of the Law of Ukraine “On physical culture and sport” of December 24, 1993 No. 3808-XII [4, art. 80], physical culture is understood as the activity of subjects of the sphere of physical culture and sports, which is aimed at ensuring the motor activity of people in order to ensure their harmonious, primarily physical, development and maintaining a healthy lifestyle. The main directions of physical culture are: physical education of various groups of the population, mass sports, physical culture and sports rehabilitation.

As for the concept of sports, it is understood as the activity of subjects in the field of physical culture and sports, aimed at identifying and unified comparison of people’s achievements in physical, intellectual and other training by conducting sports competitions and appropriate preparation for them. The main areas of sports are: children’s sports, children’s and youth sports, reserve sports, amateur sports, high-performance sports, professional sports, veterans’ sports, Olympic sports, non-Olympic sports, disabled sports, and other sports.

As can be seen from the above definitions, sport is an objective consequence of the occupation of physical culture and sports subjects by physical culture, since it provides motor activity of people, and sport allows at a certain stage to compare those achievements by recording their results in accordance with unified standards and rules.

To generalize the statements, physical culture and recreation and sports activities can be defined as a set of creative, universal, purposeful activities, during which objects, processes and phenomena of natural and social origin can change, based on a combination of private and public interests and can be carried out professionally by subjects of the sphere of physical culture and sports for the development of physical culture and aimed at ensuring the motor activity of people for the purpose of their harmonious, primarily physical, development and maintenance of a healthy lifestyle to identify and unified comparison of people’s achievements in physical, intellectual and other train-

ing by conducting physical culture, health and sports events and providing appropriate training for them.

Also, a characteristic feature of the field of sports public relations is the presence in its context of various types of management processes with an objective need to ensure an appropriate level of order in the relevant public relations. Accordingly, sports processes of various types, as well as public sports relations in general, have undergone and are undergoing their managerial influence on the part of the state and its bodies in order to ensure that the level of their order belongs to them. These trends in the plane of law are manifested in the prism of categories and concepts of regulatory and administrative-managerial management (regulation).

Under the legal (regulatory) regulation of the sports sphere, it is appropriate to understand the implementation of law – making processes (establishing rules/conditions for the functioning of the sphere of sports legal relations) and control (over compliance with the established rules/conditions of the sports sphere), as well as the application of liability for violation of rules and norms established in the sphere of sports legal relations. At the same time, the concept of regulation and management of sports relations in general should be understood as administrative and managerial activities in the field of sports, carried out by state, municipal, private and other authorized bodies and institutions in the form of various legal, organizational and financial-economic regulatory and managerial measures in order to optimally coordinate various industry interests, ensure their protection and protection, as well as in order to solve various operational sports issues.

At the same time, when understanding the concept of regulation of sports legal relations, it is necessary to proceed from the fact that such is a separate form of public management of the sports sphere and is meaningfully revealed through the implementation by authorized subjects of state and municipal power, other authorized subjects of a set of legal, organizational and financial and economic measures to influence the behaviour of subjects that organize and carry out activities in the field of sports, in order to optimally coordinate public and private interests among themselves, as well as ensure their protection and protection.

Accordingly, the management and regulation of sports phenomena and processes provides in its arsenal a number of legal means and mechanisms of an administrative and legal nature. In particular, if we are talking about the

category of purely state or municipal regulation of sports legal relations, then we should mention such legal, organizational and financial-economic means of regulation as the development and adoption of regulatory legal acts regulating sports relations, the creation of sports development programs, state orders, licensing, patenting, technical regulation, the application of standards and limits, the provision of investment, tax and other benefits, subsidies, compensation, etc.

Along with the regulation of the sphere of sports, the system of public management of sports legal relations also includes such forms of management as the management of current affairs in the field of sports, as well as supervision (control) in the field of sports, in respect of which we note the following.

Management of current affairs in the field of sports is reduced to the implementation of internal organizational and administrative-managerial processes in the subjects of sports legal relations, which are legal entities, on the basis of the ownership rights of the subjects of current affairs management in relation to the relevant sports subjects, or on the basis of corporate rights of the relevant subjects of current affairs management in order to solve operational issues of various nature, which is ultimately aimed at achieving the goals of sports activities. It is worth emphasizing that in this way, sports law solves the issue of managing current affairs in the public, municipal and private sectors.

Regarding supervision (control) in the field of sports as a separate legal form of public management of sports legal relations, the essence of such is reduced to the plane of legal measures for the implementation of supervision (observation, monitoring, etc.) over the field of sports as a whole and the behaviour and activities of subjects of sports law, in particular in order to ensure the legality and established in the sports sphere of legal sports order and the proper level of discipline of the behaviour of its subjects by determining the level of compliance of the behaviour of subjects of sports legal relations with the established requirements of legislation, identification of offenses and application of legal and other liability measures in this regard.

In a separate plane, it is also appropriate to recall the subjective understanding of sports law. In this regard, we note that subjective rights in the field of physical culture and sports can be revealed through the prism of the private legal capabilities of a person defined in the legislation to carry out

various types of activities in the field of physical culture and sports, which is provided by the normative definition of a wide framework of the legal field of personal freedom to perform actions and/or omissions in the relevant field, and also contributes to the satisfaction of its corresponding needs arising in this regard. It will be more meaningful to state the thesis that human rights in the field of physical culture and sports (subjective sports rights) – these are certain, defined by law, private legal opportunities of a person to carry out sports and physical culture and recreation activities in the field of physical culture and sports, which, taking into account their dispositive and general nature, endow their owners with a wide range of socio-cultural freedom and inviolability, serve as a means of meeting social, cultural and economic needs and interests for harmonious physical development, maintaining a healthy lifestyle, achieving achievements in physical, intellectual and other training and, accordingly, their demonstration in sports competitions.

The means of ensuring these human rights in the field of physical culture and sports are the powers granted to such a person regarding the free choice of sports and physical culture and sports services, the availability and safety of physical culture and sports, the protection of rights and legitimate interests, the creation of institutions of physical culture and sports, the association in public organizations of physical culture and sports orientation, the acquisition of special education and the implementation of professional activities, etc.

It should be borne in mind that the content of sports rights and human interests in the field of physical culture and sports, as well as the nature of sports public relations arising in connection with their implementation, determine the content and directions of state policy in this area, and also serve as an impetus for the further development of the legal system and the system of legislation of Ukraine, which led to the formation of the field of sports law as a complex legal entity.

The logical outcome of the research conducted on this topic of this work will be the following.

Sports law, being a certain set of legal norms, is aimed at regulating public relations that arise and develop in the field of sports, and therefore have a close and indissoluble relationship with such concepts and categories as sports, physical culture and recreation and sports activities, sports competitions, etc.

The complex of all manifestations of physical culture, recreation and sports activities has a mixed private and public character. At the same time, sports law of Ukraine is a complex branch of law characterized by a combination of private and public mechanisms of legal regulation, and therefore a special legal regime, which serves as one of the systems – forming factors of this branch of law.

The subject component of sports-legal regulation is formed by the following types of public relations:

- organizational, social, economic and other aspects related to the organization and implementation of activities in the field of physical culture and sports;

- public relations related to the holding of sports events of various types, including sports competitions;

- social relations that arise when creating conditions for the development of physical culture and sports;

- economic, civil, labour, administrative, financial and other types of public relations related to sports that arise in connection with the organization and conduct of targeted physical culture, recreation and sports events of commercial and non-commercial orientation;

- relations between subjects of the sphere of physical culture and sports who have amateur or professional status or are engaged in physical culture and sports to meet their personal needs, as well as relations between organizers of physical culture and recreation or sports events;

- relations of consumption of the results of sports events (sports services of a spectacular nature, etc.).

The key categories of sports law are sports, physical culture and recreation and sports activities, sports competitions that carry the following meaning of understanding:

- physical culture is understood as the activity of subjects of the sphere of physical culture and sports, which is aimed at ensuring the motor activity of people in order to ensure their harmonious, primarily physical, development and maintaining a healthy lifestyle;

- the concept of sport is understood as the activity of subjects in the field of physical culture and sports, aimed at identifying and unified comparison of people's achievements in physical, intellectual and other training by conducting sports competitions and appropriate preparation for them;

- physical culture and recreation and sports activities as an integral concept should be understood as a set of creative, universal, purposeful activities, during which objects, processes and phenomena of natural and social origin can change, based on a combination of private and public interests and can be carried out professionally by subjects of the sphere of physical culture and sports for the development of physical culture and aimed at ensuring the motor activity of people for the purpose of their harmonious, primarily physical, development and maintenance of a healthy lifestyle to identify and unified comparison of people's achievements in physical, intellectual and other training by conducting physical culture, health and sports events and providing appropriate training for them;

- a sports competition should be understood as a system of legal, economic and organizational measures created by the organizer of the relevant sports event, aimed at effective, accurate and complete implementation of the approved regulations of the competition and ensuring the conditions for its holding, taking into account the observance of the rights and interests of participants in the competition, its organizers, spectators and other people (including measures that are necessary to ensure the normal course of the competition and ensure their implementation), which are manifested in the competition, struggle of athletes for certain benefits in order to achieve, due to their own achievements, advantages over other athletes, that is, in order to achieve a certain sports result, better than the sports result of other athletes.

Sports law, being a certain set of legal norms, aimed at regulating social relations that arise and develop in the field of sports, and therefore have a close and inseparable relationship with such concepts and categories as sports, sports activities, sports competitions, etc.

The complex of all manifestations of physical culture and recreation and sports activities has a mixed private-public character. At the same time, sports law of Ukraine is a complex branch of law, characterized by a combination of private and public mechanisms of legal regulation, and thus – a special legal regime, which serves as one of the system-forming factors of this branch of law.

The subject component of sports-legal regulation is formed by the following types of public relations:

- organizational, social, economic and other relations related to the organization and implementation of activities in the field of physical culture and sports;
- public relations related to sports events of various kinds, including sports competitions;
- social relations that arise when creating conditions for the development of physical culture and sports;
- related to sports economic, civil, labour, administrative, financial and other types of social relations that arise in connection with the organization and conduct of targeted sports and sports activities for commercial and non-commercial purposes;
- relations between the subjects of physical culture and sports who have amateur or professional status or are engaged in physical culture and sports to meet their personal needs, as well as relations between the organizers of physical culture or health or sports events;
- relations of consumption of results of sports actions (sports services of entertaining character, etc.).

The key categories of sports law are sports, physical culture and recreation and sports activities, sports competitions.

REFERENCES:

1. Aparov, A.M., Onyshchenko, O.M. (2016). *Economic law of Ukraine: a textbook*. Volume 1. K.: KDAVT named after Hetman Petro Konashevych-Sagaidachnyi. K: Istyna.
2. Aparov, A.M., Onyshchenko, O.M. (2018). *Economic law of Ukraine: a textbook*. Volume 2 (Special part). K.: State University of infrastructure and technology. K: Istyna.
3. Aparov, A.M. (2012). *Sports law of Ukraine: textbook for students of universities*. K.: KDAVT named after Hetman Petro Konashevych-Sagaidachnyi. K: Istyna.
4. *Vidomosti Verkhovnoi Rady Ukrainy [News of the Verkhovna Rada of Ukraine]*, 14, 1994.

§ 2.5. Features of procedural legal relations of the head of pre-trial investigation body with the prosecutor

The increased attention of society and the state leadership to conducting pre-trial investigations of certain high-profile crimes has actualized a wave of initiatives aimed at improving the efficiency and quality of criminal prosecution in our country. One of the ways to improve the pre-trial investigation process is to establish proper departmental control and prosecutor's supervision over the conduct of each procedural action and decision taken. They are implemented in the field of criminal proceedings, first of all, by the head of the pre-trial investigation body and the prosecutor, who are participants in criminal proceedings on the part of the prosecution. The scope of their powers, regulated by the CPC of Ukraine, allows us to assert mainly the leading role of these participants in the proceedings in the pre-trial investigation. In other words, both of these entities are responsible for ensuring the proper level of legality and effectiveness in conducting pre-trial investigations.

Taking into account the above, natural questions arise, how are procedural powers similar to their legal nature implemented, do conflicts arise during the implementation of the leadership role of the prosecutor and the head of the pre-trial investigation body, and how are the procedural legal relations between these participants in the process formed? The outlined problems updated the topic and determined the direction of this research.

Analysis of publications on research issues and problem statement. Improving the procedural status and optimizing the powers of the head of the pre-trial investigation body and the prosecutor have been the subject of research by a significant number of scientists, in particular D. O. Vlezko, O. P. Guliaev, V. V. Kalnytskyi, V. F. Kriukov, D. M. Mirkovets, M. A. Mykhailiuk O. Pogoretskyi, O.V. Petkov, V. M. Savytskyi, O. Yu. Tatarov, V. Ya. Tatsiia, K. H. Shapovalova, N. S. Trubin and others who have made a significant contribution to solving this problem.

At the same time, the problem of finding ideal forms of management of pre-trial investigations remains one of the most controversial in criminal proceedings. Scientists have not come to a consensus on the optimal limits of procedural competence of the head of the pre-trial investigation body and the

prosecutor in criminal proceedings: some experts insist that the function of leading a pre-trial investigation should be assigned exclusively to the head of the relevant investigative unit [2, p. 15], and others believe that the management of pre-trial investigation is also inherent in the procedural activity of the prosecutor, since it is identical to the supervision of compliance with the rule of law [3, p. 238].

The Criminal Procedure legislation is also imperfect in terms of regulatory regulation of this issue, which indicates that the process of finding the optimal model for organizing and managing a pre-trial investigation, as well as monitoring compliance with the rule of law during its conduct, is incomplete. The above allows us to state that the current stage of solving the problem of ensuring the quality of pre-trial investigation by the prosecutor and the head of the pre-trial investigation body creates an urgent need to develop new concepts for the implementation of prosecutor's supervision and departmental control in criminal proceedings.

The purpose of the article is to study the procedural powers of the head of the pre-trial investigation body and the prosecutor, the specifics of their implementation in practice and the relationship of these participants in criminal proceedings among themselves.

Presentation of the main material. In accordance with Paragraph 8 of Part 1 of art. 3 of the CPC of Ukraine the head of the pre-trial investigation body is the head of the Main Investigation Department, the investigation department, the department, the Department of the National police body, the security body, the body that monitors compliance with tax legislation, the first deputy or Deputy Director of the State Bureau of Investigation, the head of the main Investigation Department, the investigation department, the Department of the state Bureau of Investigation body, the main division of detectives, the division of detectives, the Department of detectives, internal control units of the National Anti-Corruption Bureau of Ukraine and its deputies acting within the limits of their powers [1].

According to Part 1 of Article 7 of the Law of Ukraine "On the prosecutor's office", the prosecutor's office of Ukraine consists of the Office of the general prosecutor, regional prosecutor's offices, district prosecutor's offices and the Specialized Anti-Corruption Prosecutor's office [4]. Paragraph 15 of Part 1 of Article 3 of the CPC of Ukraine stipulates that a prosecutor is a person who holds a position provided for in Article 15 of the

Law of Ukraine “On the prosecutor’s office” and acts within the limits of his powers.

The head of the pre-trial investigation body and the prosecutor are assigned to the prosecution of criminal proceedings (paragraph 19 of Part 1 of Article 3 of the CPC of Ukraine) and are endowed with a number of powers regulated by the CPC of Ukraine.

According to Article 39 of the CPC of Ukraine, the head of the pre-trial investigation body is authorized to: determine the investigator(s) who will carry out the pre-trial investigation, and in cases of pre-trial investigation by an investigative group-to determine the senior investigative group who will direct the actions of other investigators; suspend the investigator from conducting a pre-trial investigation by a reasoned decision on the initiative of the prosecutor or on his own initiative, with subsequent notification to the prosecutor, and appoint another investigator if there are grounds provided for by the CPC of Ukraine for his recusal or in case of ineffective pre-trial investigation; get acquainted with the materials of the pre-trial investigation, give the investigator written instructions that may not contradict the decisions and instructions of the prosecutor; take measures to eliminate violations of legal requirements if they are allowed by the investigator; coordinate the conduct of investigative (search) actions and extend the term of their conduct in cases stipulated by the CPC of Ukraine; carry out pre-trial investigation, while using the powers of the investigator; exercise other powers provided for by the CPC of Ukraine.

Part 2 of Article 36 of the CPC of Ukraine provides that the prosecutor, while supervising compliance with laws during a pre-trial investigation in the form of procedural guidance of a pre-trial investigation, is authorized to: start a pre-trial investigation if there are grounds provided for in the CPC of Ukraine; have full access to materials, documents and other information related to the pre-trial investigation; instruct the pre-trial investigation body to conduct a pre-trial investigation; instruct the investigator, the pre-trial investigation body to conduct investigative (search) actions, secret investigative (search) actions, other procedural actions within the time limit established by the prosecutor or to give instructions on their conduct or participate in them, and if necessary – to personally conduct investigative (search) and procedural actions in accordance with the procedure established by the CPC of Ukraine; to entrust the conduct of investigative (search)

actions and secret investigative (search) actions to the relevant operational units; to cancel illegal and unjustified decisions of investigators; initiate before the head of the pre-trial investigation body the issue of removing an investigator from conducting a pre-trial investigation and appointing another investigator if there are grounds provided for by the CPC of Ukraine to challenge him, or in case of ineffective pre-trial investigation; make procedural decisions in cases provided for by the CPC of Ukraine, including the closure of criminal proceedings and the extension of the terms of pre-trial investigation if there are grounds provided for by the CPC of Ukraine; coordinate or refuse to coordinate petitions of the investigator to the investigating judge for conducting investigative (search) actions, secret investigative (search) actions, other procedural actions in cases provided for by the CPC of Ukraine, or independently submit such petitions to the investigating judge; inform the person of suspicion; file a civil claim in the interests of the state and citizens who, due to physical condition or financial situation, failure to reach the age of majority, old age, incapacity or limited legal capacity, are unable to independently protect their rights, in accordance with the procedure provided for by the CPC of Ukraine and the law; approve or refuse to approve an indictment, petitions for the application of compulsory measures of a medical or educational nature, make changes to the indictment drawn up by the investigator or these petitions, independently draw up an indictment or these petitions; apply to the court with an indictment, a request for the application of compulsory measures of a medical or educational nature, a request for the release of a person from criminal liability; support the state prosecution in court, refuse to support the state prosecution, change it or bring an additional charge in accordance with the procedure established by the CPC of Ukraine; coordinate the request of the pre-trial investigation body for international legal assistance, transfer of criminal proceedings, or independently make such a request in accordance with the procedure established by the CPC of Ukraine; instruct the pre-trial investigation body to fulfil the request (instruction) of the competent body of a foreign state for international legal assistance or adoption of criminal proceedings, to check the completeness and legality of the procedural actions, as well as the completeness, comprehensiveness and objectivity of the investigation in the adopted criminal proceedings; check before sending to a higher-level prosecutor the documents of the pre-trial investigation body on

the extradition of a person, return them to the relevant body with written instructions, if such documents are unfounded or do not meet the requirements of international treaties, the consent to be bound by which was provided by the Verkhovna Rada of Ukraine, or the laws of Ukraine; instruct the pre-trial investigation bodies to search for and detain persons who have committed a criminal offense outside Ukraine, perform certain procedural actions for the purpose of extraditing a person at the request of the competent authority of a foreign state; appeal against court decisions in accordance with the procedure established by the CPC of Ukraine; exercise other powers provided for by the CPC of Ukraine [1].

I. I. Prysiashniuk believes that the procedural management of a prosecutor's pre-trial investigation is an activity aimed at a comprehensive, complete and impartial investigation of the circumstances of criminal proceedings, identifying both those circumstances that incriminate and those that justify the suspect, the accused, as well as circumstances that mitigate or aggravate his punishment, providing them with an independent legal assessment and ensuring the adoption of legal and impartial procedural decisions, and in case of non-compliance with the above tasks – the use of powers to cancel illegal and unjustified decisions of investigators or initiate before the head of the pre-trial investigation body the issue of removing the investigator in case of an ineffective investigation [5, p. 207-210].

Unlike the prosecutor, the head of the pre-trial investigation body is not endowed with such a significant amount of procedural powers in criminal proceedings and is somewhat dependent on the decisions of the latter, since he is obliged to carry out his instructions provided in writing. Failure of the head of the pre-trial investigation body to comply with the legal instructions of the prosecutor entails liability provided for by law.

Almost the only authority of the head of the pre-trial investigation body, which the prosecutor cannot exercise independently, is the right to suspend the investigator from conducting a pre-trial investigation by a reasoned decision with subsequent notification to the prosecutor. The prosecutor, in turn, is only authorized to initiate before the specified head the issue of removing the investigator from conducting a pre-trial investigation if there are grounds for doing so provided for by the CPC of Ukraine. This norm appeared thanks to the recommendations of experts of the Council of Europe, who drew attention to the danger associated with the significant

dependence of the pre-trial investigation body on the scope of the prosecutor's powers in criminal proceedings [6, p. 30].

So, both the head of the pre-trial investigation body and the prosecutor in criminal proceedings use the same forms and methods of influencing the process of pre-trial investigation, but the latter, as the procedural head of the investigation, occupies a priority position in this hierarchy.

First of all, this concerns the scope of powers in the field of checking the materials of the pre-trial investigation and providing instructions to the investigator and the pre-trial investigation body, the ability to independently conduct investigative (search) actions, take part in them, apply to the investigating judge with petitions for conducting investigative (search) actions and secret investigative (search) actions, the application of measures to ensure criminal proceedings, etc. Unlike the prosecutor, the head of the pre-trial investigation body is granted part of these powers only in the procedural status of an investigator who has accepted the relevant materials of the pre-trial investigation or conducts it as part of an investigation team.

The head of the pre-trial investigation body and the prosecutor are obliged to take measures to eliminate violations of legal requirements if they are allowed by the investigator. Such violations can be detected by the head of the pre-trial investigation body and the prosecutor during the review of the materials of the pre-trial investigation. The only difference is that the prosecutor has the right to cancel illegal decisions of investigators, while the head of the pre-trial investigation body does not have such an opportunity. Some experts believe that in this case, the head of the pre-trial investigation body can apply to the relevant prosecutor with a request to cancel the investigator's decision, although this issue is not regulated by the norms of the CPC of Ukraine [7, p. 139].

The form of procedural response of the head of the pre-trial investigation body to violations of the requirements of the law by the investigator is to remove him from conducting a pre-trial investigation or provide written instructions on their elimination.

In turn, the prosecutor is not authorized to independently remove the investigator from conducting a pre-trial investigation. If there are appropriate grounds, he can only initiate before the head of the pre-trial investigation body the issue of removing the investigator from conducting a pre-trial

investigation and count on the adoption of the necessary procedural decision by the named official.

The CPC of Ukraine defines differently the main tasks of these participants in criminal proceedings during pre-trial investigation: the head of the pre-trial investigation body organizes pre-trial investigation (Part 1 of Article 39 of the CPC of Ukraine), and the prosecutor supervises compliance with laws during the pre-trial investigation in the form of procedural guidance of the pre-trial investigation (Part 2 of Article 36 of the CPC of Ukraine). Naturally, the question arises: How do these tasks relate to each other, what unites them, and what is the difference?

Several opinions have been expressed in the legal literature on this issue. Some authors claim that the prosecutor is endowed with the function of procedural guidance of the investigation in the form of supervision, identifying the first and second concepts, while others insist that supervision of the implementation of laws by pre-trial investigation bodies and management of pre-trial investigation are his independent functions in pre-trial investigation [3, 106-107]. The position of a number of scientists on the inadmissibility of the leading role of the prosecutor in the investigation of criminal offenses and the incompatibility of this function with prosecutor's supervision is also expressed and reasoned [2, 15].

Even before the entry into force of the CPC of Ukraine in 2012, a significant part of scientists and practitioners spoke out against the combination, concurrency of the function of prosecutor's supervision and procedural management of pre-trial investigations due to their difference and different legal nature. After all, the tasks of prosecutor's supervision and management of the pre-trial investigation are completely different, despite the similarity of a number of powers for their implementation [8, p. 426]. The same opinion is shared by V. V. Klochkov, focusing on the difference between the concepts of "supervision" and "management", the impossibility of including "management" in "supervision", and even more so the perception of "management" as the best and only possible form of "supervision" [9, p. 31].

In turn, the term "supervision" is defined as "verification or observation for the purpose of verification" [10, p. 683], and the process of "management" means "to direct, be responsible for the state of affairs, have the right to an organizational decision" [11, p. 22]. As we can see, the

concepts of “supervision” and “management” are different from each other and cannot be identified as we see it in Part 2 of Article 36 of the CPC of Ukraine.

It should be noted that from the date of adoption of the CPC of Ukraine in 2012 to June 2016, the procedural status of the prosecutor contradicted the provisions of the Constitution of Ukraine, where Article 121 regulated that the prosecutor’s office is assigned to monitor compliance with laws by bodies conducting pre-trial investigations. That is, the legislator exhaustively regulated the participation of prosecutor’s offices in pre-trial investigations and did not define the management of pre-trial investigations as one of their areas of activity. As for today, these conflicts have been corrected by excluding Section VII “Prosecutor’s office” from the Constitution of Ukraine and adding its article 131-1, which defines that the prosecutor’s office organizes and processes pre-trial investigations, resolves other issues during criminal proceedings in accordance with the law, and supervises secret and other investigative and search actions of law enforcement agencies. Thus, at the constitutional level the prosecutor’s office is charged with the duty of pre-trial investigation:

- 1) on the organization of pre-trial investigation;
- 2) procedural guidance of the pre-trial investigation;
- 3) supervision of secret and other investigative (search) actions of law enforcement agencies.

According to A. O. Mikhailiuk, giving the prosecutor the authority to organize a pre-trial investigation directly contradicts the functional purpose and powers of the relevant head of the pre-trial investigation body. In this regard, it can be argued that the prosecutor’s supervision of the legality of the pre-trial investigation does not fully agree with its organization activities, because supervision and organization are completely different types of activities that provide for diametrically opposite types of measures in their legal nature aimed at achieving different goals using different methods and means [12, p. 283].

Investigating this issue, V. M. Savytskyi came to the conclusion that the introduction of such a subject as the head of the pre-trial investigation body in criminal proceedings led to a redistribution of responsibilities for managing the pre-trial investigation, as a result of which the prosecutor’s activity focused on taking measures mainly of a supervisory, law

enforcement nature. In turn, the scope of procedural powers of the head of the investigative unit, who in all respects is closer to the investigator than the prosecutor, allows him to successfully control the investigation process, identify possible shortcomings in a timely manner and promptly respond to problems, actively supporting and stimulating the creative search of investigators [13, p. 203-204].

D. M. Mirkovets also denies the expediency of giving the prosecutor the function of procedural guidance of the pre-trial investigation, he believes that this can lead to a certain imbalance in the pre-trial investigation, as well as reduce the level of responsibility of investigators and heads of investigative units for their work. Both the basic provisions of management theory and the rules of ordinary logic allow us to state that the management of a certain activity or the performance of certain powers and, accordingly, the supervision of a certain activity, the performance of powers are essentially different things. Never the same person (or body) can effectively manage a certain activity and at the same time monitor its implementation, since this leads to irresponsibility [14, p. 113-114].

Under such conditions, it is really difficult for a prosecutor to effectively combine the function of supervising the legality of pre-trial investigation and procedural guidance in his activities. Unlike the prosecutor, the head of the investigative unit, due to his official position, has closer, direct contact with the investigator, is able to get acquainted with the materials of the pre-trial investigation in the usual working mode, has data on the workload, professional level, experience of his subordinates, etc. This gives him a certain advantage over the prosecutor, allowing him to identify the shortcomings of the investigation more effectively and in a timely manner and quickly take measures to eliminate them. The disadvantage is also the territorial distance of the prosecutor from the investigator, who receives materials of the pre-trial investigation, usually only during scheduled or unscheduled inspections, applying to the investigator-judge with a petition, complaints about the actions of the investigator and the end of the pre-trial investigation.

Even the process of familiarizing the prosecutor with the materials of the pre-trial investigation is much more complex and time-consuming than within the investigative unit carried out by the head of the pre-trial investigation body. In particular, the prosecutor requests the materials of the

pre-trial investigation in an official way, sending a corresponding letter to the investigator or the head of the pre-trial investigation body. After preparing the materials (numbering of sheets, drawing up descriptions, firmware, etc.), they are sent with a cover letter to the prosecutor. During the period of checking the materials of the pre-trial investigation, the investigator will not have direct access to the proceedings, which complicates the conduct of investigative (search) actions, secret investigative (search) actions and other procedural actions. That is, such a check at a certain stage of the investigation may even prevent the timely receipt of the necessary evidence in criminal proceedings.

For proper procedural management of a pre-trial investigation, the prosecutor must thoroughly know all the materials of pre-trial investigations under his supervision, constantly monitor the situation with the evidence received and analyse the results of the investigators' activities. That is, the prosecutor, logically, should be in constant contact with the investigator and the investigation process, taking an active position in conducting investigative (search) actions, secret investigative (search) actions and preparing various kinds of appeals with petitions to the investigating judge. However, in practice, such a model of prosecutor's behaviour is incapacitated, since the numerous staff of prosecutors, additional functions (not related to procedural guidance), excessive workload (an ever-growing number of proceedings), departmental obstacles (distance from the investigator, official correspondence, etc.) do not allow proper implementation of the entire scope of powers defined in the CPC of Ukraine.

Within the limits of their powers, the head of the pre-trial investigation body and the prosecutor actively influence the process of collecting evidence in criminal proceedings, their completeness and timely receipt. However, according to Article 92 of the CPC of Ukraine, the obligation to prove the circumstances provided for in Article 91 of the CPC of Ukraine (circumstances that are subject to proof in criminal proceedings) is assigned to the investigator, prosecutor and in some cases to the victim [1].

The legislator did not include the head of the pre-trial investigation body in the specified list – he is not a subject of evidence and cannot conduct investigative (search) actions, secret investigative (search) actions and other procedural actions in criminal proceedings that are in the work of investigators subordinate to him.

In turn, the prosecutor has the right to conduct investigative (search) actions, secret investigative (search) actions and procedural actions, apply to the court with petitions, personally make procedural decisions, etc., which indicates his ability to act as an independent subject of evidence, and influence through the investigator on the formation of evidence in criminal proceedings. In view of this, sometimes there are questions related to the admissibility of evidence obtained by the prosecutor during the pre-trial investigation.

According to Paragraph 4 of Part 2 of Article 36 of the CPC of Ukraine, the prosecutor is authorized to give instructions on conducting investigative (search) actions, secret investigative (search) actions, other procedural actions, participate in them, and if necessary – personally conduct investigative (search) and procedural actions in accordance with the procedure established by the CPC of Ukraine [1]. From the above, it can be seen that the legislator did not give the prosecutor the right to pre-trial investigation of criminal offenses in full and independently collect evidence in criminal proceedings. The CPC of Ukraine notes the selectivity of such actions – the prosecutor conducts investigative (search) actions and other procedural actions in “necessary cases”, which, in our opinion, are an exception related to the need to provide methodological assistance to the investigator during complex investigative (search) actions in high-profile proceedings that require increased procedural control.

At the stage of developing the draft CPC of Ukraine in 2012, experts of the Council of Europe noted that the exclusive authority of the prosecutor’s office “in necessary cases to personally conduct investigative (search) or procedural actions or a full investigation” contradicts the general approach to investigation regulated in Article 38 of the CPC of Ukraine, which defines an exhaustive list of bodies with the right to conduct pre-trial investigation [15, p. 30].

The process of collecting evidence is not typical for the procedural activity of a prosecutor in criminal proceedings and is not directly related to the supervision of legality and the procedural management of a pre-trial investigation. In view of this, as well as the principles of criminal proceedings (the principle of legality), the prosecutor only in exceptional cases has the right to personally conduct investigative (search) actions and other procedural actions in criminal proceedings.

At the same time, the head of the pre-trial investigation body, without being the subject of evidence himself, is able to significantly influence this process in criminal proceedings. Using such powers as providing written instructions, the specified head organizes the work of the investigator, analyses the evidence obtained and can adjust the choice of ways and methods of proof that are capable in a particular situation to the greatest extent ensure the comprehensiveness, completeness and objectivity of the study of the circumstances of the commission of a criminal offense.

The choice of the head of the pre-trial investigation body of the means of procedural influence on the investigator depends both on the nature of the committed criminal offense (numerous episodes of criminal activity, commission of a crime by a group of people or an organized criminal group, the presence of contradictions in the system of evidence, etc.), and on the personal qualities of the investigator (lack of experience and/or qualifications, inattention, superficial approach to the investigation, etc.). The most common way for the head to influence the process of proof is to provide the investigator with written instructions on conducting investigative (search) actions, secret investigative (search) actions in criminal proceedings.

The authority to remove an investigator from conducting a pre-trial investigation by a reasoned decision and appoint another investigator is quite significant. By such a decision, the head of the investigative unit actually changes the identity of the direct subject of evidence during the pre-trial investigation.

The norm of the CPC of Ukraine, which obliges the head of the pre-trial investigation body to carry out written instructions and instructions of the prosecutor under the threat of liability provided for by law for their non-compliance, is debatable. At the same time, unlike the “head of the investigative department”, whose powers were previously regulated by Article 114-1 of the CPC of Ukraine of 1960, Today the head of the pre-trial investigation body is deprived of the opportunity to challenge the instructions and instructions of the prosecutor. An ambiguous situation arises – having received an instruction from the prosecutor in a specific criminal proceeding, the head of the investigative unit, who does not have the right to personally conduct a pre-trial investigation (if he personally did not accept the proceedings or is not part of the investigation team as an investigator), is obliged to carry it out under the threat of responsibility. Under these

circumstances, the head becomes a kind of dependence on the investigator, who conducts a pre-trial investigation, constantly monitoring his activities for compliance with the instructions of the prosecutor.

In the context of the above, the opinion of scientists is relevant that the head of an investigative unit subordinate dozens or even hundreds of investigators, and his physical capabilities in terms of monitoring the implementation of prosecutor's instructions are not unlimited [16, p. 348-349]. In such circumstances, the legal status of the head of the pre-trial investigation body is levelled, and his powers are directed not to implement the tasks of an independent subject of criminal proceedings, but to perform the function of an "assistant" prosecutor. In view of this, practitioners often complain about the actual "replacement" by the prosecutor of the powers that the head of the investigative unit should perform, and the negative impact of this on the effectiveness of the pre-trial investigation.

The results of the analysis of modern investigative practice allow us to state that the activity of the head of the pre-trial investigation body gradually focuses on certain aspects of the procedural management of the investigation, and the prosecutor – on supervision of this process. As in the case of the CPC of 1960, the prosecutor enters the process of pre-trial investigation on his own initiative only occasionally, when conducting appropriate checks or complaints received about the actions of the investigator.

As a rule, the prosecutor does not have a real opportunity to properly familiarize himself with the content of numerous requests to the court for permission to apply measures to ensure criminal proceedings, conduct investigative (search) actions and secret investigative (search) actions, which are addressed to him by investigators of pre-trial investigation bodies. In such circumstances, the prosecutor usually relies on the head of the pre-trial investigation body, who, by oral agreement, reviews such documents and eliminates possible mistakes of investigators. However, the problem of inconsistency of these issues with the norms of the CPC of Ukraine remains.

Analysing the procedural activity of the prosecutor, O. Yu. Tatarov concludes that against the background of rather progressive and democratic innovations laid down in the concept of the CPC of Ukraine, the provisions defining the status of the prosecutor in pre-trial proceedings are still regarded as a "step back". It is considered illogical to combine several incompatible functions in the prosecutor's activities: managing the pre-trial investigation,

supervising the implementation of laws by pre-trial investigation bodies, and maintaining public prosecution. In this regard, the powers of the prosecutor in pre-trial proceedings enshrined in the CPC of Ukraine are somewhat exaggerated [16, p. 347-349].

Conclusions. Summing up the above, we can state that there are certain shortcomings in the sphere of regulatory-legal regulation of the procedural powers of the head of the pre-trial investigation body and the prosecutor and their correlation with each other. In our opinion, the identified shortcomings can be eliminated by making appropriate amendments and additions to the CPC of Ukraine, which relate to:

- deprivation of the prosecutor's procedural powers to direct the pre-trial investigation, leaving him with supervision of compliance with laws by the pre-trial investigation bodies;

- expanding the powers of the head of the pre-trial investigation body to direct the pre-trial investigation and eliminate violations of the law during the pre-trial investigation by the investigator;

- providing an opportunity for the head of the pre-trial investigation body to challenge the prosecutor's instructions to a higher prosecutor.

REFERENCES:

1. Criminal Procedure Code of Ukraine (2013). *Vidomosti Verkhovnoi Rady Ukrainy [News of the Verkhovna Rada of Ukraine]*, 9-10, 11-12, 13. Art. 88.

2. Savytskyi, V. M. (1959). *Prosecutor's supervision of the inquiry and preliminary investigation*. Moscow.

3. Kriukov, V. F. (2006). *Prosecutor's supervision: textbook*. Moscow: Norma.

4. Law of Ukraine "On the prosecutor's office (2015). *Vidomosti Verkhovnoi Rady Ukrainy [News of the Verkhovna Rada of Ukraine]*, 2-3. Art. 12.

5. Prysiazhniuk, I. I. (2012). Features of prosecutor's powers under the new CPC of Ukraine. *New form of pre-trial investigation in the draft CPC of Ukraine and problems of its implementation in the activities of the security service of Ukraine: materials of the interdepartmental scientific and practi-*

cal conference, 27.04.2012, Kyiv. - Kyiv: Nauk.-vyd. viddil NA SB Ukrainy. Pp. 207-210.

6. Conclusion on the draft Criminal Procedure Code of Ukraine prepared by the Directorate for justice and protection of human dignity, the directorate general I "Human Rights and the rule of law". Strasbourg, 02.11.2011. Available online: www.coe.int/t/dgh/cooperation/capacitybuilding/Source/expertises/Opinion_Draft_CPC_UA_Ukrainian.pdf.

7. Tatsii, V. Ya., Pshonka, V.P., Portnov, A. V. (Ed.). (2012). *Criminal Procedure Code of Ukraine: scientific and practical commentary*. Kharkiv: Pravo.

8. Herasimova, S.I. (Ed.). (2002). *Handbook of Prosecutor*. Moscow.

9. Klochkov, V. (1989). To the development of the concept of prosecutor's supervision in criminal proceedings. *Socialisticheskaya zakonnost [Socialist legality]*, 11, pp. 29-32.

10. Busel, V. T. (Ed.). (2004). *Big Explanatory Dictionary of the modern Ukrainian language*. Irpen: Perun.

11. Trubin, N. S. (1982). *Prosecutor's supervision of compliance with laws by bodies of inquiry*. Moscow: Yurid. Lit.

12. Mikhaylyuk, A. O. (2019). Organisational-legal bases of procedural supervises compliance with legality at the stages of pre-trial investigation. *Pidpriemstvo hospodarstvo i pravo [Enterprise economy and law]*, 6, pp. 281-286.

13. Savytskyi, V. M. (1975). *Essay on the theory of prosecutor's supervision*. Moscow: Nauka.

14. Mirkovets, D. M. (2012). *Management of pre-trial investigation in the criminal process of Ukraine: diss....* Candidate of Legal Sciences: 12.00.09, Kyiv.

15. Conclusion on the draft Criminal Procedure Code of Ukraine prepared by the Directorate for justice and protection of human dignity, the directorate general I "Human rights and the rule of law". Strasbourg, 02.11.2011. Available online www.coe.int/t/dgh/cooperation/capacitybuilding/Source/expertises/Opinion_Draft_CPC_UA_Ukrainian.pdf.

16. Tatarov, O. Yu. (2012). *Theoretical-legal and organisational bases of pre-trial proceedings in criminal proceedings*: diss... doctor of Legal Sciences, Kyiv.

§ 2.6. Criminal proceedings and public activists

The article provides a philosophical-legal analysis of the activities of public activists as participants in criminal procedural activities, attempts to attribute them to separate parties of criminal proceedings, determining their role and significance in criminal proceedings.

Our own position on the legislative regulation of the activities of public activists as participants in criminal proceedings is highlighted, and on this basis, proposals are made for making specific changes to the current CPC of Ukraine.

Taking into account the realities of random domestic legal policy and the destructive vector of its modern development, fuelled by the dominance of foreign grants, the real phenomenon of today's criminal process is the appearance of a new side in it – public activists.

Only lazy does not speak about the figure of a public activist as a so-called participant in criminal proceedings today.

Almost all mass media have a duty to “put in the ears” of ordinary citizens about the mythical ideals of democracy, civil society and the rule of law.

In our previous publications, we noted that almost every day every official of any level, weight or political orientation, speaking on the so-called talk shows like non-biased TV channels, little aware of the significance of their statements, but with the appearance of almost a doctor of law, using declarative and template phrases, tries to convey to us his version of the historical path of the Ukrainian people to a better life with European values, in which each person can be free and have an almost unlimited list of rights and freedoms, as a sign of the onset of democratic transformation.

The fashion trend of some modern journalists, and almost all politicians, their observers, public figures and activists, as well as other people far from jurisprudence who do not want to work if it requires intellectual or physical costs, the slogan has become about “the need to increase the level of protection of citizens' rights and freedoms, the humanization of the criminal-

law policy of the state, as well as the need for reform of judicial and law enforcement agencies”.

However, unfortunately, not every one of these individuals reminds Ukrainians of the list of responsibilities that they must adhere to as participants in democratic transformations on the way to the development of the rule of law and civil society. In the conditions of modern “total democracy”, every Ukrainian armed with that unlimited list of his rights and freedoms, as well as taking into account the mentality of our nation, often believes that his rights are unlimited, there are no duties, and the “root of evil” lies in the activities of judicial and law enforcement agencies, the very presence of which restricts their public position, which, in turn, makes it necessary to humanize criminal justice.

The Criminal Procedure Code adopted in 2012, according to the overwhelming majority of scientists, journalists, representatives of human rights and public organizations, allegedly made a breakthrough in the modern criminal-law and criminal procedure policy of the Ukrainian state, and also embodies the implementation of European values in the domestic criminal procedure legislation.

The entry into force of the Criminal Code of Ukraine in 2001 allegedly contributed to the departure of the domestic criminal-law policy of the state from Soviet remnants and its choice of a democratic vector of development.

However the practical realities of today are diametrically opposed to the often hysterical arguments of representatives of the domestic establishment, and their henchmen, who, acting on behalf of pseudo-public and quasi-human rights organizations, promote the need for legislative strengthening in criminal proceedings of the rights and freedoms of suspects, accused, convicted, increasing procedural guarantees and opportunities of the defence against the background of reducing such for the prosecution, increasing papermaking, bureaucracy and formalism in the work of judicial and law enforcement agencies under the guise of strengthening their responsibility in the context of the implementation of European values in domestic criminal procedure legislation.

In our opinion, the “European humanity” provided for by these legislative acts, in the modern realities of the domestic legal system, acts as an additional catalyst for the growth of crime, due to the lack of an actual balance of

rights and obligations between the prosecution and defence parties (both among themselves and before the court, and along with it); priority of duties in the work of judicial and law enforcement agencies regarding the strict observance of the rights and freedoms of persons suspected (accused) of committing criminal offenses, which entails the actual secondary importance of their activities for the real protection and restoration of the rights of victims and ensuring the safety of other participants in criminal proceedings [1, p. 126-128].

Almost no modern high-profile court case takes place without the participation of public activists.

Taking into account our own practical experience, we will try to analyse the role and significance of the public and their individual representatives for the modern criminal process.

We believe and do not deny that public control is an important attribute of a modern democratic state governed by the rule of law.

We agree that it is public control that should become an influential tool for public control over the state to search for, preserve and develop the achievements of democracy and the real protection of citizens' rights and freedoms.

However, we must clearly distinguish public control from public disorder. We must clearly distinguish quasi-activists from people with a really active public position, their attempt and desire to really change society for the better, the need and expediency to hear their position and take it into account when making important, including national decisions.

Many articles have been written about public activists, all of them differ in their approaches to defining this term, and sometimes contradict each other.

It should be noted that domestic jurisprudence does not contain a definition of the concept of "public activist". This concept is more of a tabloid-journalistic colour, which is used by representatives of the mass media, oligarchy, political clans, grant-eaters and others not related to the jurisdictional process. At the same time, as for grant-eaters, we will provide our own subjective definition that they are recipients of irrevocable international financial assistance provided by foreign organizations to destabilize the legal, economic and political situation in Ukraine under the pretext of searching for ephemer-

eral ideals of democracy and amorphous rights and freedoms of citizens. At the same time, it is grant-eaters, in our subjective opinion, who are the main conductors of public activists in criminal proceedings, and determine the tactics and methodology of their “work” during specific proceedings.

However, let us return to public activists, to whom this scientific work is devoted. For example, the chairman of one of the Ukrainian public organizations M. Skakun regarding this definition comes from two words “public” and “activism”. The word “public” has two meanings: 1) territorial public (range from residents of a microdistrict to the planet Earth); 2) public – a group of two people who are united by some feature: for example, nationality, profession, hobby, religion, illness, views, and so on. Therefore, a public activist must belong to the community in whose interests he acts. Some may point out that a real public activist can also act in the interests of another community. Try to imagine miners under the government building demanding to repay the salary debt to teachers. Or, some might mention the activities of foundations like Bill and Melinda Gates, because they help communities they don’t belong to. However, such activities are more charitable. Similarly, a person who helps the homeless or poor is more of a philanthropist. The second word in this phrase “activist” implies an active life position, the implementation of certain activities and direct participation in it. Given the combination with the word “public”, we have: activities for the benefit of your public. However, some may notice that this is altruism – a selfless desire to work for the benefit of others. In fact, no, rather objectivism, because achieving benefits for his community, a public activist himself receives it as a participant. For example, Bobby Fischer fought to improve the conditions of tournaments for chess players, and, accordingly, improved his conditions [2].

Positive for modern society are the real results of public organizations to improve the quality of life of society. A really positive example of a civil position converted into a legal struggle is the decision of judges on claims of public organizations or their representatives in the interests of society or individuals who recognize illegal decisions, actions or omissions of state or local authorities.

For example, the Dnipropetrovsk District Administrative Court, at the request of one of the public organizations, overturned the decision of the Executive Committee of the Dnipro City Council to approve the tariffs for the

cost of parking services at paid parking sites. In their lawsuit, the activists demanded to cancel the decision with all changes, which sets the price at 10-15 hryvnias per hour of parking, since this decision did not pass the regulatory procedure, as the law provides, besides, calculations were not provided and public hearings were not held. Activists advocated that parking in the city should be free or that their tariffs should be reasonable and transparent [3].

Agreeing with the presence of truly ideological people who occupy an active life and public position and their selfless desire for the benefit of others, we must state that in the modern criminal process, the activity of public activists is overwhelmingly due not to their active public position, but to the desire for profit or external expression of their existing complexes. It is unfortunate that, as a rule, the forms of realization of their so-called public position of activists are their aggression and negativity, rejection of criticism and the inability to position their views in a civilized way. Even more annoying is the root reason for the real opportunity for an activist to show his aggression and negativity – the clumsiness of domestic law enforcement and human rights mechanisms of the Ukrainian state.

American actor, director and screenwriter Edward Harrison Norton is apt to say: “most terrible things are done under the guise of caring for people” [4].

For example, according to media reports, Odessa customs officers found a significant number of boxes of tobacco products among the cargo of toilet paper during the inspection. A record batch of contraband was detained in the Port of Odessa. Tobacco products (cigarettes) were found during customs control of a container with a cargo of “toilet paper”, which one of the domestic enterprises exported to Israel. During the customs inspection of the cargo, it turned out that only the first four rows of the 40-foot container were occupied by boxes of toilet paper. Further – only cigarettes are visible. The estimated number of detected tobacco products is from 500 to 600 thousand packs of cigarettes. According to preliminary estimates, the cost of a batch of seized cigarettes may reach UAH 15-17 million”. The sender and declarant was *(despite the bibliographic reference to a specific online publication, the author of the article changed the names of enterprises and the surname of the person for ethical reasons, since this article is a scientific study, contains*

subjective opinions of the author and does not aim to expose the illegal activities of specific individuals, advertising or anti-advertising of certain public organizations or enterprises and covering their activities) “LABIUS” from Ternopil, the recipient is the company “Rafal Kazman” from Israel. But the freight forwarder of contraband goods is the company “Modus Group Technik LLC. The founder of the company is Vitalii Bobunenko, who heads the local public council under the State Fiscal Service, which has repeatedly exposed smuggling schemes at the Odessa customs. In the summer of this year, based on information provided by the “activist”, the German newspaper “Süddeutsche Zeitung” reported that Ukraine was allegedly losing about 4.8 billion dollars on smuggling annually, and the Odessa customs is one of the most problematic. According to media reports, Bobunenko’s activist activities were aimed at lobbying the interests of his own business. Since 2017, after the change of customs management, he has actually lost all preferences. And through information pressure, he tried to return them. This is not the first time that Bobunenko’s companies have been caught smuggling. In April of this year, the prosecutor general’s office reported on the scheme of grey import of Porsche cars from the UAE to Ukraine, in which Modus Group Technik LLC was involved [5].

In other words, it is no exception that public activists pursue their own mercantile goals and use their “electorate” to lobby for individual business interests.

Ya. Sobko, who called activists a profession, and, among other things, differentiated activists according to a certain hierarchy: today, a public activist is a profession (although it would be more appropriate to say “false profession”), a means of earning and laundering money, the personification of lies and hypocrisy. Of course, not all activists fall under this interpretation but the vast majority. “Wikipedia” says that activism has such forms of activity as agitation, boycotts, rallies, demonstrations, strikes, etc. Add to it posts on “Facebook”, speeches to journalist’s, “own” sites on TV channels, print/online publications-and here you have the “job” of the average activist, as well as a good means of influencing public opinion. It is at the expense of the latter that they lobby for their own – I emphasize, their own, and not public interests. Activists have a certain hierarchy [6].

The lowest caste is the so-called “retired protesters” (You don’t have to be of retirement age). These are people who do not have a job, enough money to live on, but have enough free time. It is this category of people who are mostly victims of “activist recruitment”, who are offered to take part in rallies/protests/demonstrations for a small fee to defend certain interests of the customer. For the most part, they play the role of extras, shout dictated slogans, and act according to the previously voiced scenario.

The highest ranking is “security activists”. These include mostly people of athletic build, mainly men, who, by using various means of pressure (threats of physical violence, smoke bombs, blocking, etc.), disrupt the holding of some events, meetings, etc. Just remember – how many court sessions were disrupted over the past year, when judges were locked in their offices, doused with “green paint”, threatened with physical violence, or blocked in the premises of the courts using smoke bombs? This list goes on for a long time...

“Amateur professionals” is the third caste in the activist hierarchy. As it turns out, there are entire offices where you can order various kinds of services. In her reflections, Ya. Sobko refers to an interesting investigation on this issue, which was published by her colleague from Ternopil, where he talks about the so-called activist-“desiatnyk”. He has 10 people in his team. When someone orders the services of this activist, the client de facto orders the entire ten, the entire team. In his group there is a person with a degree in Ecology, a journalist, and even a former TV announcer who can speak. There are also three Masters of sports in freestyle wrestling – security. Plus, all members of the “top ten” are active users of Facebook. “Only one our top ten can hold a picket rally, organize public hearings, write appeals to regulatory authorities, and raise information noise. In total, if necessary, the “top ten” can even disrupt the work of the session of one of the councils”.

In October 2017, in Kiev, employees of the National Police together with the GPU detained a group of people who systematically demanded money from developers for not obstructing their activities. The group demanded and received 200 thousand US dollars from one of them. The extortionists positioned themselves as representatives of a public organization defending the interests of residents. Public activists in Khmelnytsky operated under a similar scheme. They demanded 10 thousand US dollars from the de-

veloper. But they were detained by the police while receiving “compensation” in the central square of the city. Interesting examples, aren’t they?

“Grant-eating mouthpieces” are the highest caste in the hierarchy. It is the most dangerous. This includes activists who have received large grants from foreign partners (and who need to work out these grants significantly) and who have their own sites in various media outlets. Actually, the first and second are interrelated. In addition, these activists in most cases are members of some public organizations (often this is one of the conditions for obtaining a grant), which, according to loud statements about the fight against corruption, purging the authorities, etc., are aimed at personal enrichment. At least that’s what it looks like from the outside.

Of course, it does not add faith in their “selfless intentions” (for example, anti-corruption activists) – a sharp increase in income that was published in declarations (and how they fiercely protested for the cancellation of the relevant declaration). Still, it’s very simple – if you have nothing to fear and hide – just show and prove that you are honest. But, as you can see, not everything is so simple.

Another tool for the influence of “grant-eating mouthpieces” on public opinion and a way to defend certain interests is media platforms and lively activity in social networks. Using them, “mouthpieces” can “correctly” tune entire masses of the population and instill their opinions in them. Unfortunately, only a small percentage of people understand what is really happening and are able to draw their own conclusions.

Well, one more of the qualities of the “highest caste”: if your opinion does not coincide with theirs, you are a priori wrong. If you expressed it and they didn’t like it, beware, you will be harassed. If you don’t give in to their manipulations and provocations, they will find a way to get you. And if they haven’t got it yet, then they are waiting for the right moment to attack...

In continuation of this topic, the concept of “activist” was given by A. Portnov, who believes that an activist is a member of a social movement who, as a rule, has not achieved anything in life by his own work, has not shown himself in any way, does not like to work, is superficial and poorly educated, with high self – esteem, inadequate self-confidence in actions and a thirst for profit. The goal of an activist is a direct or derivative form of influence on the process chosen by him, ultimately conditionally converted into a

representative mandate, money or material values. According to the lawyer, the means of achieving the activist's mercantile goals is to focus on several significant social contradictions and, through participation in actions, rallies, marches and press conferences, superficially position yourself in the problem segment to exert informational or forceful pressure on officials in the area of economic or legal influence that interests the activist. An important element of covering up their illegal activities is the active and sometimes fanatical use of state and national symbols, the flag, coat of arms, anthem, national clothing, patriotic theses, slogans. At the same time, the key paradigm of this phenomenon is that the activist's work is not long. In the end, it ends up the same way – in disgrace, poverty, prison, or death [7].

Without cherishing any likes or dislikes for the person who provided such a definition, and taking into account our own practical experience, we must state that such a definition is more acceptable to activists as parties to the criminal process, who, as a rule or overwhelmingly are (or were) themselves participants in criminal prosecution or are in the field of view of law enforcement agencies.

The press-centre of the judicial power of Ukraine even posted information on the official website of the Council of judges on this issue that public activists risk receiving according to the law for contempt of court. Namely, the press centre of the judicial power of Ukraine draws the attention of representatives of the public, activists, volunteers who take part in court sessions to consider socially significant cases in both criminal and civil proceedings, to the inadmissibility of violating the rules of conduct in court.

In each case, gross violation of the rules of conduct during the court session, threats against judges, accusations of delaying the consideration of the case, etc., do not contribute to the establishment of justice and complicate the administration of justice in general, because, advocating for fair punishment for the defendants, public activists and free listeners themselves often resort to illegal actions, arranging picketing of courts and grossly violating the rules of conduct in the court session.

As an example, the situation on consideration by the Holoziivskyi District Court of criminal proceedings on charges of Dmytro Kyianytsa of committing a criminal offense under Part 1 of Article 299 of the CC Ukraine (bul-

lying of animals committed with the use of cruel methods or hooligan motives) is mentioned.

This criminal proceeding, according to animal rights activists, volunteers and members of the public, has a significant public response. At the same time, the so-called increased public interest in the case borders on a gross violation of the rules of conduct in court, up to undisguised manifestations of pressure on the judge.

The press centre of the judiciary considers it necessary to warn that for such violations, Ukrainian legislation provides for very specific penalties, which are implemented by making a decision to remove someone from the courtroom and bring them to justice. In particular, for disobeying the order of the presiding judge or for violating the order during a court session, as well as for committing actions that indicate a clear disregard for the court or for the rules established in court, the guilty people may bear administrative responsibility under Part 1 of Article 185-3 of the code of administrative offenses of Ukraine. "Showing disrespect to the court", which entails the imposition of a fine from 20 to 100 non-taxable minimum incomes of citizens. At the same time, the issue of bringing a person to justice for showing disrespect to the court is decided by the court immediately after the violation is committed. Taking into account the above, the press centre of the judiciary appeals to public activists who actively monitor the consideration of any proceedings that, in their opinion, are of public interest, not to resort to disparaging manifestations of disrespect for the court and not to violate the rules of conduct in court and court sessions so that they are not subject to the means of influence provided for by the current legislation [8].

We would like to add that often public organizations and their individual representatives become a profitable tool for the struggle of interested parties with the court and other participants in criminal proceedings. In particular, from our own practical experience, we will give an example that within the framework of the implementation of the procedural guidance of the pre-trial investigation of one of the criminal proceedings, the prosecutor of the prosecutor's office of the Dnipropetrovsk region V., who is a prosecutor in criminal proceedings, when studying the materials of secret investigative (search) actions, namely: removing information from transport telecommunications networks (listening to a mobile phone), found that during a telephone

conversation D., who is a suspect in this proceedings, with another person noted that given the principled position of V., as a procedural leader in criminal proceedings, as well as due to the impossibility of persuading him to his side by bribery, it became necessary to “knock out” him as a party to the criminal process by sending absurd and far-fetched complaints against him to public organizations, which, in turn, should send appropriate letters to deputies of Ukraine, anti-corruption bodies and other state institutions and departments. During this conversation, D. and another person also discussed the need to forcibly block V’s work as a prosecutor by organizing rallies and pickets in front of the prosecutor’s office, the court (during meetings), and the prosecutor’s place of residence (for physical intimidation of him as a person and his family members). That is, citizen D., who was reasonably suspected of committing a number of particularly serious crimes as part of a criminal association, under the pretext of exercising his right to defence, but in reality pursuing the intentions of evading criminal responsibility, acted, in fact, as the “customer” of the services of anti-corruption activists, who, in turn, under the pretext of exercising his right to public position and intolerance to corruption manifestations, took measures to destabilize the procedural work of Prosecutor V. to collect and record the evidence base. Thus, prosecutor V., instead of fulfilling his direct duties to form an evidence base and then present it to the court to prove the guilt of citizen D., as an active participant in a criminal group, was forced to spend procedural time preparing and processing responses to schizoid complaints of so-called anti-corruption public activists and “justify” to them (taking into account the obligation to provide them with answers to written appeals) that he is not in any relations with the injured people, he did not negotiate or take illegal benefits from them for lobbying their business interests, did not drink alcoholic beverages with them, does not have paedophilic deviations, etc. Also, based on the results of studying these secret investigative (search) actions, it was established that such complaints of slanderous content should be sent to the personnel commission when conducting an interview with Prosecutor V. when checking his integrity as part of the re-certification of prosecutor’s personnel that took place in 2020.

Also, from our own experience, we can give another example when during the work of personnel commissions, namely during the so-called third

round of re-certification of prosecutor's employees of regional prosecutor's offices, which took place in July 2020, under the walls of the commission meeting building, there was a rally of activists who expressed disagreement of "not indifferent" citizens with the results of work and procedural actions of a certain prosecutor. Without knowing this prosecutor, without providing an assessment of his work, as well as without any characteristics of his business and moral qualities, we asked one of the so-called activists, who was holding a poster with the slogan that prosecutor I. is a corrupt official, about what reasons he (meaning the activist with the poster) came to such a conclusion, and what evidence he can give to convince his arguments. Of course, the specified citizen could not explain anything, indicating that he takes part in this rally based on his own mercantile interests.

This clearly confirms that in the context of the political, economic and legal crisis that has recently overwhelmed the Ukrainian state, public activists are the defining driving force that can significantly influence the adoption of serious decisions.

Unfortunately, this driving force can be destructive, since it can also influence the court's decision-making in the interests of a particular party, depending on: 1) the "customer of services"; 2) his financial capabilities; 3) political preferences; 4) authority, role and significance in political and economic circles; 5) the degree of public interest in making certain decisions (including imposing a certain opinion on them by interested parties); 6) the ability of the court (psychological stability of the judge) not to succumb to outside influence.

At the same time, the main problem of the modern legal system in this direction is the lack of a legislative definition of the concept of "public activist" and adequate legal regulation of its activities, including during court sessions, which does not allow society to give a good assessment of the good intentions of certain ideological individuals.

In particular, public activists who position themselves as "concerned citizens", but de facto fulfil the order of certain parties to the proceedings, being in the courtroom, usually using patriotic slogans, lobby for the interests of a certain party, and under the pretext of transparency of the judiciary, put pressure on the court to make the decision necessary for the customer. In turn, the court, or another party of the proceedings (which can be both the de-

fence and the prosecution), despite the lack of adequate protection from state from the illegal actions of activists, the declarative nature of legislative support for the procedural independence and independence of a judge, prosecutor or lawyer, and, in the vast majority, the intellectual inability of the activists themselves, to physically work out the legal arguments of the party opposite to its customer, in order to prevent negative consequences from illegal actions of activists are often exposed to their influence, more precisely, not the influence of activists, but their customers. Please note that going to the courtroom, public activists are clearly aware of the composition of the court, knowing the full names of judges, prosecutors, lawyers, other parties to the proceedings, and thanks to electronic declaration, they are aware not only of the personal data of judges or prosecutors, but also know the composition of their families, property status, etc., which is an effective lever of influence on them when shouting slogans and calls to commit illegal actions for psychological pressure on them and attempts to introduce them into cognitive dissonance. Unfortunately, this is a litmus test of the absurdity of the results of judicial reform and the legal nihilism of the lion's share of Ukrainian society.

At the same time, activists who are present in the courtroom always remain incognito, and even if they deliberately violate the rules of stay in court, it is almost impossible to bring them to justice for these actions. Even if they are physically detained by police officers, there is an inevitable risk of mass events (demonstrations, pickets and other riots) of their "like-minded people" for the release of "illegally" (in their opinion) detained "victims of repression".

Please note that the Constitutional Court of Ukraine abolished electronic declaration for anti-corruption activists, concluding that it does not pursue a legitimate goal, and did not provide a fair balance between the interests of people exercising their right to freedom of public activity, and the interests of national security and public order, the needs to protect the rights and freedoms of others (Article 36 of the Constitution), being too burdensome. It restricts the freedom of political and social activity guaranteed by the Constitution and can be used for persecution. The declaration of activists did not ensure a fair balance between the interests of people exercising their right to freedom of public activity and the interests of national security and public order, the needs to protect the rights and freedoms of others. The applicants

stressed that: 1) anti-corruption public activists are not authorized to perform the functions of the state or local self-government and do not dispose of public funds; 2) it is impossible to use the institutions of the Law of Ukraine “On prevention of corruption” in relation to people who direct their public activities to fight corruption, because the subject of regulation of the law can only be the impossibility of abuse by officials; 3) the obligation of activists to declare contradicts the principle of the rule of law in terms of legal certainty and legitimate purpose and is a direct restriction: the right to freely express their views and beliefs; freedom of association; the principle of equality of citizens and the prohibition of restrictions on the basis of the type of activity; the principle of non-interference in personal life; existing rights and freedoms, in particular, the right to work, part of which is equal opportunities in choosing the type of work [9].

Without commenting on the decision of the highest body of the country’s constitutional jurisdiction, and in no way questioning its legality, we will express our position on e-declaration for public activists in the form of rhetorical questions: 1) what exactly does the obligation of activists to declare their income contradict the principle of the rule of law?; if anti-corruption public activists are not authorized to perform the functions of the state or local self-government, then why do they actively require, as a rule, representatives of the state (judges, prosecutors, other officials) to make certain decisions?! 3) if they position themselves as people who are not authorized to make legally significant decisions, then how can they simultaneously position themselves as an important element of the struggle for democratic values and a driving force for protecting the rights and freedoms of citizens, public and state interests?!

What can be the balance of rights and interests of the state, the public and individual citizens if in the courtroom there are people who de facto cannot be identified, but who, by force, number, aggressive sentiments, actually put pressure on the court or the parties to the proceedings, and under the pretext of fighting for democratic ideals and a fervent fight against corruption, act in the interests of a particular beneficiary.

Without objecting to the freedom of a person to actively express their own public position, and deeply respecting the right to their own opinion and the ability to express it, we note that the activities of public organizations and

their individual representatives require detailed legal regulation. First of all, this concerns their so-called activities in the framework of the criminal process and the need to determine their role and significance as a specific aspect of criminal proceedings.

For this purpose, the current CCP of Ukraine should include the norm in paragraph 5 of Chapter 3 of section I “Other participants in criminal proceedings”, introducing a new norm – article 64-3 “A third person who does not make independent claims in criminal proceedings”.

The specified norm should define precisely the provision that the third person who does not make independent claims, is presented in the courtroom, has an active public position in a particular area of public relations, is interested in the results of the trial or a certain stage of it, and is included in the Register of public activists of Ukraine. The specified person, while in the courtroom, uses the rights and obligations defined by Article 328-330 of the CPC of Ukraine, and also has the duties defined by this article (prohibition directly or indirectly (through posters, statements and slogans) to demonstrate their personal disagreement with the actions of the court, the parties to the proceedings, insult their honour, dignity and business reputation and commit any actions aimed at inciting any hostility or discrimination (national, political, racial, linguistic, religious, etc.).

This provision regarding the mandatory membership of public activists in a certain register should somewhat remind Part 2 of Article 45 of the CPC of Ukraine that a lawyer cannot be a lawyer whose information is not entered in the Unified Register of lawyers of Ukraine or in respect of whom the Unified Register of lawyers of Ukraine contains information about the suspension or termination of the right to practice law [10].

Of course, anyone can be present in the courtroom, and it doesn't have to be a public activist who belongs to certain organizations. But if the meeting rooms are synchronously and organized filled with people who, even by external signs (the same clothes on which identical slogans are placed (for example, “Freedom to Pupkin”, “Pupkin is a hero”, “#FreePupkin”), or the same posters containing the same type of slogans and who (people) synchronously and for conducting a particular person shout repeated slogans in the direction of the court or the parties to the process, often insulting them, then

just the procedure and algorithm of activities of such people who position themselves as public activists, it is necessary and settle it.

The introduction of a Register of public activists will in no way contribute to their harassment. On the contrary, it will contribute to the balance of the rights of participants in the proceedings, and will be an additional sign of transparency of the judiciary. For example, any person present in an open court session has the opportunity to find out not only the identity of the judge or prosecutor through electronic declaration, but also details (full names of their family members, including young children, condition, living space, car brand, etc.). Thanks to the Unified Register of lawyers of Ukraine, you can get more limited but specific information about a lawyer. Then a rhetorical question arises: What (what data) to hide for a person with an active public position, who has zero tolerance for corruption, is an ardent supporter of a healthy lifestyle and loves animals, which he promotes in court, and de facto requires the court to make a decision in favour of specific individuals. Rhetorical question: what unites “as like-minded” protesters and suspects (accused or defendants), who mostly do not even know each other, but have a virtual “common opinion” and iron confidence in the decency and innocence of the person in respect of whom the proceedings are being conducted, and also insist on the falsity of diametrically opposite conclusions of the prosecutor (less often a lawyer), or the court?! If a person does not make independent demands, but has an active public position (especially if he/she belongs to a certain organization or movement), then, on the contrary, it should be a pride for him/her to be included in the Register of public activists, as a revolutionary and driving force capable of a real struggle for democratic ideals and able to influence the adoption of a particular decision in relation to a particular person in a legal (we emphasize legal and legitimate) way to influence making this or that decision regarding concrete person. If a person takes a really active public position (no matter on what basis: he/she may be an ideological altruist or have mercantile interests), then what should he/she worry about and why should he/she be ashamed to be included in the Register. Moreover, under such conditions, he/she has a better chance of being heard, because if there is interest about a particular activist, given the internet era, you can freely find her activist articles, essays or other worldviews and really listen to her public position.

For example, let us model a situation when in the courtroom during the election of a preventive measure against the accused P. in the courtroom there are activists who are representatives of a human rights organization, included in the Register of public activists and came to court with a banner containing “Freedom to P.” The investigating judge, paying visual attention to the banner and the activists’ belonging to a certain public organization on the link in the mobile application “Instagram” came across a certain stream, which is diametrically opposite to the version stated by the prosecution, and indicates a really unfounded suspicion of P. in the commission of a crime, his non-involvement in the event of a criminal offense and, as a result, the absence of grounds for choosing a preventive measure. This situation can also become real, in which it is thanks to the public (which is really not indifferent and has an unbiased public position, does not hide its affiliation and sympathy, acts openly and transparently) that the error of the state apparatus was corrected and indicates the justification of society to demand that the court make a truly fair decision.

Thus, the activities of public activists in Ukraine require immediate legal regulation. Special attention from the point of view of streamlining the law requires the activities of people with an active public position acting in the framework of criminal proceedings. The introduction in the current CPC of Ukraine of a new norm on the algorithm of activity of third parties who do not make independent requirements in the context of the expediency of implementing the draft Register of public activists of Ukraine will significantly contribute to improving the organizational and legal basis for the activities of public activists in jurisdictional (primarily criminal) proceedings.

REFERENCES:

1. Shestopalov, Roman (2018). White spots of the criminal justice reform the ukrainian style... *Problems of legal state formation in Ukraine in the context of globalisation: monograph* (O. M. Ivanii (Chief editor)). LAP LAMBERT Academic Publishing, 142 p.

2. Skakun, Marko. Public activist, who is it? Available online: <https://www.prostir.ua/?news=hromadskyj-aktyvist-hto-tse>

3. The Court of Appeal cancelled parking rates in Dnipro. Available online: <https://d1.dp.ua/news-your-region/80105-apelyac-yniy-sud-v-dm-niv-tarifi-na-parkuvannya-u-dn-pr.html>

4. Norton, Edward. Quotes about hypocrisy. Available online: <https://gorkystore.ru/uk/makiyazh/citaty-pro-licemerie-licemerie-primernye-vyskazyvaniya-o-licemerii/>

5. A public fighter against smuggling schemes was convicted of cigarette smuggling. Available online: <https://resonance.ua/gromadskogo-borcyaz-kontrabandnimi/>

6. Sobko, Yana. Activist-profession or a special type of hypocrisy. Available online: <https://resonance.ua/aktivist-profesiya-chi-osobliviy-vid/>

7. Portnov, Andrey. The goal of activists is a mandate or money. Available online: <https://112.ua/obshchestvo/andrey-portnov-cel-aktivistov--mandat-ili-dengi-329990.html>

8. For contempt of court, public activists risk receiving according to the law. *Press centre of the judiciary.* Available online: <http://www.rsu.gov.ua/ua/news/za-nepovagu-do-sudu-gromadski-aktivist-rizikuut-otrimuvati-po-zakonu>

9. E-declaration is unconstitutional for activists: is it enough? Available online: <https://ti-ukraine.org/news/chy-dostatno-skasuvannya-e-deklaruvannya-dlya-predstavnykiv-antykoriptsijnoyi-gromadskosti/>

10. Criminal Procedure Code of Ukraine No. 4651-VI of April 13, 2012. Available online: <http://zakon0.rada.gov.ua/laws/show/4651-17>

11. Кримінальний процесуальний Кодекс України від 13 квітня 2012 року № 4651-VI [Електронний ресурс]. – Режим доступу : <http://zakon0.rada.gov.ua/laws/show/4651-17>

Scientific edition

THE RULE OF LAW STATE:
REALITIES AND PROSPECTS OF DEVELOPMENT
IN THE CONTEXT OF GLOBALIZATION

Monograph

Group authors

Chief of group authors –
*Candidate of Pedagogical Sciences (PhD),
Associate Professor O. M. Ivanii*