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Problems of legal state formation in Ukraine

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FOREWORD

In the period of transition to market relations, of the democratic life foundations development, of the approval of the independent statehood idea in real life, the Ukrainian society faces the task of determining the purpose of further development, which has became legal state formation. Having chosen as the basis of state development the development of the legal state (art. 1 of the Constitution of Ukraine), recognizing the principle of the rule of law (art. 8 of the Constitution of Ukraine) and proclaiming person, his life and health, honour and dignity, inviolability and security to be the basic value (art. 3 of the Constitution of Ukraine) Ukrainian society accepted the values of the European legal culture, which made it possible to further join the Convention for the protection of human rights and fundamental freedoms and the recognition of the jurisdiction of the European Court of human rights, the practice of which has become an important factor in the implementation of the concepts of the European legal tradition in the national legal system.

Legal dogmatism, formalism, anti-anthropocentrism, which prevailed in the Soviet system, have become an additional factor in the choice of a radically different vector, based on the recognition of human dignity and human rights and provides for the obligation of the state to assert these rights, to be responsible to the person for its activities.

It should be noted that the German theory Rechtsstaat has undergone certain changes, taking into account the need for its implementation in the Ukrainian realities that is noted by the group authors in this work. An important methodological caveat during this study was, first, the understanding that the legal state is a model of an ideal state (which allows us to talk about the degree of approximation to its implementation), and, secondly, the awareness of the impossibility of public authorities, justifying, for example, the restriction of human rights or failure (improper performance) of their duties to appeal to the fact that the legal state is only an ideal that cannot be achieved; public authorities must act in such a way, according to which Ukraine is a state of law.

An important factor that has been taken into account by the group authors is also the fact that the legal state is not a purely “theoretical construc

tion", which provides for the allocation of only general trends in its formation and development, and also requires the study of various spheres of social and legal reality in order to clarify the problematic aspects of the implementation of the provisions that make up the essential content of the legal state (in particular, we are talking about the sphere of criminal law, criminal enforcement, labour and other legal relations).

This led to the architectonics of the monograph, which includes two sections: the first of which concerns the theoretical model of legal state in the context of globalization; the second – is aimed at highlighting the certain problems of the concept of legal state in certain social spheres.

The authors hope that this work will be useful both for students of law institutions of higher education, in particular, in the context of the mastering of the content of certain disciplines and the formation of their legal culture on the principles of the legal state, and for scientists, who study the legal state in the context of globalization.

Chapter 1.
LEGAL STATE IN UKRAINE IN THE CONTEXT OF GLOBALISATION: THEORETICAL BASIS

§ 1.1. MODI OF A LAW-BASED STATE AND A CIVIL SOCIETY: WEST AND EAST

In June 1996 already, the legislative body of the Ukrainian state, having adopted the Basic Law, consolidated the vector of the state development, in particular, the development of a law-based state (Article 1 of the Constitution of Ukraine). After that, a large number of dissertations were submitted (both for obtaining the degree of a Ph.D., and for the degree of Doctor of Science), not a single monograph was published, and a number of scientific articles were published on the subject of a law-based sate and directions of the development of Ukraine as a law-based state. There is a paradox: on the one hand, Ukrainian legal literature, mass media in Ukraine, and politicians constantly focus on the activities of a civil society in Ukraine, on the other hand most people recognize the failure of such a society and, moreover, indicate that it is not characteristic for our mentality and they refer to reports of foreign media, decisions of the European Court of Human Rights on passivity of the Ukrainian citizens in the political sphere, insufficient level of their consciousness, etc. Taking into account the abovementioned, and also taking into account the provisions of Art. 1 of the Constitution of Ukraine it can be argued that the question of a law-based state and a civil society remains relevant to the Ukrainian science. In addition, more than a quoter of century has passed since the proclamation of Ukraine's independence, which, in general, is a rather long period of time, which allows us to draw some conclusions about the achievements on this path (taking into consideration the fact that in the postmodern period the intensity of changes is rather high).

Such scholars of law in Ukraine as: V.K. Zabigailo, MI Kozyubra, AM Kolodiy, MM Onishchenko, LM Pavlovskaya, P.M.Rabinovich, V.G.Sokurenko, M.V.Tsvik, Yu.S.Shemhuchenko and some others addressed to the problems of a law-based state and a civil society.

The works of such lawyers as A. Zayets (The Law-Based State in the Context of the Up-to-date Ukrainian Experience - K., 1999), B. Kravchenko, Y. Gonchiz, N. Hnidyuk (Civil Society - K.: Millennium, 2001), O Skrypnjuk (Social and Law-Based State in Ukraine: Problems of Theory and Practice. -K., 2000), S.Tymchenko (Civil Society and Law-Based State in Ukraine - Zaporizhzhya, 2002). However, certain issues of the subjects, put into the title of work remain unsolved.

Therefore, the purpose of this paper is to highlight the modi of a law-based state and a civil society in the context of Western and Eastern values.

Of course, few people will deny that it is still impossible to recognize Ukraine as a law-based state today. Thus, over the past five years, Ukraine ranks the first place in terms of appeals to the European Court of Human Rights (can not be considered an exception the year of 2017, given the decision of this Court in the case of Burmich and others v. Ukraine, according to which more than 12,000 cases were removed from the list of cases of the Court and transferred to the Committee of Ministers of the Council of Europe). At the same time, the vast majority of cases against Ukraine concern to such fundamental rights as freedom from torture (Article 3 of the Convention for the Protection of Human Rights and Fundamental Freedoms), the right to liberty and personal inviolability (Article 5 of the Convention for the Protection of Human Rights and Fundamental Freedoms), the right to a fair trial (Article 6 of the Convention for the Protection of Human Rights and Fundamental Freedoms).

According to the results of the World Democracy Rating (2017), Ukraine is classified as a hybrid regime (among four types: full democracy, imperfect democracy, hybrid regime and authoritarian regime). At the same time, an important factor influencing the fact that Ukraine was not recognized as a state with imperfect democracy was the state of functioning of public authorities (which can not be a surprise given my pre-mentioned statistics of appeals to the European Court of Human Rights).

According to the well-known organization Freedom House Ukraine belongs to partially free countries (this institution distinguishes between all three categories of states: free, partially free, non-free). At the same time, Freedom House emphasizes the lack of involvement of the authorities in legal responsibility for large-scale corruption at a high level, undermining the popularity of public authorities and influencing certain reform efforts; in the

area of civil liberties - political pressure and attacks on journalists threatening freedom of the press [1].

In 2017, Ukraine's fall in the ranking of human freedom (132 place - the last among the European countries), taking into account such indicators as: security, the rule of law, freedom of religion, freedom of speech, the possibility of development.

Ukraine is referred to states with mostly non-free mass media.

Heritage Foundation removed Ukraine in 2017 to states with a largely non-free economy (44th – the last place among the European states and 150th among 180 countries in the world). Heritage Foundation notes the need to improve anti-corruption fight, development of capital markets, privatization of state-owned enterprises, and improvement of the legislative framework and the rule of law. "There are serious problems related to corruption in the courts, one of the weakest and least trustworthy state institutions in the country. Judges are largely regarded as business advocates and other powerful sources of influence. Corruption remains a serious challenge for Ukraine, and the progress in improving accountability is rather slow" [2]. Ukraine is between Cameroon and Sierra Leone, ahead of only the African states, Venezuela, the KPDR and some others.

The given ratings allow us to draw conclusions about the activities of the public authorities and their compliance (in this case - inconsistency) with the activities of the authorities in a state governed by the rule of law.

At the same time, I focus on another aspect of the matter, since a law-based state provides for not only certain requirements for the activities of public authorities, but also for the population of such a state. A law-based state can be developed only when the values of human dignity and tolerance will be prioritized to the population. Results of the sociological national study of the Democratic Initiatives Foundation named after Ilko Kucheriv, with the support of the United Nations Development Program in Ukraine and on the initiative of the Office of the Ombudsman of the Verkhovna Rada of Ukraine on Human Rights and the public unity “Human Rights Information Center”, point out the gaps in human rights sphere and the level of tolerance of the representatives of the expert community themselves (civil servants , police officers, judges, teachers, journalists and human rights activists). Herewith, only 25% of Ukrainians called tolerance as a value. Only 35% of Ukrainians

said that human rights are more important than material wealth [3, c. 8, 17, 30].

For Ukrainian society, despite the perception of the idea of equality of all human beings regardless of "race, color, political, religious or other beliefs, sex, ethnic or social origin, property status, place of residence, language or other grounds" whenthe question is about the peaceful gatherings of sexual minorities, the constitutional prescription immediately goes to the background. Significant in this aspect is the discussion of November 17, 2016 in the Verkhovna Rada of Ukraine of the draft Law on Prevention and Combating Domestic Violence. One of the controversial issues was the exclusion of the concept of "gender" and "sexual orientation". I. Lutsenko stated on this subject that "the concept of" sexual orientation "will be regulated, based on the Christian values of this hall"; Y. Miroshnichenko stressed that "the only thing that the deputy minister and our colleagues who came before me draw their attention to is the position of the All-Ukrainian Council of Churches, where it is a matter of introducing exactly categories of gender and sexual orientation through these laws. This is unacceptable in our society "; I. Mosiychuk pointed out the following: "This bill contains things that are unacceptable for the Ukrainian society, which are unacceptable to the Ukrainian Church, which are unacceptable for every Ukrainian, who is aware of this. Therefore, the faction of the Radical Party will not support this law, and the bill. It is suggested that the draft law be returned to the committee» [4].

I note that the concepts of civil society and a law-based state are the achievements of the European (continental) culture . The doctrine of the rule of law is inherent for England, for example. If we talk about the Soviet Union and, accordingly, the states in the post-Soviet space, then it should be pointed out such a correspondence of these theories as legitimacy. And to this day, a significant amount of legal literature promotes the rule of a law and legitimacy as the principle of law, despite the fact that, firstly, the current legislation clearly distinguishes between the notions of "law" and "a law", and secondly, the practice of the European Court of Human Rights points to the possibility of neglecting the provisions of "a law", if it does not correspond to "the quality of the law", that is, the rule of law. In this regard, the words of V. Andrushchenko are appropriate: "Totalitarianism keeps people with strong teeth and does not want to part with its victim. Its tentacles hold back the

established social institutions, principles and technologies of social organization, and most importantly the souls of people who are accustomed to the idea that one can only live in such a way, and not otherwise, that there is no other freedom, that the true democracy is carried out not as a democracy, not as the will of the people, but as the maintenance of his (people's) good, even if it is necessary to act against his will" [5].

The anti-democratic Soviet legacy continues to gravitate towards the Ukrainian society. For example, manuals and textbooks on the theory of state and law – the fundamental legal science, which performs a methodological function in relation to other legal sciences, have not changed much since the times of A. Vyshynsky (who was considered to be the founder of the "Soviet law"). This is indicated by SP Holovaty in the extremely important and unique (concerning methodology, essence, the contents of the rule of law in the aspect of liberal values) paper today in Ukraine, the "Rule of Law" [6].

In recent times, the number of scientific works on comparative law has considerably increased. And it's natural. Integration processes in the world explain this. At the same time, it is well-known that various states (societies) (their groups) experience various values, different understanding of law. In connection with this, the term "legal civilization" is quite common. That is, it can be affirmed that law is an element of the culture of society, one of its achievements, which is quite static. After all, the publication of the law, the proclamation of the corresponding principle, for example, the rule of law, the law-based state will not change the mentality of a society. Therefore, "blind borrowing" of uncharacteristic elements, institutions, and ideas of another civilization that are not characteristic for a certain society is meaningless. This is the same as, for example, to transfuse a human being blood of incompatible groups, the consequence of which is well-known.

In connection with which the following words of S. Holovaty are urgent: "Specifically, the German phenomenon is the so-called Rechtsstaat, which (by analogy with “specifically the English product” in the form of “the rule of law”) is also considered “a legal form of the system built on economic and political freedom» [6, c. 808].

For the Ukrainian society are characteristic two tendencies (ideas):

1) the idea of escaping from the state;

2) the idea of paternalism.

This situation is explained quite simply - the mentality of the Soviet man continues to gravitate over the Ukrainian society, the ideology of communism still lives in Ukrainian citizens. And, accordingly, the features of "homo sovieticus" are the features of "modern" Ukrainian. Having understood this, having realized this, one can outline the directions of Ukraine's development. Thus, the question of "homo sovieticus" is quite relevant to us. Therefore, one can not but mention the unsurpassed researcher of the soviet man and the soviet society - Alexander Zinoviev.

Alexander Oleksandrovich quite successfully determined the reason for updating the idea of civil society in post-Soviet states: "With the abolition of socism and the establishment of psysm, Ibansk walked the western way. And since in Western countries there is a Civil Society, Ibansk ... decided to take urgent measures in order to build such a society in Ibansk" [7].

However, once again, it should be emphasized that civil society can not be formed by adopting relevant laws, obtaining instructions from authorities, etc. Civil society is a constant opponent of public authorities, which is constantly strugling against the state. Herewith, civil society is a consequence of the interaction of free, equal, conscious, active citizens who are self-organizing to uphold their rights. Therefore, the person of such a society is endowed with legal consciousness, and his/her behavior is socially active. For "homo sovieticus" other features are characteristic – "there are no convictions. There is only a more or less stable reaction to all that we have to deal with - a stereotype of behavior. Convictions are the features of a Western, not a Soviet man. ... Will homosos organize and hold protest demonstrations? No, of course, he will not.. Homosos is trained to live in relatively bad conditions, ready to bear out difficulties, constantly expects still more bad, humble before the authorities ... " [8].

Therefore, the decision to build "civil society" is taken by the authorities, and not by "homo sovieticus", besides, not in contrast to the first one, but for helping it, under its control, and as its structure. Although it is clear to a person with common sense that such an institution can not be considered an element of civil society, since the latter institutions are created precisely against the public authority and, therefore, can not be its branch, can not "approve an appeal to the head of the state in which to assure the latter about the intentions of giving him all kinds of help".

Public associations should act as a kind of intermediary between society and the state. However, “the intermediary between the two social objects may be only such a third object, which does not depend on these two precisely in terms of mediation” [9].

Describing the current state of the post-Soviet states, we can not again but use the words of O. Zinoviev on the state of permanent reformation. Moreover, as the author points out, there have never been so many reforms in the history of mankind as here. The reforms covered all spheres of life of citizens, starting with the alphabet. Reforms have become a constant component of life. The goal of reforms, of course, is to improve the life of society. Although, "nobody believes in these words. They are not a deception. There is a kind of ritual, etiquette, formalism here. ... experienced ibanets’ knows in advance that all this is a play of verbiage. But this is not something completely meaningless and in general unnecessary. This spectacle is our reality " [7].

Usually, in transitional periods of development of society, issues of the means of streamlining social relations are actualized. In particular, it is about the regulatory opportunities of law, human rights as an inherent part of a person, and so on. This, in turn, is a factor in intensifying the scientific search for the above-mentioned phenomena, as well as the phenomena that are the subject of this study. I note that within the domestic legal science the question of understanding and structure of legal consciousness is discussed, and the european legal science operates mainly with the other notion - sence of justice. Are these phenomena the same that are denotted by these concepts?

In my opinion, these terms denote different phenomena. And the key to understanding these phenomena is the understanding of law. Domestic legal science does not operate with the notion of “sense of justice”, since to this day it is based on the normative understanding of law which connects law with precriptive texts. According to this approach, though it may be noted about the fairness of law, but this provision is not actually applied (besides, within this approach, society may not always adequately perceive justice, so it is the prerogative of public authority that accepts these texts). Therefore, legal awareness is understood, mainly, through the perception of texts of normative legal acts. The emphasis is placed on the intellectual component. To what results could cause such an understanding of law (and, accordingly,

of justice), the world saw on the example of national-socialism in Germany and communism in the Soviet Union.

The term sence of justice places emphasis on the emotional component, on the "people's spirit", "divine setting" and so on. In this context, one can not but mention the psychological school of law. The most well-known representative (the founder) of the psychological direction in law is Leon Petrazhitsky (1867-1931), a graduate of the University of Kyiv, is the most well-known representative (founder) of the psychological trend in law. L. Petrazhitsky in his paper "Theory of law and state in connection with the theory of morality" indicates that the practice of lawyers has little in common with the understanding of law. First of all, as the thinker points out, the use of the word "law" by lawyers (as well as by many other people) of the word "law"and their perceptions about law are based on a naive and projectional view, on the adoption of emotional fantasies as valid legal phenomena, namely, norms, "dictates" and "prohibitions", applied to subordinate to law legal relationships between individuals, their rights and responsibilities. This, in turn, leads to the emergence of a number of unsolvable essentially problems about the nature of the corresponding imaginary realities, which are overcome through the use of various fictions and other arbitrary constructions, in particular the adoption of various non-existent "wills", "the only will" of the state, general recognition, etc. At the same time, the "set of rules of law" lawyers call "objective law" or "law in an objective sense", and the legal relationships between the subjects, their rights and responsibilities (which, as L. Petrazhitsky points out, they consider as three various phenomena) are called "subjective law" or "law in the subjective sense". Accordingly, lawyers distinguish between two types of law and it would be necessary to determine the nature of the law, which combines both objective and subjective, based on this logic. But this is not done. Instead, an objective law is defined as a system of rules of law, and therefore subjective law is considered as something insignificant, secondary, optional, an abnormal addition to the "objective law".

These provisions allowed L. Petrazhitsky to conclude that the understanding of the concept of law should be based on a different view, it should proceed from the denial of the real existence of what lawyers consider to be present in the field of law and shifting the emphasis on finding real legal phenomena as a special class of complex, emotionall and intellectual

mental processes, therefore, one should proceed from the sphere of the psyche [10, c. 84].

In a review of the work of Markus D. Debbard "Feeling of Justice" David S. Vroble points out that for society as a whole, the concept of "justice" is of great importance. This is an abstract idea, an ideal prerequisite for our entire system of law, in particular, criminal law. We accurately identify our criminal system as a system of justice, recognizing that the sense of its existence is the support and arrangement of this theoretical construct. The most famous American legal institution – the jury – is based on the idea that a public "sense of justice" can be used. [11].

For the european legal science, it is important to understand the very phenomenon, denoted by the term "law", as well as its essence – justice: Jus est ars boni et aequi. So the question is about the "sense of justice", and not knowledge of laws, attitudes towards them and fulfillment / non-fulfillment (legal awareness). In addition, even legal awareness is considered within the limits of european civilization mostly as an emotional characteristic, and not intellectual, because law itself is not always represented in a text form.

Considering the modi of civil society and a law-based state, one can not but point out the following. Initial thing in understanding of the contenst of a law-based state is the very understanding of law. According to the normative approach to the understanding of law, the latter is defined as a system of mandatory, formally defined rules of conduct that are adopted (sanctioned) and provided by the state. That is law and the legislation are identified. "Law is the will of the ruling class raised in the law", as the founders of Marxism-Leninism argued. In addition to that, the hierarchy and subordination of both the authorities and, accordingly, the acts that they accept are important. In this regard, all normative legal acts must comply with the Basic Act of the state – the Constitution, it is important that the state body does not go beyond the competence, complies with the regulations, procedures, etc. That is, not the question of complying of the letter and the spirit of law is solved, but it turns out the correspondence of the letter to letter of a law (which generally may be called the red tape or bureaucracy). Thus, according to this approach, it is important not the conformity of the law with law, but the compliance of the law with the law (the principle of the rule of the law).

In the law-based state, law, and not the law, must prevail. And the principle of legality applies only to state bodies. Laws exist for the

consolidation of the foundations of activites of state bodies, the rule of law is key for citizens. Therefore, for the latter, it is important to have legal activity and, accordingly, legal culture. In the time of the Soviet Union the situation was opposite.

At the same time, attention should be paid to the following provisions.

Firstly, the rule of law is not just one single, separate principle; it is a complex phenomenon, a number of principles, including such as:

- legality, in particular transparency, accountability and democratic procedure for the adoption of laws;
- legal certainty;
- prohibition of arbitrariness;
- access to justice;
- observance of human rights;
- non-discrimination and equality before the law [12].

The principle of the rule of law directly concerns even the principle of proportionality, about which our domestic legal science knows so little and which is the basis for decision-making, even by policemen, in the Federal Republic of Germany.

Secondly, understanding of the legality as a compliance of the activities / act with substantive and procedural rules is overly simplistic and does not meet western legal tradition (though it is in full accordance with the soviet (non) law tradition with its understanding of law as a prescriptive text and the need for compliance purely with this text, hence formalism and bureaucracy, because the place in such a system for a human being - as the main value - does not exist simply). “In due time the former Government Agent for the European Court of Human Rights Yuri Zaitsev, called this approach “formal and primitive”,”schematic” and pointed out that the term “a law” in the context of the European Court of Human Rights has wider meaning than its “technical” understanding” [13, c. 130].

Lawfulness also prescribes compliance of the prescriptive text with the “quality of the law”. This has been repeatedly pointed out by the European Court of Human Rights. For example, in the case of Volokhy v. Ukraine, the Court noted: “The court has always held the idea that the phrase “in accordance with the law” does not simply sends away to national law but also is related to the requirement of the quality of the “law”, that is, to the

requirement to adhere to the principle of "the rule of law", as it is directly stated in the preamble of the Convention ..." [14].

In this context, it is important to re-evaluate the contents of such a legal category as the principles of law. Thus, by adopting the Constitution of Ukraine in 1996, it is unlikely that everyone understood the contents of the provision enshrined in Part 1 of Art. 8 of the Basic Law. Especially considering the provisions of other parts of the same article, proceeding from the interpretation of which some domestic scientists actually identify the rule of law with the supremacy of the law and the "top" of this system is called the Constitution.

For more than 20 years has been required for domestic jurisprudence in order to begin to embodythe principe of the rule of law, having enshrined in laws that define the manner of the organization and activities of public authorities, in particular the so-called law enforcement agencies, as well as courts (although it is the courts (as well as the legal profession, and non-state law enforcement organizations), in my opinion, protect law. In addition, certain articles of the Basic Law directly sustained partial (but essential) changes: first of all, Article 129: the provision that the judge while administaring justice is governed by the law is replaced by the provision that the judge is guided by the rule of law. Although even in this case, the soviet dogma has worked: the provisions of the Constitution require the introduction of a mechanism for implementation, which is determined by the law (in spite of the fact that according to part 3 of Article 8 of the Constitution, "The norms of the Constitution of Ukraine are rules of direct action" [15]), and ratified by Ukraine, in 1997 already, the Convention for the Protection of Human Rights and Fundamental Freedoms "is filled with firmness as European governments, who are like-minded and have a common heritage of political traditions, ideals, freedom and the rule of law ..." [16].

At the same time, one can not but point out that, unfortunately, legislation in Ukraine is outpacing the legal science. Thus, despite the fact that the rule of law is even directly enforced in the laws, a considerable number of scholars are investigating the "rule of the law", identifying law with the prescriptive text, and the guarantee of the human rights is the law (human rights are defined as a measure of freedom guaranteed by the law). The principles of law are seen as effective means of regulating social relations only when they:

1) are enshrined in the law or

2) are deduced from the contents of the law, placing law dependent on the law.

And this is with the recognition of human rights and of his/her rights as the main value, as the main duty of the state to assert and guarantee human rights, with the recognition of the inexhaustibility of human rights, with the recognition of the rule of law, with the recognition of the jurisdiction of the European Court of Human Rights.

That is, the existence of the principle of law is dependent on the existence of the text of a legal act. This is despite the fact that the principles of law are defined as guiding, fundamental ideas under which the national system of law functions (and, accordingly, the development of legislation takes place). Such a cognitive dissonance has not become a factor in the rethinking of the soviet perception of the essence of the principles of law until today. In spite of the fact that the two paradigms under consideration are antagonistic: if we recognize the primacy of the principles of law as regards precriptive texts, then we can not argue that the principles of law are neither necessarily fixed or enshrined nor derive from the text of a normative legal act (since the principle exists even before the adoption of the corresponding normative legal act, this act does not exist yet, but there is a principle according to which legal requirements will be formulated). And vice versa: if the principles of law derive from the precriptive text, they can in no way be guiding, fundamental ideas that determine the development of these pre-scripted texts.

Consequently, such an eclectic understanding of the principles of law distorts their essence, removing lawyers from natural and law understanding to legal positivism and even up to legism.

Unlike such “scientific” provisions, in 2004 already, the Constitutional Court of Ukraine in the case about the imposition of a more lenient punishment by the court indicated that law is not limited only to the law, but also includes other social regulators, in particular, norms of morality, and customs. At the same time, the law is notlaw if it is not fair (and justice is a category of morality; therefore, law is, first of all, morality, not the law) [17].

It is precisely because of the discrepancy of the principle of legal certainty the Constitutional Court of Ukraine declared unconstitutional paragraphs. 7 h 9 st. 11 of the Law of Ukraine “On State Assistance to

Families with Children" of November 21, 1992, according to which the payment of childbirth assistance is terminated "in case of arising of other circumstances" [18].

"If the court concludes that foreclosure in the form of confiscation of property will not ensure a balance between the general interests of society and the requirements of protection the right of ownership of a particular person, then he is entitled not to impose such a penalty, even if it is stipulated by the provisions of the Customs Code as obliged" [19] - is indicated in the ruling of the Court of Appeal of the Chernivtsi region of April 19, 2016.

The European Court of Human Rights has repeatedly pointed out in decisions (quite often in decisions against Ukraine) that the phrase "in accordance with the law" does not merely refer to national legislation, but also antisipates that such legislation corresponds to the "quality" of the law, that is, the rule of law. The law must comply with law, and not law of the law. The rule of law is in force, not the rule of the law. Human rights determine the contents and direction of the activities of the state, and not the state fixes in the law and thus confer rights to a human being. The absence of "mechanisms for implementation" of certain provisions of the law is not a human issue, but a problem of inactivity of the relevant state bodies and their officials, for which they should bear legal responsibility, and therefore this can not be a hindrance to the realization of human rights.

Thus, legal practice is obviously ahead of legal science (as well as education), which is largely left over dogmatic. Ukrainian law practice gradually departs from normative perception of law and implements the provisions of the natural law school. The rule "is given preference" not to the law, but to law. In my opinion the activities of the European Court of Human Rights, the practice of which is recognized in Ukraine as a source of law (in accordance with Article 17 of the Law of Ukraine "On the implementation of decisions and application of the European Court of Human Rights practice" [20]) contributes to this. The soviet legal science perceived the principles of law as some kind of transcendental phenomena that have nothing to do with legal practice, besides giving the text of the law an element of democracy. A similar attitude was even to the Constitution (because the Constitution establishes the foundations of human relations and public authority, the principles of organization and activities of the latter, human rights).

To a great extent, even to this day, the principles of law are perceived by the established tradition as an "introductory part" in the text of a normative legal act that can be not read (something like the license agreement, which most users do not read when installing computer programs, simply by choosing option "I agree to the license terms"). This conclusion is possible to be drawn due to nterviews of about 200 investigators of the National Police, 150 district inspectors (Dnipropetrovsk region), in particular, with regard to the understanding of the second section of the Law of Ukraine "On the National Police" (principles of the activities of the National Police) and the second section of the Criminal Procedural Code of Ukraine (principles of criminal proceedings) which I conducted personally. In addition to that, the overwhelming majority (96%) actually identifies law with the law, and the rule of law understands the rule of the law, even though that in the Law "On the National Police" the rule of law is enshrined in Art. 6, and legality (as a principle) – in Art. 8; Art. 8 of the Criminal Procedure Code is entitled "Rule of Law", and Art. 9 – "Lawfulness". In addition, according to Part 5 of Art. 9 of the Criminal Procedural Code "Criminal Procedural Law of Ukraine is applied in the light of the practice of the European Court of Human Rights". And part 6 of Art. 9 consolidates the analogy of law: "In cases where the provisions of this Code do not regulate or ambiguously regulate the issues of criminal proceedings, the general principles of criminal proceedings, specified in part one of Article 7 of this Code, are applicable." [21]. There rhetorical questions arise: is it possible to achieve the purpose of criminal proceedings without understanding its principles and is not it the lack of understanding of the principles of criminal proceedings the cause for the bureaucracy of this proceeding, eliminating all humane from it, including the person himself/herself?

Thus, for domestic legal science even to this day, the soviet dogmatism is inherent in such an important issue as understanding of law, human rights and the principles of law. As long as the principles of law are not perceived as a means of regulation of public relations as a mandatory requirement, there no democratic law-based state we can even mention. Principles of law - this is not an advice, not a recommendation; they require a mandatory and full implementation in social practice. Rough and systematic violation, ignoring their demands not only causes harm to individual social relations, but also undermines the foundations of law and order.

In addition, the existing classifications of the principles of law give rise to denials. In particular, it is not clear what kind of logic individual scientists are guided by while distinguishing general and social and special and social (legal) principles, referring to the first the rule of the law over political and physical strength, the rule of human rights and freedoms over the rights of the state [22]. In addition to that, as a rule, special and social (legal) principles are divided into: branch, principles of a sub-branch of law, principles of law institutes. This approach, in my opinion, is also a reflection of the soviet dogmatic jurisprudence. My position is based on the following. First, the rule of the law is eclecticism of two antagonistic paradigms: natural law and normative. There is the rule of law, the constituent of which is legitimacy. At the same time, the prescriptive text should be "qualitative", that is, comply with the rule of law. Secondly, what are the rights of the state for the western lawyer (and, accordingly, the lawyer of the state, which has taken the course towards the european integration,and has even fixed the european values at the legislative level) this is at least incomprehensible, and in general – an oxymoron. Thirdly, for the western legal culture, the distinction of such constituent of law as the institute of law, sub-branch of law, etc. is not characteristic. Such a division of the law system was proposed in the first half of the twentieth century by the soviet scholars. Such a structure is a derivative of legislation that can be grouped into institutions, sub-branches, branches (although it is indicated that the system of law is an objective phenomenon, while the system of the legislation is subjective. But the question arises: it is objective towards what? Does the institute of law exist objectively? Is the law institute the result of a logical operation performed by a research jurist and which is called a classification?

Consequently, the law-based state can not exist:

1) in a society whose citizens do not have legal activity, and legal culture;

2) where law and the law (legislation) are identical;

3) where the rule of the law (legislation) prevails but not the rule of law.

It is necessary to remember the famous saying: "Only that person is worth of happiness and freedom – who fights for them every day." The process of building of the law-based state and the formation of civil society is a complex and long-lasting. Even the effectiveness of reforms carried out in

the state can not lead to the improvement of life at the same time. Every day consciousness demands a quick, and effective result, which is used by politicians, making meaningful decisions, especially before the next elections. In addition, the reform should not happen chaotically, but according to a single concept, which, again, is designed for more than a decade. Demostrative in this context is the analogy with the Babylonian tower: the lack of unity does not allow to reach the corresponding goal, therefore all reforms should be carried out unidirectionally. The activities of state authorities and local self-government bodies should be aimed at achieving a single goal, which can not be abolished with the change of officials, the latter can only result in the replacement of methods and means of achieving the goal.

The next thing that needs to be understood by the Ukrainian people is that a strong state is a weak society. I can recall that the state differs from the primitive society by the presence (apart from some other signs) of public authority, which is defined by lawyers as a power whose interests do not coincide with the interests of the majority of society.

Thus, creating a model of an ideal state, defining the vector of development of Ukraine, we should first of all clearly understand the peculiarity of the people, their mentality, and not to try to "blindly borrow" the experience of other peoples and forcibly implement it.

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§ 1.2. THE IMPACT OF GLOBALIZATION PROCESSES ON THE SPREAD OF HUMAN TRAFFICKING IN UKRAINE AND WORLDWIDE

Globalization is an objective process on a planetary scale that has both progressive and negative consequences. The global policy of the international community is determined and dictated by the lead countries, and it is not always in the interests of developing and underdeveloped countries. As a result, underdeveloped countries are becoming the scene of the struggle not only of states for spheres of influence, but also of criminal groups that earn their billions fortune by committing illegal actions, the object of which is often a person.

Human trafficking is now attracting increasing attention from the international and European communities. Along with the illegal movement of migrants, the use of "live goods" for enrichment constitutes a very serious humanitarian, economic and migration problem within the framework of transnational crime. These phenomena are not new, but recently they have become widespread, constantly changing and becoming more complex. After all, according to the International Centre for the Prevention of Crime of the United Nations, the annual amount of money for this transnational crime is tens of billions of dollars a year and puts it on the third place after drugs and weapons trafficking.

Researches of many scientists are dedicated to the analysis of human trafficking as a transnational crime, for exampe of N. M. Akhtyrska, M. Yu. Buriak, A. Ya. Vilks, V. M. Dremin, V. Ye. Yeminov, H. O. Zorin, D. H. Kaznacheiev, A. I. Konnov, V. I. Kulykov, V. V. Luneiev, O. V. Naden, A. S. Ovchynskyi, V. S. Ovchynskyi, Ye. D. Skulysh, V. O. Tankevych and others. Important methodological issues of counteraction human trafficking are revealed in the researches of S. K. Akimov, Yu. V. Aleksandrov, S. M. Alferov, P. P. Andrushko, O. M. Bandurko, Yu. V. Baulin, P. O. Vlasov, V. V. Holina, T. A. Denysova, L. D. Yerokhina, A. P. Zakaliuk, O. H. Kalman, V. A. Kozak, O. V. Kozachenko, O. M. Kostenko, V. M. Kuts, K. B. Levchenko, Ya. H. Lyzogub, M. M. Maksiuta, A. S. Myronova, M. I. Panov, Ye. L. Streltsov, A. O. Topchiy, I. M. Trubavina, A. O. Udalov, V. I. Shakun, I. A. Schvab, S. S. Yatsenko. Studies on historical aspect and evolution of approaches to combat human trafficking are revealed in the works of A. Aronovits, V. Kartashkin, V. Kree and H. Toiermann. However, scientists have not analysed human trafficking in the framework of globalization processes

of our time, there is a need to introduce effective forms of counteraction to this phenomenon, which determines the relevance of the research topic, its theoretical and practical importance.

Human trafficking contradicts the humanistic and democratic principles established by the Universal Declaration of Human Rights (1948), the Convention for the Protection of Human Rights and Fundamental Freedoms (1950), The International Covenant on Civil and Political Rights (1966) and other international legal instruments.

National legislation of modern civilized countries considers a person and his / her inalienable rights and freedoms as objects provided with additional guarantees and increased state legal protection. Ukraine is not an exception. Thus, the Constitution of Ukraine proclaims individual, his rights and freedoms as the highest value and guarantees everyone the right to life, dignity, personal freedom etc. Such rights and freedoms belong to every person from the birth.

In 1999, there was established the National Coordination Council for the prevention of human trafficking in Ukraine. Decree of the President of Ukraine on 18 February, 2002 No. 143 "On measures to the further strengthening of the rule of law and the protection of the rights and freedoms of citizens" declared that one of the priorities of law enforcement agencies is, first of all, the fight against human trafficking. On 4 February 2004, the Verkhovna Rada of Ukraine ratified the UN Convention against transnational organized crime and "the Protocol to prevent and suppress human trafficking, especially women and children, and punishment for it" [1; 2; 3]. The law "On combating human trafficking" aimed at solving this problem and adopted by the Verkhovna Rada of Ukraine on September 20, 2011 [4], which regulates the issues of combating human trafficking, minimizes its consequences by establishing the appropriate organizational and legal framework, the powers of the Executive authorities, and determines the status of human trafficking victims, as well as the procedure for providing assistance to such people. Resolution of the Cabinet of Ministers on 24 February, 2016 № 111 confirms the State social program of combating human trafficking for the period up to 2020 [5], which aims to: implement a comprehensive state policy on combating human trafficking; strengthen the interaction of public authorities, international, public organizations and other legal entities in the field of combating human trafficking; increase public awareness of protection against getting into situations of human trafficking and receiving help while getting in such situations; to eliminate in society the biased attitude towards the victims of human trafficking, distrust of the authorities that deal with the issues of combating human trafficking.

However, despite the large number of ratified international instruments and national legislation in the field of combating human trafficking [6; 7; 8], more than 21 million people are now victims of forced labour in the world. Men, women and children fall into the hands of human traffickers, both in their own countries and abroad. Herewith all countries suffer: the country of origin, transit and destination. What concerns Ukraine, according to the assessment of the International Organization for Migration (IOM), 160 thousands of Ukrainians have been suffering from human trafficking since 1991 [9, p. 174].

Modern processes increase global inequality, the imbalance of wealth and poverty, strength and weakness, centre and periphery. [10, p. 240]. The global economy has forced countries, which claim economic assistance, to adapt to the socio-economic ideology of neoliberalism and to carry out structural changes aimed at reducing public debt by reducing the financing of the social sphere. This policy has led to a reduction in the state's participation in economic and social spheres of public life, the opening of local markets for foreign investors, privatization, the abolition of subsidies in the national sectors of the economy and provoked the outflow of labour into developed countries [11, p.70].

Over the past 50 years, income level in industrially developed countries has been rising steadily, while in many developing countries, especially in the last quarter of a century, this has not been the case. For example, the size of the minimum wage in Ukraine limits and constrains citizens in full satisfaction of their needs and acts as an additional incentive for the search for larger earnings abroad. The reason for such low wages is low productivity, as the American or European produces something in one hour of working time, the Ukrainian needs for the same thing six hours or even more.

The outflow of labour force comes from countries where labour force supply exceeds demand, while the inflow of labour force in developing countries allows these countries to reach a new level of social and economic life at the expense of cheap labour force. The demand for workers in unskilled sectors, like domestic servants, in agriculture or in the entertainment industry, is typically met by employees of the number of illegal migrants, as national workers (via the growing level of education) waive performance of physical, unskilled and low-paid jobs [12, p. 26].

Process of globalization requires from the human the abandonment of the old, traditional standards, national identity, replacing them with a universal mass model of consumption. Selfish motivation, which was expressed in the ideas of material well-being, has become dominant in the system of value orientations of a

modern person. The consequence of the spread of consumer lifestyle was the revival of shameful forms of human exploitation by humans.

In Ukraine, dishonest money-makers, using the difficult economic situation, high unemployment level, superficial imaginary knowledge of Ukrainians about the "ease" of life in Western countries, the lack of real information about the problem and the legal imperfection of the protection of citizens, has organized a criminal business – invitation of citizens to work abroad, where they are exploited, earning scanty money for themselves and thousands for the organizers of this business. Export of "live goods" is carried out in Russia, Turkey, Italy, Spain, Germany, Serbia, Cyprus, Portugal, Hungary, Greece, Czech Republic, the United Arab Emirates, Israel, the USA and other countries. Human rights activists, referring to the assessment of the Ministry of Internal Affairs of Ukraine, claim that every year the network of slavers gets about 7 thousands of Ukrainians [13, p. 88].

Human trafficking is the implementation of an illegal transaction, the object of which is a person, as well as the recruitment, movement, re-hiding, transfer or receipt of a person committed for the purpose of exploitation, including sexual, using deception, fraud, blackmail, vulnerable human condition or with the use or threat of violence, using official position or material or other dependence on another person, which according to the Criminal Code of Ukraine is defined as a crime [14; article 149].

Victims face many health risks.

Physical threats include:

- drug and alcohol abuse;
- physical injuries (fractures, concussion of the brain, burns, vaginal / anal lacerations);
- brain injuries, which may result in memory loss, dizziness, headaches; venereal diseases such as: HIV/ AIDS, gonorrhoea, syphilis;
- infertility, miscarriage, other diseases (tuberculosis, hepatitis, malaria, pneumonia), as well as forced or involuntary abortions.

Psychological damage includes shame, grief, fear, distrust, self-hatred, suicide and suicidal thoughts. The victims are at risk of post-traumatic stress, which is a disorder-acute anxiety, depression, insomnia, physical hyper-alertness, etc. The listed changes can remain stable and long-lasting. Very often, the perpetrators instil in their victims fear and at the same time gratitude for the fact that the victim remains alive. All this is done for the purpose of exercising coercive control [15, p. 6].

Human traffickers operate through employment agencies, show business firms and dating services. They also place false ads in newspapers and on the stands, on the Internet, handle offers directly on the street, help financially to drag a person into debt bondage. Often, traffickers are good friends or acquaintances, moreover women are a significant percentage of them.

As a means of recruitment in Ukraine is often used method of persuasion, when given the positive characteristics of work abroad (proper living conditions, high wages, incomparable with the Ukrainian standard of living in the country in which they offer to go). The attention is focused on the poor prospects of life at home [16, p.10]. They cite their own experience as an example. Similar arguments have compelling effect on the emotional individuals who are prone to adventurism, especially when such people are unable to realize themselves in Ukraine (do not have normal job, education, house). Unfortunately, quite often a strange world turns to be cruel and indifferent, and the person in it – deceived and defenceless.

There are many different types of exploitation: adoption for commercial purposes, use in porn business, use in military conflicts, involvement in criminal activities, transplantation or forced donation, forced prostitution, slavery, forced labour, involvement in debt bondage, forced begging, use in experiments etc. [17, p.14].

Adoption for commercial purposes is a special legal document establishing parental custody of children deprived of parental guardianship, with the purpose of their further use for production of income (begging, gambling or for further conclusion in relation to their transactions, which are related to the actual transfer of their ownership) [18, p.127].

Children are forcibly removed from their habitual home environment; experience rape, various forms of violence, ill-treatment; are deprived of the right to education; work in dangerous jobs etc.

Use in porn business is the actual use of a person to create objects of a pornographic nature, that is, those that are aimed at arousing unhealthy sexual passion through cynical, shameless, rudely naturalistic or unnatural display of the sexual life of a person, animals, others, including fictional creatures. Use in the porn business means the use of a person as a pimp, the owner of a brothel, an actor in the filming of pornographic films, an extra in the manufacture of pornographic magazines etc. This form of exploitation affects the intimate side of a person's life and is one of the most cynical crimes, because it destroys person's personal life, his future, family relations, destroys the gene pool of the nation, and therefore undermines the future of the whole society. On the other hand, criminals get a windfall

profits from exactly the use of women and girls in the global sex market [19, p. 284].

Use in military conflicts is the use of a person to perform combat tasks related to the overthrow of state power or violation of the sovereignty and territorial integrity of other states etc. Armed conflicts have become catalysts for the increase in human trafficking, which is caused by many factors. The difficult criminal situation in the conflict zone, the weakening of state institutions, the dysfunction of law enforcement agencies in the zone of armed conflicts, the complexity of the legal status of uncontrolled territories, changing the gender balance in some areas and others are among them.

In the context of armed conflicts, the most common forms of human trafficking for further exploitation are [20, p. 163]:

- recruitment, removement, transfer, harbouring or receipt of men aimed at joining the armed forces of the participants of the conflict;
- use of forced labour and slavery to meet the needs of armed groups;
- sexual exploitation (military prostitution, forced pregnancy);
- involvement in criminal activities;
- organ removement.

A large proportion of internally displaced people are vulnerable to human trafficking. Lack of knowledge of the international and domestic law requirements of other countries regarding refugee or asylum status makes them easy prey for fraudsters.

Involvement in criminal activity is an action related to the direct mental or physical impact on a person and committed in order to cause him the desire to take part in one of several crimes. In this case, various methods of influence can be used (persuasion, intimidation, bribery, deception, inciting a sense of revenge, envy or other low motives, an offer to commit a crime, a promise to buy or sell stolen goods, giving advice about the place and methods of committing or concealing traces of a crime, drinking alcohol or using drugs, psychotropic substances with a person in order to facilitate his inducement to commit a crime, etc.). Victims are used to commit crimes against their clients, transportation, distribution of drugs, etc. All this leads to the risk for the victims to become members of the gang, to be convicted.

Today there is such an area of illegal business ***as clandestine market of human organs and tissues for transplantation.***

According to the UN experts' assessment, at present no state is able to meet fully the needs in human organs for transplantation, and the number of people waiting for such operations is constantly growing.

Ukraine ranks second place in Europe after Moldova among the "black exporters" of human organs.

In some countries, the centres openly use the Internet and other means to invite patients to travel abroad to receive transplant at reduced prices, including all donor costs. Trafficking of cells, tissues and organs for commercial purposes are carried in the same way, often using people kidnapped or brought into other countries under false pretences, where they are forced to be donors in the violent way.

Sexual exploitation is one of the types of exploitation of human labour, in particular in the field of prostitution (the implementation of natural sexual acts, satisfaction of sexual passion in an unnatural way, the commission of whatever other acts of a sexual nature for the purpose of obtaining income, and not on the basis of friendship or personal sympathy) or in related areas [21, p.57].

Zombification and other techniques are often used to involve people in sexual exploitation. They are completely isolated in the usual place, they are not allowed to have any contacts, non-traditional mode of the day is introduced, distrust is provoked to everyone with whom the victim has interacted, a special diet is practiced (based on carbohydrates, without protein substances). When the person's consciousness is completely blunted, its programming is happening, including usage of hypnosis. There is a so-called brainwashing (clearing the memory of previously received information, breaking the landmarks of time, premises and situational landmarks), indifference to all variants behaviours. The necessary ideas are forming in the subconscious verbally, with the help of images, smells, and substances (hyperbolised importance of sex, dominant of full obedience etc.). In the process of zombification a deep (somnambulistic) hypnosis and strong hypnotic (barbamil with the addition of chlorpromazine) are used. The victim of the zombification is put to sleep for about two weeks, it is the time in which his programming will be performed. During this period, the object of zombification may be the subject to the effects of drugs. Obtained as a result of the zombification model is possible to change only with the help of medical intervention [22; c. 48].

Regarding ***labour exploitation***, the victims usually work in extremely difficult jobs with a complete violation of occupational safety: work in agriculture, construction, industry for 16-18 hours a day, seven days a week, without means of protection, in poor social conditions. Often such people are completely isolated. Often victims live in basements of the illegal enterprise, which is constantly pro-

tected, in unsanitary conditions, without proper food and without any contacts out of a workplace [23; p. 35].

In labour exploitation, victims are usually promised wages after a certain amount of work or a certain period of work before starting work. In addition, their passports and other documents are taken away, ostensibly for "their legalization". However even after the completion of the proposed amount or period of work, wages are not paid. As a rule, workers are reported that earnings will be paid a little bit later. However, when in some months victims start insisting on payment of money, they are explained that they won't receive any means as they were bought and money were given for that person who have brought them and that they would work as much as the owner considers necessary. Any resistance of a worker is severely punished with beatings, restrictions on movement, hunger, intimidation, [24, p. 26]. Thus, the main signs of labour exploitation are the following: physical and sexual violence (or threat of its use), psychological coercion (threat of punishment); deception or false promises about types and conditions of labour; the artificially created debt; falsification of accounts; inflated prices, lowering the cost of services (performed works); the withholding or non-payment of earnings; the content of the documents proving the identity; (threat of) imprisonment and other restrictions on the freedom of action, the threat of isolation; (threat) issuing authorities (migration services, police); (threat of) dismissal; (threat of) restriction of rights; (threat of) restriction of food, shelter; (threat of) transfer to a job with worse conditions.

By the way, labour exploitation in practice includes forced consummation and forced involvement of a person in begging, especially children.

Forced begging is the systematic soliciting of money, things and other material values from strangers. Mostly children, disabled and older people are suffering from this problem. Children, because of their age, are the least protected and vulnerable category of citizens. According to statistics, in Ukraine 30% of girls and 10% of boys under 14 years were victims of violence.

Involvement in debt bondage is the actual involvement of a person in a state of complete material dependence of another person. Using a situation where a person is in dire need of money or things or services (for the treatment of a beloved one, repayment of debt or credit, payment of housing, etc.), criminals receive consent to further cooperation and thus gain control over the person. Exploitation of such person lasts until he fulfils his "duty" (in most cases – the price that was paid for him and the costs associated with his maintenance) [25, p. 19]. Often such debts are fabricated, they are credited with the amount of money spent on accom-

modation, food and extension of stay in a foreign country on fake visas. Thus, a person finds himself in a planned debt dependence, which is constantly growing. Excogitated fines are also added (for example of sexual exploitation: the delay to the customer or from him, refusing to drink alcohol with the client, etc.).

Use in experiments is illegal carrying out of medical, biological, psychological or other experiments on a person, if it creates a danger to his life or health. Bacteriological, chemical weapons are tested on the victims, they are exposed to radiation. Technological advances, especially in biotechnology, have also generated demand for organs used for scientific purposes by pharmaceutical firms or research institutes.

Thus, although the legislation in the field of combating human trafficking in Ukraine complies with international and European standards, in particular, covers activities that include the prevention of human trafficking, the fight against it and the protection of victims of human trafficking, but at the practical level, this activity is not effective and has a number of problem moments, such as:

- domestic legislation outlines aspects of the state's relations with the public descriptively, without setting specific tasks, formats and indicators of such interaction;
- the imperfection of the national mechanism of interaction between the subjects of prevention and combating human trafficking is manifested in the fact that the relevant mechanism is generally aimed at combating the consequences of human trafficking and to a lesser extent at overcoming the causes of this phenomenon;
- limited access to institutions giving assistance to victims of human trafficking (social services centres for families, children and youth, social service centres, social and psychological rehabilitation centres for children) is due, on the one hand, to the non-inclusion of such a category in the list of clients, to the non-compliance of the age limit (up to 35 years), to the lack of registration, and, on the other, to the difficulties in identifying victims among other categories of people who are in difficult life circumstances and have the right to stay in these institutions;
- the imperfection of cooperation in the provision of assistance to foreigners is explained by the lack of regulations on the establishment of the rehabilitation period and the relevant regulations of the migration legislation in Ukraine;
- lack of coordination between the authorities and the public in informing the public, especially of risk groups;

- inconsistency of actions in the issues of combating the transit of "live goods" through the territory of Ukraine and the lack of a centralized national system for collecting statistical information lead to the impossibility of determining the real number of people who transit through the territory of Ukraine [26, p.10].

There is a need for effective measures aimed at investigation crimes and punishment of those involved in human trafficking.

In our opinion, **ways and means of solving the problem** can be:

- introduction into the practice of law enforcement agencies of modern methods of conducting operational investigative work in the field of combating human trafficking and related with it crimes;
- improvement of the procedure of interaction of law enforcement agencies with other state authorities and public organizations in terms of combating human trafficking;
- creation of a common information field as a system integrated mechanism for the exchange of information on leading experience in the prevention of the phenomenon of human trafficking;
- development and approval of criteria for the identification of victims of trafficking;
- development of a set of effective measures to protect victims from prosecution for illegal migration and to enable them to escape from the cycle of persecution;
- provision of a range of social services to victims of trafficking, promotion of their employment and realization other activities;
- supervision of compliance of the rights of adopted children;
- carrying out preventive and awareness-raising activities to prevent human trafficking;
- ensuring systematic training of specialists in the field of combating human trafficking;
- taking into account the new challenges of human trafficking arising as a result of the armed conflict in the East of Ukraine;
- improvement of normative regulation in the sphere of tourism and model business, as well as intermediary activities for employment abroad, ensuring strict control over its observance and inevitable prosecution of people guilty of violations of the current legislation;
- creation of a unified national system of registration of people who have committed crimes related to human trafficking.

However, the best and the most effective measure in the fight against human trafficking should be the improvement of living conditions in Ukraine through the development of industry and increase of the subsistence minimum.

Conclusions. Globalization is an objective regularity, a global process that cannot be avoided. The problem is what socio-economic consequences will be for a particular country and a person. Globalization has allowed some people to rise up and achieve material well-being, while others have been condemned to live below the poverty line. The hopeless situation of people who are unable to legally meet their needs, the lack of a fair arbiter in the role of the state in the distribution of social benefits are the direct causes of human trafficking [27, p. 60].

Economic and social disorder forces men and women to go abroad for employment. Young people do not see prospects for life and implementation in the Ukrainian society. They are quite critical about the situation in the country, are striving to overcome poverty, to live in better material conditions than their parents; they are willing to work hard, are mobile enough, initiative [28, p. 11].

Parents leave their children without necessary care, who thus become even more vulnerable not only to the social effects of poverty, but also to human trafficking.

Thus, human trafficking is a multifaceted phenomenon that is growing and changing along with economic globalization, labour mobility, and technological progress. Inefficiency of political and economic reforms in Ukraine, corruption of officials, the declarative nature of social policy, the growing gap between the top and the absolute majority of the population, the armed conflict in the East of the country, the increase in the level of mobility of the population, the emergence of internally displaced people and the associated with it labour migration of the population, the increase in unemployment, the unrealizable romantic dreams of many Ukrainians of bright future have led to disbelief in positive changes in the country [29, p.20].

External causes of human trafficking are: ineffective system of combating human trafficking in the world (opening of borders, simplification of travel opportunities; inconsistency of the international legal framework regarding the prevention of human trafficking and protection of victims to real conditions, the lack of mechanisms for the implementation of laws; corruption of responsible bodies ensuring compliance with the rule of law; inconsistency of migration policy with the realities of the labour market in countries; loyal legislation to prostitution in many countries of the world; formation of international criminal associations; the internationalization of the shadow economy); the demand for human trafficking (due to

the existence of demand for low-paid labour and commercial sexual exploitation, especially the exploitation of children; work in the industries where the majority of the population does not want to work for a number of reasons, in particular because of dangerous working conditions); the availability of opportunities for traffickers (financial rewards for human trafficking; impunity for crimes, minimal risk of negative consequences for the traffickers themselves; lack of justice for victims and potential victims, which allows traffickers to manipulate their impunity); the presence of potential victims (poverty and economic inequality between countries and regions; limitation of the supply of employment within their countries; the presence of wars or armed conflicts; lack of registration at birth, legal status and citizenship of a large part of the population, especially national minorities) [30, p.12].

A systematic approach is needed to combat trafficking, since the state and society have to confront well-organized criminal groups. This problem cannot be solved at the level of one country: new challenges and threats require consolidation – both the efforts of state and non-governmental organizations, social protection bodies, migration services, and the international community.

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Chapter 2.
APPLIED ASPECTS OF REALIZATION OF THE CONCEPT OF LEGAL STATE IN UKRAINE

§ 2.1. DYNAMIC SECURITY IN THE PENAL INSTITUTIONS: NOTION, ESSENCE, PRINCIPLES

The current state of reformation (development) of the penitentiary system of Ukraine [21], as well as the doctrine of the domestic criminal-executive (penitentiary) law [2; 3; 8; 22; 23; 25] put new approaches to the understanding of traditional categories in this area before the practice of the execution of sentences. One of such categories is "security" in the criminal-executive (penitentiary, penal) sphere of legal relations.

Taking into account the modern groundwork of foreign and domestic scientists, the category of "security" in relation to the penitentiary sphere is considered comprehensively from the standpoint of its differentiation into physical (external), procedural (external) and dynamic security.

The most complex notion is "dynamic security", the development of which is based on the so-called "reserve" improvement of the practice of punishment from the standpoint of achieving the goal of punishment and penal legislation.

At the same time, preliminary scientific studies have shown that, unfortunately, in Ukraine, dynamic security is on the stage of development, relations between staff and convicts remain in second place compared to the efforts to improve the technical systems of protection and supervision.

However, the preamble of the European Prison Rules states that "the application of prison sentences and the treatment of prisoners require compliance with the requirements of safety and discipline, while ensuring conditions of detention that do not violate human dignity and provide prisoners with the opportunity to be engaged in meaningful activities and the introduction of appropriate programs for prisoners, thus preparing them for return to the society" [7]. Such approach in the European philosophy of the criminal enforcement process requires the development of the so-called "constructive dialogue" between the administration of penal institutions and convicts in or-

der to ensure the transition from a punitive to a correctional-resocialization approach.

There are now available scientific developments of domestic scientists on introduction of foreign philosophy of dynamic security in domestic penitentiary practice. In particular, I. M. Kopotun proposed implementation of the principles of dynamic security in the practice of crime prevention that lead to emergency situations in penal colonies [11, p. 109]. I. S. Yakovets studied the dynamic security in penal institutions as a basis of crime prevention [26]. M. I. Lysenko proved the value of the dynamic security for achievement isolation in the criminal-executive institutions of closed type [14; 15, p. 140-147].

Domestic scientists have conducted a fairly detailed analysis of this category of the penitentiary system, but the existing studies have unsystematic character and do not solve the scientific task regarding the formulation of the notion, essence and principles of dynamic security in the penal institutions.

The aim of the research is to summarize the current state of development of the notion "dynamic security in the penal institutions" and the formulation of the relevant definition, essence and principles.

Establishments of punishments execution are made for isolation of people who have committed crimes, and for society security. People, who are kept in them, are not imprisoned at will, but are placed there against their will. Therefore, the first priority for any penitentiary system of detention and supervision of prisoners in order to prevent escape [1]. The work of the penitentiary system must be organized in such a way as to ensure respect for human rights, as well as the principles of humanity, justice and the rule of law. Special attention should be paid to the creation of proper conditions for the rehabilitation of prisoners. The penitentiary system must maintain and ensure proper control in its units. This is a basic requirement for every well-organized institution. Loss of control can lead to violations of the integrity of the security system in the penal institutions.

According to international requirements, all penal institutions must guarantee:

– respect for the rights of prisoners throughout the period of imprisonment;

– compliance with an adequate level of physical security to prevent escape from places of penal institutions;

– implementation of established procedures for the organization of a reliable security system;

– creation of conditions for the organization of effective interaction of the staff of penal institutions;

– development and application of an effective system for the collection of operational information;

– elimination of security breaches in accordance with approved procedures;

– use of physical force only in the cases of extreme necessity, if it is not possible to ensure compliance with the legal requirements of the workers of the penal system in a non-violent manner.

Ensuring security and order is a fundamental principle in the penal institutions. From a human rights perspective, the regime and personal security are an integral part of the state's responsibility to protect people deprived of their liberty. By seriously restricting the freedom of prisoners' movements and the ability to defend themselves, states have increased obligations to protect them.

Ensuring security includes measures to prevent and respond to fires and other emergencies, and provide appropriate working conditions for prisoners and staff. It also includes procedures to prevent and reduce the level of suicide and self-harm.

These are the requirements of international standards in the field of criminal-executive (penitentiary, penal) legal relations.

In its turn, the current criminal-executive legislation of Ukraine in the context of the category of security in the penitentiary system in part 1 of article 102 of the Criminal Executive Code (CEC) uses the paired category "security of convicts and staff". At the same time, the CEC of Ukraine does not contain a definition of these definitions. However the analysis of its norms shows that they contain the requirement of these kinds of security in the context of the legal regulation of such areas of criminal-executive activity as: ensuring the right of convicted prisoners to personal security (art. 10), carrying out requirements of separate detention of convicts to imprisonment in correctional and educational colonies (art. 92), carrying out a complex of regime measures in colonies (art. 102-103), implementation of operational-search ac-

tivity in penal institutions (art. 104), determination of the grounds for the use of measures of physical influence, special means and weapons (art. 106), etc. [12].

The above-mentioned generalization is fully correlated with the doctrinal views of the national penitentiary science on the concept of the notion "security of convicts and staff". In particular, as it is rightly noted by A. Kh. Stepaniuk and I. S. Yakovets, the right of convicts for personal security (art. 10 of the CEC) corresponds to the duty of the administration of penal institutions to create and ensure the state of protection of vital interests of both people deprived of their freedom as well as staff. Security is the fundamental basis for the functioning of the criminal-executive system, which, by the way, now includes minimum, medium and maximum level of security colonies. Security is a feature of the criminal-executive system, organized on the principles of integrity and stable relations between its structural units. The penitentiary system, according to the fair conclusion of the named scientists, is a system of ensuring the security of subjects and participants of the penitentiary activities aimed at the implementation of the restrictions of the rights and freedoms inherent in punishment. The threat to criminal-executive security is a deviation from criminal-executive activity, from the order of execution and serving of punishment, an encroachment on the legal status of participants of criminal-executive legal relations. So A. Kh. Stepaniuk and I. S. Yakovets continue, the provision of criminal-executive security is a guarantee, a necessary specific condition for the existence of the criminal-executive system. Supervision over prisoners, preventive and operatively-search activity in colonies, the use of technical means of supervision and control are directed on the ensuring prisoners' security [13, p. 340-341].

As the author's team of another scientific and practical comment of the CEC of Ukraine notes, security, in the general sense, is a state, when there is no threat to anyone or anything, and from a legal point of view, security is a state of protection of vital interests of a person, society and the state. At the same time, according to the authors of the commentary, which fully coincides with the philosophy of the penitentiary theory and practice, the system of penal institutions should ensure: 1) prevention of threats and dangers that may come from convicts – that is, the activities of the security system aimed at preventing the commission of intended or prepared threats and dangers; 2) prevention of threats and dangers that may come from convicts, measures to

identify, eliminate (neutralization, blocking, limitation of the sphere of action) the causes and conditions of threats and dangers; 3) the cessation of the threats and dangers that can come from a convicted person, the operation, it is the system of ensuring security, which lies in prohibition finalizing the implementation of threat or danger that is already actualized; 4) the cessation of the threats and dangers that may arise concerning prisoners [18, p. 307-308].

We support the above-mentioned paradigms from the point of view of ensuring security in the penitentiary system of Ukraine, but the above-given list of security directions on the western model seems to be more differentiated, which makes it possible to apply preventive measures more targeted.

Such functional division led to a division in foreign penitentiary science about security into three components, namely: 1) physical; 2) procedural (also called administrative); 3) dynamic [16, p. 43-51; 24, p. 114-119].

Thus, the analysis of the achievements of foreign scientists-penitentiaries showed that the security in the penal institutions has several components:

– firstly, it is a question of external security (so-called perimeter security or physical security), aimed at the need to prevent escapes and other undesirable and illegal contacts with the outside world. This is mainly achieved through physical structures such as prison buildings, walls and fences, alarms and surveillance and detection systems. The assessment of the physical security of penitentiaries includes the study of the schemes of their buildings, the strength of the walls and bars on the windows, the doors of residential buildings, the technical characteristics of walls and fences, observation towers, observation platforms, etc. In addition, it includes the study of issues related to the provision of physical means of security (the state of locks, surveillance cameras, alarm systems (internal and external), x-ray machines, devices for the detection of metal objects, etc.);

– secondly, there is the issue of internal security in the prison, the so-called procedural security or control. Procedural security includes such issues as how prisoners are moved within the building, what property they are allowed to keep, how to inspect them and visitors, and their daily lives. Reasonable and proportionate disciplinary rules, which must be observed by both prisoners and staff, help to streamline the environment.

Each institution should have a comprehensive legal act regulating the following activities:

– accounting of prisoners (accounting and regular control);
– control of the movement of prisoners;
– search (both physical buildings and prisoners themselves);
– checks of serviceability of the alarm system and means of communication;
– control of the use and storage of camera keys;
– control over the use of tools in industrial buildings;
– censorship of prisoners' correspondence and telephone conversations;
– implementation of quality control and effectiveness of the organization of the security system;
– data collection and implementation of operational investigative measures.

Effective procedural security requires not only a clear set of rules, but also their implementation by a sufficient number of workers who must be employed according to their qualifications, moral and business qualities, must be well trained and receive a decent salary.

Staff must carry out thorough searches of cameras and the roll call, to follow the procedures of escorts and other security measures, strictly following the requirements of the international legislation on human rights [19]. According to paragraph 76 of the "Mandela Rules", workers must undergo the necessary training, which will ensure competence in security issues [20]. They should be familiar with the security requirements. This awareness involves the study of everything related to the use of security technologies: keys, locks, technical means of surveillance. Workers have to learn what facts and how to fix them for security planning. Most importantly, they must understand the importance of their direct interaction with prisoners. The security guaranteed by the lock and key must be complemented by knowledge of who the prisoners are and how they usually behave.

Almost all prison systems have several levels of security to neutralize the risks posed by prisoners. Prisoners should be categorized at the time of first arrival and assigned to appropriate security levels. In many countries, a "progressive" system is used that allows transferring a prisoner who adheres to the rules to a category with less stringent security requirements. In domestic legislation it is regulated by the CEC of Ukraine (art. 100, 101) [12].

On the one hand, there are institutions or parts of institutions with a very high level of security aimed at people who have a high level of risk to other prisoners or themselves, the risk of escape or a high risk to society in the case of escape. On the other hand, there are open-type institutions in which prisoners go to work in the community, have keys to their rooms and live with relative freedom of movement [12]. Most states have prisons with different levels or categories of security.

One of the main aspects of personal security inside the prison is the prevention of violence among prisoners. This can be expressed in several dimensions, from occasional acts of violence against individual prisoners, regular violence against the most vulnerable prisoners, systemic violence by informal structures, such as criminal authorities and the "self-government" system, where the internal security of the prison remains in the hands of the prisoners themselves. In many parts of the world, especially where prisoners are held in barracks or in large premises, the administration is actually in the hands of the dominant prisoners themselves or their informal groups.

If we draw a parallel with the Ukrainian realities, the categories of physical and procedural security are more understandable for the domestic penitentiary practice, since they are manifested in such areas as the modernization of engineering and technical means of protection, the creation of modern security, information and telecommunication systems in the bodies and institutions of execution of sentences, improvement of operational and regime units for the prevention and detection of crimes and other offenses, searches, inspections, and other procedural measures to maintain law and order in penal institutions.

On the other hand, the category of dynamic security requires deep assimilation by the penitentiary staff on the way to build the optimal mechanism of punishments execution.

The analysis of special sources showed that the term "dynamic security" was introduced into circulation (as a consequence of the mass riots of the 70-80 of the twentieth century in prisons of Great Britain) in 1985, by Jan Dunbar, former director of the prison administration of Great Britain, who became very famous for the introduction of progressive ideas in the work of subordinate service. From his point of view, dynamic security is when "relationships and individualism are combined in a planned (and useful) activities when in the institution both of maximum and minimum security level the re-

sult is formed in a flexible and the best order in prison" [27, p. 233-234]. It was emphasized that the main focus should be on the treatment of staff and convicts as individuals, on fair and polite "staff-convict" relations. This is not a physical or procedural restriction, but rather the development of relations with convicts, the occupation by useful activities, the establishment of trust and effective communication and therefore "knowledge of what is happening". In practice, this leads to the fact that the prisoners themselves talk about all the problems that threaten security, or the staff "feels the scent" when "something is wrong" in their institution [14, p. 52].

Further study of the theory and practice of differentiation of penitentiary security into physical, procedural (administrative) and dynamic was made by the head of the International Centre for Prison Studies Andrew Coyle (who previously held the post of Minister for Corrections in the UK Government), publishing the results of his research in the world-famous book "A human rights approach to prison management" [9].

Now in the UK and other countries of the world postulates formulated by E. Coyle and other scientists-penitentiaries regarding improvement of the work of penitentiary staff and its role in the correction of convicts and prevention them from committing crimes due to the use of dynamic security have become widespread.

The paradigm of dynamic security produced by the foreign penitentiary practice is in general correlated with the provision part 3 of article 102 of the CEC of Ukraine, according to which the regime creates conditions for socially useful work of convicts, general education and vocational training, social and educational work and social impact.

So, we can summarize the following: to ensure high security standards, it is necessary to recognize and prevent potential security breaches, as well as to maintain an environment for the development of effective dynamic security. No prison can prevent escapes without good external control measures and physical barriers, like doors with increased security level and fences. These should be regularly checked and maintained in an appropriate state, but physical barriers are only part of the protection against prisoners escaping.

Although procedural and physical security measures are very important, without dynamic (operational) security, the general security of the penal institution will not be adequately ensured, since security also depends on the work of the institution's staff, who interact directly with the prisoners,

and study the processes which take place in the institution and involve the prisoners in the constructive activities of the institution. This type of security is of a higher quality than static security measures for institutions. While regular interacting with prisoners, the staff member must monitor the current situation in the institution, collect and analyse information on activities that pose a real security threat. Such organisation of staff relations with prisoners will make it possible to identify and prevent escape and other emergency events in the institution. The advantage of dynamic (operational) security is that it is proactive or preventive in nature, as it allows you to identify security threats at an early stage.

The so-called "dynamic security" is an approach to security that combines a positive relationship between staff and prisoners with fair treatment and targeted activities that contribute to their future reintegration into society. It includes actions that promote professional, positive and respectful relationships between staff and prisoners. The formation and development of dynamic security is based on knowledge of the prison contingent, understanding of the relationship between prisoners, as well as between prisoners and prison staff, which allows workers to foresee problems and threats to personal security. Dynamic security should be accompanied by appropriate methodology and procedures, and especially appropriate staff selection and training.

Reference book on prison incidents solving states the following: "the Members of prison staff must understand that interacting with prisoners in a humane and equitable way enhances the security and order in prison. (...) Regardless of the staff relationship, each contact between staff and prisoners strengthens the relationship between them, which should be positive, based on personal dignity and mutual respect for how people treat each other, and in accordance with international human rights principles and proper process of law" [5].

Developed dynamic security exists, for example, in the so-called direct surveillance prisons in the United States. They are organized as small, decentralized living spaces where staff works in direct contact with prisoners rather than in control rooms. Comparative studies of many researchers have shown that without higher costs for buildings or staffing than other systems, such an institution reduces the level of seizures and other serious violations, and provides a less tense environment more accessible to correctional work and re-

habilitation programs [4]. In fact, they are more likely to ensure both security and human dignity.

The UN manual on the assessment of criminal justice systems provides the following definitions of the term "guard" and the notion of "security" [17]:

– the term "guard" refers to the duties of the prison service to prevent prisoners from escaping; traditional means of security include walls, bars, locks, keys, gates, movement monitoring devices, other technical devices and control areas around the perimeter of the prison.

– the notion "security" refers to the requirement of order and control in the prison to prevent violations and to protect vulnerable prisoners; security measures in the prison must be provided by an impartial and fair disciplinary system.

Safety and security procedures include proper classification and assessment of prisoners, searches and operational actions.

Proper classification of prisoners on the basis of risk assessment is one of the most important actions that prison leaders must take to ensure the guard and security of prisons. Security measures for prisoners should be of such a minimum level as is necessary to ensure their detention in conditions of isolation [7]. This will allow prison staff to look after fewer prisoners more effectively, who pose a real threat to others; to provide the most humane prison environment, as well as to avoid the extra costs of providing a higher level of protection for a large number of prisoners [20].

It is now generally recognized that the guard and security of prisons depend on the creation of a positive climate that facilitates cooperation between the administration and prisoners.

External guard (prevention of escapes) and internal security (prevention of disturbances) are best ensured by establishing a positive relationship between prisoners and staff. This is the essence of the so-called "dynamic security" [19].

In the domestic legislation, in particular art. 102 of the CEC of Ukraine [12] established by the law and other normative legal acts the order of execution and serving of punishment (the mode in correctional and educational colonies) should provide, among other things, safety of prisoners and personnel. This is quite natural, since any public activity, including criminal-executive, is associated with risks of various nature, creating a threat to the

life and health of people who are involved in the process of implementing certain programs, performing tasks, exercising statutory powers, etc [10]. So, we agree with professor O.H. Kolb that ensuring security in places of deprivation of freedom is one of the main regime requirements.

In the science and practice it is widely believed that security in the colonies depends on danger of categories of convicted people in the institution, and almost the only effective means of influence on the operational situation in the colonies are: 1) apply to convicts of a wide range of punitive measures, 2) the possibility of criminal prosecution for wilful disobedience administration institutions, and 3) conducting operational-investigative work (art. 104 of CEC of Ukraine). That is why the main efforts of the SCES of Ukraine on the way to ensure security are directed to the modernization of engineering and technical means of protection, the creation of modern security, information and telecommunication systems in the bodies and institutions of execution of punishments, which, in its turn, is the second priority of this service [26, p.181].

The dynamic component of ensuring the security of a certain regime is not only preventing prisoners from escaping, but also maintaining good relations with prisoners, knowledge of their mood and temperament, awareness of almost all processes taking place in the prison, apparently guaranteeing a safe and decent environment for life.

The effectiveness of dynamic security is that it can be a preventive measure in identifying security threats at early stages. It will work better, where there are motivated and qualified staff, so it cannot be an excuse for non-professional training.

Dynamic security is based on the principle that both sides of the prison (staff and prisoners) have a natural desire to create a safe environment.

Protection and security in prison are depended on a positive climate that would encourage prisoners to cooperate. External security measures (prevention of escapes) and internal security (prevention of violations of order and disobedience) are best provided by building positive relationship between prisoners and staff.

This concept is based on the realization that interaction with prisoners will enable staff to anticipate and better prepare themselves for certain events in order to finally respond effectively to incidents that may threaten the security of the prison and the safety of staff and prisoners.

The principles of dynamic security are much easier to apply in institutions where there is an appropriate ratio of staff and prisoners.

The concept of dynamic security includes:

– development of positive relationships with prisoners;

– direction of prisoners' energy and constructive work and activities;

– ensuring a decent and balanced regime with individual programs for prisoners.

Prisoners should be assessed individually on the following aspects:

– the degree of threat, which they pose to society in the event of escape;

– probability of escape attempt;

– external sources to which they can ask for help to escape.

Dynamic security contributes to a more gentle and humane treatment of prisoners. The easing of the detention regime has been noted in many international legal acts. For example, according to paragraph 60.1 of the Standard Minimum rules for the treatment of prisoners, the regime adopted in a penal institution should seek to minimize the difference between life in prison and life in freedom, which kills the sense of responsibility and human dignity of prisoners [20]. Unfortunately, for the national penitentiary system this rule is still declarative. Instead of doing everything for social reintegration, the development of the regime takes into account mainly the requirements of procedural security, punishment, etc.

Prisoners should be kept under the least strict security conditions. Prison staff should be made aware that the security regime does not depend only on walls, fences and electronic surveillance. The regime is more effective when prison staff know the prisoners for whom they are responsible and communicate with them on a daily basis.

Good behaviour and cooperation on the part of prisoners can also be encouraged through a system of privileges that will apply to different categories of convicts. The prison environment should not be such that it will intimidate the prisoners, but so that will contribute to addressing their particular needs. The development of good working relationships between staff and prisoners is seen as a sign of good management.

Prison staff should try to maintain positive professional relationships with prisoners and their families [6].

Dynamic security facilitates continuous communication between staff and convicts, allowing the prevention, mitigation and control of potential incidents. One of the inherent risks of dynamic security is the presence of staff in all areas where prisoners live and work. This promotes better control and deprives the staff released earlier indifference. This vision contrasts with those systems in which the emphasis is on perimeter security, in which the role of the guard is dominant, in which physical separation of staff from prisoners is practicing, reducing typically the relationship with them only to a small number of required procedures (move, search, etc.) often with the use of mechanical restraints.

Despite the inevitable misunderstandings in prison life, a good relationship between staff and prisoners is very important. The key in this context is the authority of prison staff, which is formed on its ability to inspire respect for themselves, to control prisoners.

Dynamic security can be considered effective when workers recognize prisoners as human beings, understand their needs and aspirations, know the details of their personal lives voluntarily communicated to them, and understand the behaviour that has led a person to prison.

Convict's understanding helps the staff to determine when a person or group of people is acting unexpectedly or unusually, indicating the possibility of a threat to other people, the regime or security and protection of the prison or any of its parts. Dynamic security puts a much greater responsibility on the workers, demanding that they would know convicts, whom they are responsible for, would be informed about their activities and behaviour, and may also, if necessary, put in the report their observations or to act in accordance with them.

It should be noted that certain principles are the basis for the formation of dynamic security:

– humanity and interaction. Minimum standards are important to ensure a humane environment and a positive attitude. The Council of Europe notes that during the recruitment of prison staff special focus should be on such features of the likely candidate as integrity, humanity, the ability to interact;

– justice. In the closed environment of the prison, there is constant interference. The staff should remember that they lead people. Prison workers

should write themselves down: “Is it right, fair what we do, would it be normal if we behaved like this with a person close to you?”

There are four “pillars” of dynamic security:

– good relations between staff and prisoners;

– constructive not excessive regime content;

– mutual interest in a safe environment;

– use of any means that reduce the propensity or possibility of escape or counteraction.

Regardless of the stability and friendliness of the relationship with prisoners, staff should not forget that the main goal is security, and therefore it is necessary to always adhere to high standards of supervision.

Workers have examples to be aware of the negative consequences of abuse or concession of power not only for the individual prisoner, but also for the security of the institution. This will reduce the effectiveness of interaction with prisoners on a personal level, as well as stop the flow of information necessary to maintain a secure environment.

It is important to understand that dynamic security is based on friendly relations with prisoners.

Dynamic security implies professional behaviour, due to which the efficiency of the functions performed by the personnel increases. The development of a constructive and positive relationship between prison staff and the prison contingent will not only reduce the risks of ill-treatment, but also contribute to better control and security.

The true professionalism of the prison staff means the ability to treat prisoners humanely and decently, while at the same time not to forget about safety and order.

Agreeing with the findings of scientists-penitentiaries, we note that, as the practice of activity of establishments of execution of punishments in other countries shows, the establishment of dynamic security guarantees the normalization of the situation in places of deprivation of freedom, thus its implementation does not require significant material costs. Taking into account the difficult economic situation in Ukraine, as well as the lack of the possibility of rapid adjustment of the conditions of detention of convicts in accordance with international standards, it is the dynamic security that can act as the basis on which the further reform of the process of execution of criminal sanctions will be built [26, p.185].

Conclusions and prospects for further research. The study of the development of the category "dynamic security" mostly were made by well-known foreign scientists. We can also say that international legislative acts contain the notion "dynamic security", the content and interpretation of which must be taken into account when improving the domestic criminal-executive legislation, the creation of certain programs for the reintegration of convicts into society.

Dynamic security in penal institutions is a special type of management of the institution of punishments execution, which is based on such principles of the organization of criminal-executive and protective activities:

– professional behaviour of the staff, due to which the efficiency of its functions is growing;

– guaranty of security is largely based on a good relationship between staff and convicts;

– awareness of the processes, which take place in the institution, as well as providing it with an effective and reliable environment;

– ensuring an appropriate balance between staff and convicts;

– ensuring a constructive regime for the execution and serving of sentences on the principles of humanism and justice;

– formation of mutual interest of the staff and convicts in a safe environment;

– involvement of convicts in programs to reduce the propensity to illegal behaviour;

– regardless of the stability and friendliness of relations with convicts, the staff should not forget that the main goal is security, and therefore it is necessary to always adhere to high standards of supervision;

– friendly attitude towards convicts (including polite treatment of them) does not mean friendship with them.

In accordance with internationally recognized approaches to the management of penal institutions, dynamic security is the third and most important element in the three-fold chain of security in penitentiary institutions: physical security – procedural (administrative) security – dynamic security.

The effectiveness of dynamic security is that it can be a preventive measure in identifying security threats at early stages. It would better work if there is a qualified and dedicated prison staff.

Dynamic security is more important than static security measures. When there is regular contact with convicts, penitentiary staff are able to effectively take timely action in situations that deviate from the norm and can pose a threat. In the organization of the criminal-executive process from the standpoint of dynamic security workers who work with convicts, prevent offenses among convicts more effectively, because they have the opportunity to learn about the negative events in the subcultural groups of convicts before the incident.

Prospects for further research should be directed to the development of specific directions of implementation of the principles of dynamic security in the penitentiary system of Ukraine.

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§ 2.2. PERSONNEL MANAGEMENT AND INDIVIDUAL ISSUES OF TRAINING LAW ENFORCEMENT AND JUDICIAL AUTHORITIES OF UKRAINE

1. National police of Ukraine: Issues of personnel policy and legal regulation

The perception of Ukraine of European standards in the field of law enforcement and the appearance on this background, the newly formed National Police of Ukraine significantly increased demands on its human resource designed to protect the Ukrainian people from various types of crimes. The actuality of the problem presented in the scientific work as well as its relevance is undeniable. Legal and psychological aspects of staffing problems of law enforcement, including the system of the internal affairs, were analyzed in the works of domestic and foreign scientists, including M. Anufriieva, V. Barco, M. Kurko, M. Kostrytskyi, I. Okhrimenko, G Yukhnovetsetc, but the current state of human resource management in the organs of the National Police requires a comprehensive researchrelated to the legal regulation of forms and methods of work of the police personnel, their development and improvement.

Analysis of scientific publications in the field of administrative and legal science, management theory, legal psychology, theory and practice of the Internal Affairs, andauthors' own studies show that: the results of research of the National Police staffing units exist in fragmentary form and cannot be directly used in scientific, educational and law-making activity; the theoretical substantiation of guidelines and components of police training according to the new European standards, their placement, training, adaptation and certification is insufficiently developed. In view of the need the research institutional and legal framework of the staff optimization in the authorities of the National Police of Ukraine is rather relevant.

The main goal of this work is to elaborate the basics of activity framework for the National Police of Ukraine in terms of its staffing and isolating gaps of legal regulation in this area. The generalizationof scientific resultsin the study of human resource needs the theoretical analysis of domestic and foreign research scientists and practitioners, which are dedicated to theoretical substantiation content of personnel policy in the internal affairs, including its component - the National Police. The gradual reform of public institutions of the Ukrainian state on the basis of international and European standards, including law enforcement agencies, put on one of the priority seats interest in scientific development and

practical implementation issues of proper staffing of units of the National Police of Ukraine.

The scientific methodology of analyzing the personnel policy of the National Police Ukraine allows deeper to find out the framework, the structure of specific HR processes, laws, regulatory requirements that govern the structure, responsible for making personnel decisions, the reasons admitted blunders, mistakes in dealing appointments. Maintenance of law and order, protection of rights and freedoms, the successful implementation of which depends on many factors, including the quality of the new personnel policy, whose main objective is to create appropriate institutional and legal conditions for the formation of a highly professional staff agencies and departments can effectively solve the high-level service tasks is one of the main functions of the Ukrainian state [1].

The content of personnel policy covers such issues as: purposeful, systematic and balanced formation and training of qualified staff, continuous improvement of professional skills, comprehensive education and continuous training of staff; distribution and redistribution of employers in the areas of employment, regions and types of professional activity; efficient use of personnel, moral and material incentives of their activities, the development of special abilities, the formation of job satisfaction; Personnel and organization of social work, monitoring the activities of the staff; adaptation of personnel; formation and development of the integrated human resources management system [2, p. 10].

The most important prerequisite for strengthening the state is to develop science-based state personnel policy. This process can be effective if it complies with certain requirements and conditions, which includes the consistent implementation of a number of researches, organizational, administrative, political and legislative action. «The human resources policy must ensure the convergence of interests of citizens and the state, create conditions for opening the creative potential of individuals in all spheres of public life, that includes– solving problems of state» [3, p. 22] – says Y. Bytiak.«The personnel policy will be effective iunder such conditions like reduction of management levels in the organizational structure; strengthening personnel reserve link in higher management; stimulating new organizational structure; identification and promotion of employees who have leadership qualities; conduct training and re-training of employees; saving human resource focus; centralization of financial management; attracting prospective employees of other departments [4]» – argued such scientists as: O. Krushelnytska and D. Melnychuk.

«The personnel policy is effective if it is flexible, stable, provided in the plans of the enterprise, organization or institution, on the other hand,is dynamic,

adjusted to changes in the tactics of enterprises, economic market conditions; economically justified, based on the actual financial capabilities that provide an individual approach to employees; if it is a part of a strategic program of the organization; if the personnel policy takes into account not only the interests of agencies and departments, but also their staff; if there are conditions for a competitive labor and professional growth (career) of employees, which depends primarily on the particular employee productivity; if personnel policies aimed at the formation of the system of staff management, which orientson obtaining not only economic but also social impact [5, p. 50]» – V. Momot considers.

State personnel policy consists not only of professional training in the public service staffing or state agencies and staffing the functions of state agencies. This Corporate narrowly departmental approach complicates the formation of personnel policy as a national strategy. However, the implementation of modern course for radical reforms and an active social policy, the comprehensive democratization specializingon law enforcement agencies, relates of the increased role of the human factor as the main social resource staffing. The new claims to personnel management according to the results of socio-psychological research in HR practice determine an optimal mechanism for managing people (teams) in all areas of their activities, including such specific areas as law enforcement. The consideration of psychological conditions of HR optimization in law enforcement agencies becomes particularly important.

"The personnel policy in the organs of the National Police" –is a system of basic goals, principles, objectives, forms and methods of specifically authorized officials (leaders, chiefs, police officers) and specially created units (criminal police, patrol police, authorities of pre-trial investigation, police guard, special police, police of special destination) to ensure the structural units of the National police highly qualified personnel, endowed with the necessary moral, psychological and professional qualities. The effective implementation of the functions and tasks entrusted to the National Police of Ukraine areneed of improving legal framework in the field of HR. «The legal regulation covered various aspects of social life, while the legal form becoming only the basic and most important types of social relations in various spheres of human activity, which requiring not only legal forms, and its substantive legal fullness»–as noted V. Selivanov [6, p.14].

The term "legal regulation of the National Police of Ukraine" means the purposeful activity of subjects of the legislative process for the settlement and streamlining social legal relations that arise when structural units of the National Police provide functional activity by meansof legal technique. "The legal regulation" is a

form of social regulation and control, it allows rotation the social relations of anybody a certain legal form, which is in the law state indirectly through its operation of the competent authorities regulates and even outlines the limits of the possible and necessary behavior.

The analysis of the above definitions of "legal regulation" make the following generalizations, the main categories of the National Police of Ukraine legal regulation as organizational and legal phenomena are the rules of law, because only with their help the process of influence on social relations may directly implement. First of all, the Constitution of Ukraine, other laws, international treaties of Ukraine ratified by the Verkhovna Rada of Ukraine, and legal acts which defined legal and social status rights, duties and responsibilities of police officers.

In particular, the activities of the National Police is govern by the Laws of Ukraine "On the National Police", "On Disciplinary Regulationfor the bodies of the Internal Affairs of Ukraine", "On the organizational and Legal Fundamentals ofCombating organized crime," "On prevention of corruption," Acts of the President of Ukraine and the Verkhovna Rada of Ukraine. On additional measures to prevent the disappearance of people, improving the interaction between law enforcement and other authorities in their investigation", "On Regulation on measures to combat the laundering of proceeds of crime ","On measures to further strengthen the rule of law, protection of rights and freedoms of citizens" "on approval of the organization of official training of the National police of Ukraine", which are the legal basis of the police.

The specific gaps in the current legislation, which governing function of the National Police of Ukrainein ch.3. art. 47 (title - Appointment of police) of the Law of Ukraine "On the National Police" (2015) were analyzed. "The appointment of cadets (listeners) of universities with specific conditions of education, which train police officers, carry the leaders of these institutions.»leads on in this Law " This formulation is available in other articles of the Law (Articles 18, 51, 63, 65, 74, etc.). There is just the question, what kind of education with the specific conditions of education, train police? The legislator should specify that such kind of universities is the educational institutions of the Ministry of Internal Affairs of Ukraine, because only they can train the police, considering the specificity of the designated activities. For example, "the police commissioner for storing, carrying firearms, also its application and use only if it took the appropriate special training. " stated in ch. 2art. 46 (title - The use of firearms) of the Law of Ukraine "On the National Police" (2015). It seems even this argument isenough.

The definition of art. 49 (title - Requirements for candidate to serve in the police) of the Law of Ukraine "On the National Police" (2015) because of its textual analysis follows that the service of the police do not matterthe ethnicity, skin color, political, religious and other beliefs , gender, ethnic or social origin, property, residence, matter - the level of proficiency in Ukrainian language and level of physical training of the police, instead, are missing important parameters as moral and psychological readiness for duty in specific some circumstances also causes doubt. For the above, though blurry, referred to in Law (Articles 50, 51, etc.), but the legislator was necessary to unify it, especially in art. 49 because it is the base relative to other provisions of the Law of Ukraine "On the National Police" (2015).

"The citizens of Ukraine who wish to enter the service in the police, with their agreement, are tested for polygraph." loads doubtfulinch. 2, Art. 50 (title - Checking the candidate to serve in police) of the Law of Ukraine "On the National Police" (2015).How can the Law of Ukraine "On the National Police" (2015) hypothetically insert a "moral choice of person," particularly when it is talking about police? It turns out that when the police refuses to pass the polygraph, then already have been arising some doubts about his integrity. Surely after such denial citizen can be taken to serve in the National Police.

The passage of polygraph need to do compulsory, but not to make a separate part of the article 50 of the Law, moreover it is enough the position in ch. 1 art. 50, which states: "Citizens of Ukraine who wish to enter the service of the police, in order to determine their state health of must pass ... Psychophysiological examination" The polygraph essentially contains of the specific content and form of Psychophysiological examination, so this parameter indirectly iswoven into the understanding such terminology construction as "Psychophysiological examination."

In ch. 1 art. 51 (title - Police Commission) of the Law of Ukraine "On the National Police" (2015) written that "Ensuring a transparent selection (competition) and promotion of the service of police on the basis of objective evaluation of professional and personal qualities of each police officer, according to the position, definition of perspectives for official use in the police formed police standing committee. " Instead, inch. 2 art. 51 of the Law too vague defined composition of such committees, if ch. 1, Art. 50 dealt with evaluation of "personal qualities of each police", the process should be necessarily involved professional psychologists, since definitions of prerogative psychological science. The legislator should specify the following committee members, including the seals of a professional psychologist.

The definition “Policemen’s Attestation” in art. 57 of the Law of Ukraine "On the National Police" (2015), is problematic, because a psychological component of officer’srating wasmissed. Moreover,the legislator usesSoviet terminology clichés, like "business qualities". In this case, "policemen’sattestation is conducted to assess their business, professional and personal qualities ...." (ch. 1, Art. 57). Did the legislator do not understands that the term "business" and "professional" involve the same process, origin, form and content? Moreover, the term "business" has Russian origin and distorts the law into a Ukrainian, as being too close, "comma", with such an interchangeable term "professional".It is necessary to remove the term "business" because there is interchangeable term "professional" with synonymous meaning.

The basis for such attestation of the police officers as assignment or another extraordinary special rank of police or his deprivation was lost by the legislator in ch. 2, Art. 57 of the Law of Ukraine "On the National Police" (2015).Therefore, we suggest the following wording of ch. 2, Art. 57 of the Law of Ukraine "On the national police" with the addition of n. 4 and ch. 4:

2. The official of police officeers’evaluation takes place for: the appointment to a higher position if this position substitution is made without competition; to decide on the move to a lower position through a proprietary mismatch; to decide on separation from service by the police officer discrepancy; to assign another extraordinary or special title or police officer of his deprivation.

3. The attestation is conducted by the Attestation Commission ofpolice organs (institutions, agencies), which established by their leaders.

4. The Certification Commission must include a professional psychologist of the Internal Affairs or in the event of disputes independent psychologist other public institutions (schools).

Some of the gaps "Regulations on the organization of official training of the National Police of Ukraine" (2016) [7], ch. 6, Section 1, in kinds of such officer-training as: functional training, mainstream education, tactical training, fire training and physical training. Instead, it is unspecified the psychological training, which is especially important for the police.This kind of training, which names like "Psychological readiness to act in situations of various degrees of risk; the formation of moral and psychological stability to perform their tasks in special circumstances" is only fragmentary form in the context of tactical training of the officers.We believe that this type of training according to the European standards of police training should be singled out and improved by the psychological training classes.

The list of participants of the educational process in the system of official training, as defined in art.1 Section 3 as: the leaderof police organ (institution, organization); Head of the Study Group; the person who conducts classes; the Instructor on personal safety (including part-time); the person responsible for maintaining accounting and planning documents; personnel training group; other participants (if necessary) is the gap of this thesis. In this list, we can see that it is not a significant participant as a psychologist or teacher (coach) or psychological disciplines training. Such participant as a psychologist (psyhotrener) needs to be clearly defined in the context of tactical component of officer training.

"The personnel of training group (25-30 people) is formed according the specific policemen's activities" [7], – regulatesch. 7, Section 3. As results, these groups will be chaotic and will have difficulties with course material, especially simulations and training. The advance education and training groups should consist of 10-14 persons and such requirement exists in police training in Europe and the US. We believe that part of the activities of the police can be characterized by fair decisions of national courts because the materials compiled by investigative operational units and always solve the fate of people in the court session. And in this case it should be a question of the professionalism of the judges of the national courts of Ukraine.

2. Legal and psychological content of proffesional judges training

The requirements for staffing of Judges of Ukraine, which designed toad minister fair justice were significantly increased, in the context of perception European standards in terms of judicial activity and reforming the judiciary, which started September 30, 2016. "An objective measure excluding the state of existing systems of selection and training of judges is impossible and established system of functioning these institutions is a key parameter in determining the quality of justice, consider I. Samsin in the context of the evaluation the quality of the judicial system of the country. The International cooperation is a great importance to the High Qualification Commission of Judges of Ukraine and the National School of Judges of Ukraine in approaching to implementation such tasks according to the European and World standards "[8]. Therefore, "The training of judges should conform to the international standards" rightly noted V. Kovalenko [9].

The further implementation of judicial reform in Ukraine requires a thorough analysis of socio-psychological factors of professional judges, consider A. Nesterenko [10]. A reason of unlawful decisions, which were made in violation of the law, is insufficient qualification of judges and their poor level of professional

training, noted O.Safonova. The basis of the functioning of justice is to ensure that the judiciary of highly qualified and highly moral judicial personnel because of the training and professional education of judges depends on the legitimacy and legality of judicial decisions [11]. Alexander Chernovskyi, adds that "the formation of professional skills of a judge formed by many factors (socio-economic, socio-psychological, organizational, etc.), where the top spot take training and psychological preparation" [12]. This scientific work dedicated to the problem, that is why its relevance is not in doubt.

Another organization - legal issues and psychological aspects of professional training of judges, including the National School of Judges of Ukraine dedicated to the work of local and foreign scientists, such V. Barco, M. Dehtyarenkovoi, L. Skomorokha, I.Samsin, M. Kostytskyi, V. Konovalov, V. Kovalenko, V. Mazurka, A. Martsynkevych, V. Marchak, A. Nesterenko, S. Nikolaichuk, N. Onishchuk, S. Stepanova, E. Safonov, N. Shuklinoyi, A. Chernovskoho and others, but the current state of socio-psychological determinants of professional training and evaluation of judges needs to be further investigation considering the adoption European standards of Ukrainian judiciary.

Analysis of scientific papers in the field of administrative and legal science, management theory, legal psychology, theory and practice of judicial activities in Ukraine, and own studies show that: the results of research of professional and psychological aspects of staffing the judiciary Ukraine exist in fragmentary form and cannot be directly used in scientific, educational and law-making. It is insufficiently developed the theoretical substantiation of the main areas of professional training of judges according to the European standards.

The main goal of this work is to study the legislative framework of the National School of Judges of Ukraine in terms of its staffing and isolating gaps of legal regulation in this area. The purpose of the presented scientific work is consistent with the ch. 6 h. 1 Art.105 (title - The task of the National School of Judges of Ukraine) of the Law of Ukraine "On the Judicial System and Status of Judges" (2016) in which one of the objectives of the National School of Judges of Ukraine defined - "the research on improving the judicial system and status of judges and justice" [13]. According to Section. 3.2. Charter of the National School of Judges of Ukraine (2015), were assigned such duties as: ensuring the quality of training and skills development for the judicial system, by the way of the organization of compulsory and optional training; conduction the regular evaluation of judges on the results of their training; improving the efficiency of research, scientific and technical work [14].

"In the context of globalization of information space, improvement of various technologies and methods of work, evaluation of legislation and law enforcement practices, introducing new and improving existing methods of protection violated rights society expects of the judges appropriate level of mastery of complex knowledge and skills necessary to perform their duties. Proper training of judicial candidates and judges is a prerequisite for a competent judiciary. Such training is also a guarantee of future independence and impartiality of judges, a prerequisite for society to respect the judiciary "[15].

In accordance with the "Concept of professional psychological training at the National School of Judges of Ukraine" (2014) the professional psychological training in NSJU promotes a judicial candidates and judges professionally important, moral, ethical and business skills, provides psychological readiness for future judges to judicial activities, and aimed at preventing professional deformation and prevent the development of burnout among active judges (ch.1.1.) [16]. The latest one could rectify at introducing a system NSJU to psychological training aimed at neutralizing deformation and professional burnout judges. Currently, paragraph 4.7. "Regulations on the preparation and periodic training of judges at the National School of Judges of Ukraine" (2016) states that "a mandatory part of training programs for judges to maintain qualification is training. Taking into account needs of NSJ and RV NSJ course developers, who conducted the training, take place in it as coaches, moderators, facilitators [17].

The psychological component in the preparation and evaluation of judges has significant value because the psychological determinants cause all vector of professional activity of the judge. That is why, in ch. 5.2. (Title - Improving the professional level judges) "Strategies of reforming the judiciary and related legal institutions in 2015 - 2020" (2015) emphasized the improvement of staffing the court staff and implementing effective mechanisms for research information about judicial appointment in terms of integrity and other qualities [18]. Just in design terminology "other money" was invested the psychological evaluation criteria of judges and their professional psychological training.

In support of this, it is necessary to bring the current edition ch. 3. Art. 85 (title - Stages of qualification evaluation) of the Law of Ukraine "On the Judicial System and Status of Judges" (2016), wherenoted that for the purpose of formation of the judicial dossier (dossier of judicial candidate) The High Qualification Commission of Judges of Ukraine may decide to implement and conduct other tests to check the personal moral and psychological qualities, general skills of the judge (judicial candidate) [6]. Introducing the psychological examination for the candi-

dates, as aptly noted Alexander Chernovskyi, increase requirements for individual judges, whose professional activities related to participation in the most difficult social and legal relations, which arising in the administration of justice and reduce the number of judicial mistakes, which are sometimes exclusively psychological origin, which leads to loss of credibility of the judiciary [12].

In our view, the gap or short comings in the current Law of Ukraine "On the Judicial System and Status of Judges" (2016) is the provision of special trainingof judicial candidate (art. 77), since the definition of ch. 3 turns out that such special training (12 months) actually reduced to "zero", instead State budget of Ukraine spent at the last [13]. "The candidates receive a certificate by the High Qualification Commission of Judges of Ukraine sample for the results of special training. Passing of special training by the Candidates meansthe successful passing of education training program."(ch. 5 of the Law)[6]. Then, NSJ send materials about candidates who have been trained, to the High Qualification Commission of Judges of Ukraine for taking the qualification examination (ch. 6) [13]. The qualification examination is the attestation of a person who was trained and intend to be recommended for appointment as a judge (ch. 1, Art. 78 of the Law of Ukraine "On the Judicial System and Status of Judges" (2016)) [13].

The question arises, why do we need to conduct such special training in NSJ, if you need to re-pass qualifying examination? (itis the identification of the appropriate level of theoretical knowledge and level of professional skills of a candidate, including the results of special training program and the grade of its ability to administer justice). We consider that the final exam in NSJ need to be simultaneously enrolled in a qualifying exam, and the graduates of such special training will be automatically allowed to participate in the competition for the employment of vacant posts of judges on the basis of ranking candidates on the results of the qualifying examination, drawn up on completion of training at NSJ. It should agree with the opinion of S. Stepanova who consist that "the system of training and selection of judges is need of restructuring, which implements the provisions of international law into national legislation according to the international experience that will improve the mechanism for the appointment and subsequent professional efficiency of judges [19].

If we consider professional, especially psychological training of judges, it is should be noted that a department of scientific and methodological support psychological training of judges operate in the NSJ, whose leader is an experienced legal psychologist, scientist-practitioner J. Irkhin [20]. The department was created to increase level of professional psychological competence of judicial personnel and

their adaptability to the requirements of judicial activity. The priorities of the Department are: scientific and methodological support and maintenance of professional psychological training of judicial candidates and judges according to the "Concept on national standards for judicial education" (2016) [15] providing the introduction and implementation of professional psychological training with accordance to "Concept on professional psychological training in NSJ" [20].

Since the beginning of the introduction of a standardized training program for judges appointed for the first time (1-2 years as a judge) employees of the Department developed and successfully tested such training as "Psychological adaptation to judicial activities," which aims to give candidates for judicial office necessary psychological baggage of knowledge that improve the level of professional psychological readiness for judicial activity. Since April 2015 Psychologist operating room has been open, where currently provide the necessary psychological help for judges and court staff in overcoming stress and psychogenic effects of stress related to the performance of official duties [20] "Certainly, the most effective, it would be a special psychological service in the judicial system of Ukraine." noted by M. Dehtiarenko. The alternative condition of realization the psychological preparation as a direction of psychological support judicial activities can be introduction to each state judicial institution such postas Court psychologists [21]. Furthermore, this psychologist, among other duties, could be invited to the evaluation of judges or judicial candidates.

The evaluation of judges should be based on such objective criteria: professional competence (knowledge of law, ability to conduct the court hearing, the ability to write reasoned decisions), personal competence (the ability to practice with the volume of work, the ability to make decisions, the openness to new technologies), social competence, the ability to mediate disputes, respect for parties to the proceedings and leadership capacity for those whose position it isnecessary (according to ch. 33 Opinion number 17 (2014) on evaluation of judges, the quality of justice and respect for the judicial independence of the Consultative Council of European Judges (t. Strasbourg, 24 October 2014). The evaluation should not be based only on quantitative criteria. The quality, not only the number of decisions, of a judge has to be a key element of individual assessment [22].

The Law of Ukraine "On the Judicial System and Status of Judges" (2016) partly fulfilled this point, it defines such criteria of qualification evaluation of judges (ch. 2, Art. 83 (title - Objectives and grounds for qualification evaluation)): professional competence (knowledge of law and management, the ability to conduct the court hearing, the ability to interpret the law and to adopt a court deci-

sion), personal competence (the ability to practice with the volume of work, self-organization), social competence (balance, stress resistance, communicative), professional ethics, integrity and the ability to administer justice in the appropriate court for the aforementioned criteria (ch. 1, Art. 83 of the Law of Ukraine "On the judicial System and status of judges" (2016)) [13].

The regular assessment during recent stay on posts, which is conducted to identify the individual needs of judges for improvement, stimulating it to maintain the qualification at the appropriate level and professional growth is established at the level of law for judges in Ukraine. The procedure and methodology for evaluation of the qualification, indicators of compliance with the criteria of qualification assessment and means of installation approved by the High Qualification Commission of Judges of Ukraine (According to Art. 83 of the Law of Ukraine "On the Judicial System and Status of Judges" (2016)) [13].

Currently, the National School of Judges of Ukraine prepared the draft "Procedure and methodology of the regular assessment» (the Project) and self-assessment of the judge. If we analyze the Projectarises a question of the individuals of the evaluation (ch. 2 Project) because they singled out only: teachers (coaches) of NSJ; the judge; other judges of the relevant court; public associations, while such individual of evaluationas a professional psychology is tstayedunnoticed, for example from the department of scientific and methodological support psychological training of judges in NSJ.

This is real gap of "project", because the psychologist can objectively evaluate,by his psychological knowledge and skills, such parameters as mastering judge knowledge, abilities, skills based on the results of training; analytical skills, ability to evaluate information; the ability to interact with colleagues (ability to negotiate, to work in a team, to work under pressure, etc.); communication skills (spoken language and skills); strong judge sides; judge's recommendations of the self-passagedirections or additional training (p. 3 Project) [23]. However, the absence of professional psychological knowledge of the above-mentioned individuals of evaluation could be perceived as a fact of impartiality. Such reservations expressed by the Scientific O. Safonova, who proposes to provide removal of any appraiser who conducts professional evaluation of judges, through impartiality [11].

NSJ is necessary for qualified valuating of judges, because by its order working groups of experienced judges, university professors, scientists, NSJ workers and others who have a high level of knowledge in the respective field of law based on their specialization were created according to the need of standardized software (this should include programs of evaluation of judges),-

ch.4.2.2."Regulations on the preparation and periodic training of judges at the National School of Judges of Ukraine"(2016). For the quite formulated definitions suitableare such specialists in law as legal psychologists with appropriate practical and theoretical experience in the aforementioned evaluation methods [17].

Sadly, that the legislators did not mention to the psychological component of judges evaluating in ch. 4. 16-1 of the Law of Ukraine "On Amendments to the Constitution of Ukraine (on justice))", which cam ed into force on September 30, 2016. «The compliance of judge's position is assessed only on the criteria of competence, professional ethics or integrity» - regular the article [24]. In these criteria do not mention a psychological component, which is surely important for evaluation of judges as provides an estimate personality, with its professional and psychological qualities and professional life to further the implementation of the authority judicial activities. We consider that this list must be added by such parameteras moral-psychological characteristics of the candidate, because suchindicators aspsychological burnout and professional deformationin assessing a candidate must take into the evaluation).

On this occasion we maintain the position of the scientific - Alexander Chernov, who believes that without a proper psychological assessment and characteristics of personality it is impossible to predict professional success of future activities. According to the author, the need of psychological examination of a candidate is caused by: [12] the increased requirements for individual of judges, whose professional activities related to participation in the most difficult social and legal relations , which are arising in the course of justice; the great responsibility and seriousness of the consequences of judicial mistakes that lead to the loss of credibility of the judiciary as a whole; the significant material costs related to the appointment and dismissal of judges who were unable to adapt to work.

CONCLUSIONS

To conclude, "the main task of professional psychological selection of judicial candidates is to assess the suitability of a candidate for professional psychological and psychophysiological indicators and on this basis of long-term forecasting efficiency of its subsequent activity. The basis of selection is the psychological evaluation of individual mental characteristics of a candidate to determine their degree of compliance with the requirements and specifics of judicial activity. The psycho-physiological selection includes diagnosing of physiological properties of the nervous system, temperament, individual personality traits of a candidate and his psychomotor, emotional and volitional qualities and level of mental stability. Therefore, the development and justification of methods of professional psycho-

logical selection of candidates for judges should be based on a study of professional activity of judges, including the identification of psychological characteristics such activities and complex study of professionally important psychological qualities" [25].

Thus, the paper presented by us examines the issues of improvement of personnel management in the judicial and law enforcement agencies of Ukraine on the example of the national police of Ukraine and the court. Therefore, both police and judicial activities are of the type of extreme psychological characteristics are complex critical types of legal professions. We believe that in institutions of higher education in Ukraine it is necessary to foresee more hours of preparation of the above specialists in the psychological direction because, given the critical nature of the named professions, this will allow them to further optimize their professional activities.

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§ 2.3. PROBLEMATIC ISSUES OF CRIMINAL LIABILITY FOR MERCENARY CRIMES AGAINST PROPERTY (SECTION VI OF THE SPECIAL PART OF THE CRIMINAL CODE OF UKRAINE)

1. Criteria for determining the size of selfish crimes against property

One of the topical issues of mercenary crime against property is the establishment of the size of the crime committed, which permits the delineation of a criminal offense from administrative (petty stealing) and affects the qualification of the offender, since the size of the harm is classified as a qualifying element of the crime.

As is known, in the material composition of crimes one of the mandatory elements of the objective side is the consequence, which is property and is determined by the size of the damage. Thus, the articles in the chapter "Offenses against property" refer to significant damage and crimes in large and especially large amounts. The consequence of material damage (harm) is measured by the cost index. Such indicator should accurately reflect the socio - economic nature of the harm done and serve as a measure of the nature and degree of public danger of a criminal act [1,116]. Therefore, the problem of choosing criteria for determining the size of property crimes is extremely important.

According to the notes 2-4 to Article 185 of the Criminal Code of Ukraine (hereinafter - the Criminal Code), in Articles 185, 186, 189 and 190 of this Code, significant damage is recognized taking into account the material situation of the victim and if he caused losses in the amount of one hundred to two hundred and fifty ((hereinafter referred to as the NTMIC).

Articles 185-191, 194 of this Code recognize in large amounts the crime committed by one person or a group of persons in an amount that is two hundred and fifty times higher than the non-taxable minimum income of citizens at the time of the commission of the crime, and Articles 185-187 and Articles 189-191, 194 of this Code, recognize a crime in especially large amounts, committed by one person or a group of persons in an amount equal to six hundred times more than the non-taxable minimum income of citizens at the time of the commission of the crime.

Part 1 to Article 192 of the Criminal Code "Incitement of significant property damage by deception or abuse of trust in the absence of signs of fraud" refers to

significant damage, and in Part 2 of this article - on property damage in large sizes. According to the note to Article 119, property damage is considered significant if it fifty times more than the non-taxable minimum income of citizens, and in large quantities - such that one hundred and more times exceeds the non-taxable minimum income of citizens.

Article 197-1 of the Criminal Code "Unauthorized occupation of land and unauthorized construction" refers to the problem of significant damage, which, according to the note, is recognized as if it exceeds the non-taxable minimum of citizens' incomes hundred times more [2].

Finally, Article 51 of the Code of Ukraine on Administrative Offenses refers to petty stealing of someone else's property by theft, fraud, appropriation or embezzlement. Stealing of someone else's property is considered to be petty if the value of such property at the time of the commission of the offense does not exceed 0.2 of the non-taxable minimum of citizens' incomes [3].

As we see, in the current Criminal Code of Ukraine in 2001 the non-taxable minimum income of citizens was chosen as the criterion for determining the size of offenses and distinguishing them from non-criminal offenses. The choice of legislators was obviously influenced by the instability of the national currency and the crisis situation in the country's economy. The refusal to measure the size of the pecuniary damage in the hard currency, the rate of which has constantly changed as a result of inflationary processes, seems justified. But today, the use of non-taxable minimum income of citizens as these criteria has become ineffective and even harmful. The NTMIC has lost the properties of the social dimension and does not fulfill, to a large extent, the functions entrusted to it by criminal law. And these functions are extremely important. They are: firstly, in distinguishing a criminal act from a non-criminal (separating function); secondly, in the creation of qualified offenses (qualifying function); Thirdly, in determining the amount of fines specified in the sanctions of articles of the Special Part of the Criminal Code of Ukraine (punitive function). Thus, from him in the cases provided for by the criminal law, the punishment of the act and the amount of punishment in the form of a fine depend on.

Inadequacy of the criterion of pecuniary damage, expressed in the NTMICs, for the needs of criminal law, is that it is an artificially created indicator that does not provide an objective socio-economic assessment of the harm inflicted on society and its individual members. The inconsistency of the use of the NTMIC for these purposes became apparent for legislators, which, on 23.02.06, supplemented Article 169-1 of the Criminal Code "Violations of the Procedure for Financing the

Electoral Company of Candidates, a Political Party (Bloc)" for the first time since 2001, was applied as a criterion for determining the large pecuniary damage to four hundred minimum wages instead of the NTMIC, which more accurately expresses the social nature of the damage. But this indicator is much lowered and does not correspond to the realities of Ukrainian life.

Exit from the situation may be:

1) the complete refusal to use not only the non-taxable minimum income of citizens (NTMIC), but also from the size of material damage in the disposition of the criminal rules of the Special Part of the Criminal Code (according to the example of many Western countries, in particular, Switzerland) [4] ;

2) measurement of pecuniary damage in the national or generally recognized foreign currency (dollar, euro) at the official rate at the time of the commission of the crime;

3) determination of the size of pecuniary damage by means of social state standards (minimum wage, minimum pension, subsistence minimum) stipulated by the Law of Ukraine "On Social State Standards and State Social Guarantees" of 05.10.2000.

Refusal to qualify crimes depending on the size of damage in the norms of the Criminal Code today is unlikely given the established principles of building a national criminal law. The use of monetary valuation in the current national currency raises a reasonable doubt in view of its instability, political and crisis economic conditions in Ukraine, and an assessment in dollars or the euro will contradict the constitutional provision that Ukraine's monetary unit is hryvnia (Article 99 of the Constitution of Ukraine) . Obviously, one of the social state standards is best suited for the role of the criterion for identifying a significant, large, especially large crime against property and for distinguishing it from petty abduction. But in any case not NTMIC! This term survived by itself. Today, in the Tax Code of Ukraine, instead of it, the concept of tax social benefit is used, which is fifty percent of the subsistence minimum for an able-bodied person (per month), established by law on January 1 of the reporting tax year (881 UAH in 2018) [5] .

In my opinion, the most acceptable level to determine the size of mercenary crimes against property is such a social state standard as the subsistence minimum. He more or less objectively reflects the minimum set of products, industrial goods, social services necessary for the normal existence of a person currently in a given society and depends on specific socio - economic factors and subject to periodic adjustment. The state guarantees its observance, review and publication. The

subsistence minimum is a basic social standard, its size must correspond to the minimum wage and pension.

Summing up the above, I consider it expedient to establish in the norms of the Special Part of the Criminal Code the size of material pecuniary damage from which criminal liability comes into one living wage for an able-bodied person, considerable damage - at five living wages, a large amount of damage - in ten subsistence minimum, especially large size - at one hundred living wage for an able-bodied person.

2. Criteria for determining the amount of fines for mercenary crimes against property

Several articles on liability for mercenary crimes against property in the current Criminal Code of Ukraine provide for penalties in the form of fines. Thus, a fine is provided for in part 1 of Article 185 (theft) and part 1 of Article 186 (robbery) in the amount from 50 to 100 non-taxable minimum incomes of citizens, part 1 of Article 188-1 (stealing of water, electric or thermal energy by means of its unauthorized use) in the amount from 100 to 200 non-taxable minimum incomes of citizens, parts 1 and 2 of Art. 190 (fraud) in the amount of up to 50 and from 50 to 100 non-taxable minimum incomes of citizens respectively, part 1 of Art. 191 (appropriation, misappropriation or assimilation of property by abuse of office) in the amount of up to 50 non-taxable minimum incomes of citizens , parts 1 and 2 of Art. 192 (causing property damage by deception or abuse of trust) in the amount of up to 50 and from 50 to 100 non-taxable minimum incomes of citizens respectively, part 1 of Art. 193 (misappropriation of a person found or alien property that happened to be her) in the amount of 100 to 150 non-taxable minimum incomes of citizens, parts 1 and 3 of Article 117 - 1 (unauthorized occupation of land and unauthorized construction) in the amount of 200 to 300 and 300 to 500 non-taxable minimum incomes of citizens respectively, in all 11 cases.

Composition of the crime "Acquisition, receipt, storage or sale of property acquired by criminal means", stipulated by Article 198 of the Criminal Code of Ukraine, does not include a mandatory subjective feature - a mercenary motive. Therefore, it does not have sufficient grounds to consider it as a purely selfish crime against property.

Determining the amount of fine in the has significant disadvantages, since it does not take into account the real incomes of the perpetrator and the level of inflation in the country. This indicator- non-taxable minimum income of citizens- was created for a different purpose for application in the field of taxation and does

not reflect the property status of a person, which by its nature was designed for other social needs.

When comparing the size of the fine in the norms on liability for mercenary crimes against property, it is noteworthy and the feature that the legislator, when determining the size of fines in the non-taxable minimum income of citizens, formulates them in such a way that, for example, a fine of 50 non-taxable minimum incomes of citizens can be designated as part of the first (up to 50), and in part 2 (from 50) Art. 190 CAC (fraud), etc. The same can be said regarding the size of fines in the sanctions of parts of Article 51 of the Code of Ukraine on Administrative Offenses (from 10 to 30 in part 1 and from 30 to 50 in part 2). Such an approach to the design of sanctions is clearly illogical and suggests an apparent discrepancy in the size of fines for the public danger of these crimes.

In my opinion, with regard to the size of fines, they should be appointed on the basis of the material condition and the proceeds of the perpetrator for a certain period of time (month, day, hour) preceding the commission of the crime, preferably for a certain number of months, since the month is in accordance with the tax legislation for reporting period for taxation. By the way, the Criminal Code of Russian Federation for the purpose of punishment provides for the possibility of a fine in the amount of monthly wages for a period from two weeks to five years (Article 46 of the Criminal Code). Thus, the sanction of Part 1 of Article 158 of the Criminal Code (theft) provides for the possibility of imposing a fine in the amount of salary or other income of the convicted person for a period up to six months [6].

To determine the monthly income you can use certificates of income, the availability of registered immovable and movable property, tax returns, etc. If the culprit does not have property and income, the penalty can not be applied to it, since such punishment can not be fulfilled. Therefore, alternative punishments should be provided for in the sanctions of the relevant articles.

3. Stealing as a generic concept of some mercenary crimes against property

In Soviet times much attention was paid to the issue of crimes against property. In the theory of criminal law, in the decisions of the plenums of the Supreme Courts of the USSR and the Ukrainian Soviet Socialist Republic, the generic concept of "embezzlement" (the so-called "хищение" in Russian) of state and public property and the concept of stealing ("похищение "in Russian) of the personal property of citizens was firmly established.

Prominent contributions to the study of the social and legal nature of the looting were made by well-known scientists Piontkovsky A.A., Pinaev A.O., Krieger G.A, Matyshevsky P.S. and other. Their efforts were to create the theory of criminal responsibility for the embezzlement of socialist property, which successfully passed the test of judicial practice and received in the Soviet era a well-deserved recognition among scientists and law enforcement officers.

Soviet scientists paid much less attention to the scientific research on the stealing of personal property of citizens, since the generic notion of abduction was never produced. At the same time, under the stealing of personal property, citizens were taken to mean theft, robbery, fraud and extortion (in the terminology of that time), although the term of stealing itself was used only in Articles 140 and 141 of the 1960 Criminal Code, which concerned theft and robbery personal property of citizens.

The authors of the new Criminal Code of Ukraine in 2001, in connection with the transition to the principle of equal protection of property, regardless of the form of property, abandoned the term " embezzlement " as a generic notion of mistreatment on state and public property, but left the term " stealing " in separate articles of various sections of special part of the Criminal Code, in particular in Art. 185, 186, 188-1 section VI "Offenses against property", Art. 146, 158, 262, 308, 312, 357, 410, 432 in other sections. However, the content of the concept of "stealing" in any of the articles of the Criminal Code of Ukraine is not disclosed, moreover, it varies considerably in its scope, and therefore there is a different interpretation of the stealing in scientific works and comments that gives rise to ambiguous understanding of the legal essence of this concept and leads to instability in its application. relevant criminal law.

Particular issues of this concern relate to the work of Andrushko P.P., Baulin Y.V., Borisov VI, Kuts V.M., Tikhiy V.P. and others, but the final solution to the problem of finding out the legal nature of the concept of stealing has not yet been found.

The more urgent it seems to be necessary to carry out systemic and comparative analyzes of articles of the Criminal Code of Ukraine in 2001 containing the term "stealing", ascertaining their exact content and developing a unified legislative definition of this concept.

The term of stealing in the Special Part of the Criminal Code of Ukraine in 2001 is used in Section VI "Crimes against Property", namely in Article 185 - the secret stealing of someone else's property (theft), Article 186 – the open stealing of someone else's property (robbery), and Article 188 -1 - stealing electrical or

thermal energy by unauthorised usage. In addition, the term "stealing" is used in other sections of the Special Part of the Criminal Code of 2001, in particular in Article 146 - the abduction of a person (section III "Crimes against the will, honor and dignity of a person"). According to the scientific commentary by V.I. Borisov such action should be understood as the unlawful secret or open capture and retention of the victim by a kidnapper, which is almost always accompanied by physical or mental (threat) violence. [7, p.411]. Hence, kidnapping refers to any act, including the use of various degrees of violence and threats.

In my opinion, it's generally incorrect to talk about kidnapping a person that is unethically equated with things, property, goods, but rather to speak about the illegal capture of a person with the use of violence or threats and the subsequent retention of the victim.

Paragraphs 5, 6 and 7 of Article 158 of Section V "Crimes against Elections, Labor and Other Personal and Human Rights and Freedoms of a Person and Citizen" refer to the stealing of a ballot paper, a ballot for voting in a referendum, an election protocol or a protocol of a referendum commission or a box for ballot papers. At the same time, the content of the concept of "stealing" is not disclosed again. According to the scientific and practical commentary (NPK 2007 edition) to the Criminal Code of Ukraine, it means a secret or unlawful extraction of election documents or a document box. The question of the qualification of violent actions in this case, the author of the commentary Zinchenko I.O., as, incidentally, and judicial practice, left unanswered [7, p.444].

Article 262 of section IX "Crimes against public safety" refers to the stealing, appropriation, extortion of firearms, ammunition, explosives, explosives or radioactive materials or their taking possession of them by fraud (part 1), taking possession of them by abuse of an official office position (part 2) and robbery for the purpose of abduction, as well as extortion of these items, combined with violence that is dangerous to life and health (Part 3). Definition of stealing in relation to this norm is not given.

In the NPC 2007, under the stealing in this case, it is proposed to understand the unlawful secret or open, including the use of violence that is not dangerous to life or health, or the threat of the use of such violence, the removal of the said objects from other persons (the author of the comment Tikhy V.P.) [7, p.734].

A similar definition is found in paragraph 17 of the Resolution of the PSCU of April 26, 2002, No. 3 "On judicial practice in cases of stealing and other illicit handling of weapons, war materials, explosives, explosive devices or radioactive

materials." Thus, stealing in the named norm means theft and robbery with violence, which is not dangerous to life and health, or without such.

Article 308 of section XIII "Crimes in the area of the circulation of narcotic drugs, psychotropic substances, their analogues or precursors and other crimes against the health of the population" refers to the stealing, appropriation, extortion of narcotic drugs, psychotropic substances or their analogues or their taking possession of them by fraud. (Part 1), or their taking possession of violence that is not dangerous to the victim's life or health or the threat of such violence or the abuse of an official by his position (Part 2), crash for the purpose of stealing, as well as extortion, combined with violence that is dangerous to life and health (Part 3).

NPK 2007 interprets the stealing in this case as an illegal extraction in any way, including theft and non-violent robbery (author of the commentary Baulin Y.V.) [7, p.849]. Similarly, Article 312 of the same section, which refers to the stealing, appropriation, extortion of precursors, the acquisition of them by fraud or abuse of office (Part 1), the same acts committed with the use of violence that is not dangerous to life and health or with the threat of the use of such violence, as well as the acquisition of precursors by the abuse of an official by his position (part 2), robbery for the purpose of the stealing of precursors, and their extortion, combined with violence that is dangerous to life and the droughts (part 3). Definition of stealing is again not given. But on the basis of the fact that, along with the stealing, the legislator pointed out separately the appropriation, extortion, fraud, abuse of office, forced robbery and robbery, stealing is still meant for theft and non-violent robbery. Extortion, combined with violence, dangerous to life and health, like robbery, is highlighted in a particularly skilled crime.

Article 357 of Section XV "Crimes against the authority of state authorities, local authorities and citizens' associations", which is called "stealing, appropriation, extortion of documents, stamps, seals, seizure by fraud or abuse of office or damage to them" . Part 1 of this article provides for responsibility for the theft, appropriation, extortion of official documents, stamps, seals or possession of them by fraud or abuse of a person's position, and Part 3 - for the illegal possession of any method by a passport or other important personal document. According to the comment hy Dorosh L.V. under the stealing here should mean a secret or open seizure of a document, a stamp, or a seal. If such seizure is combined with violence or the threat of its use against an official who is in charge of the document, stamp or seal, the responsibility should be set for the totality of crimes - under Article 357 and, accordingly, under Part 1 of Article 342, Articles 346 or 350 of the Criminal

Code [7, p.953-954]. In her opinion, if the unlawful seizure of an important personal document was combined with violence, additional qualifications are required in the relevant articles of the Criminal Code [7, p.955]. As you can see, the disadvantages of constructing this article are obvious.

Article 413 of section XIX "War crimes" provides for criminal liability for the stealing, appropriation, extortion by a serviceman of weapons, ammunition, explosives or other combat materials, means of transport, military and special equipment or other military property, as well as possession of them by means of fraud (part 1) or committed by a military official with abuse of office (Part 2). Robbery for the purpose of taking possession of the named objects and extortion, combined with violence, which is dangerous to the victim's life and health, is allocated to a particularly skilled crime (p. 3). The article does not talk about violence that is not dangerous to life or health, and about embezzlement, which means that stealing means robberries, including violent ones.

Commenting on the article, Panov M.I. and Kharitonov S.O. say that there are various ways of stealing: theft, robbery, appropriation, extortion, robbery, fraud, embezzlement, seizure of abuse of office, although the analysis of the content of Article 410 of the Criminal Code gives grounds to talk about stealing as just theft and robbery of any kind [7, p. 1099].

Art.432 - marauding, that is, stealing on the battlefield things that are found in the dead or wounded. The same authors, in the commentary to this article, argue that stealing in marauding may be secret or open, with or without violence [7 c.1137]. It turns out that in this case, the stealing covers all possible forms of taking possession on the battlefield by the things that are found in the dead or wounded.

Attention shoud be drawn to the fact that the disposition of clauses 262, 308, 312, 410 of the CC does not imply the seizure of objects named therein as embezzlement, which is quite possible in practice, and this, in my opinion, constitutes a significant gap in the design of criminal liability for the said crimes .

It is worth noting that on March 19, 2009, in clause 297 of the CC - a reproach over a grave, another place of burial or over the body of the deceased - section XII "Crimes against public order and morality", the term "stealing" was quite rightly replaced by the illegal takeover of the body and other objects. By such a substitution, in the relevant comments to this article, it was stated that stealing is secret or open to violence or without the removal of these objects [7 p.811; 7, p.556].

In the sixth volume legal encyclopaedia published in Ukraine during the years of independence, there is no separate term "stealing", but the term "embezzlement" is interpreted. Author of the article Andrushko P.P. indicates that this term was used in the 1960 Criminal Code and is used in the theory of criminal law. He identifies embezzlement as a deliberate wrongful turning of the guilty person of state or collective property in his favor or in favor of others. Among the five forms of embezzlement described by the author is stealing, namely theft and robbery (st.1st.185 and 186 of the Criminal Code of Ukraine) [8, c.351].

In this regard, it should be noted that before the definition of the concept of " embezzlement " existed earlier and there are now different approaches, and the assignment to the stealing of robbery does not correspond to the etymological meaning of the word in modern Ukrainian. Thus, according to the New Explanatory Dictionary of the Ukrainian Language in 2003, the word " to steal " means to sneak gently, to go unnoticed, to go somewhere, to approach someone, to sneak up something, to pick up [9, p.917], and the word "stealing" - to take away, hide something from someone, get kidnapped - go unnoticed, stealthily [9, p.216].

Thus, under the stealing, in my opinion, it is necessary to mean taking ownership of someone else's property with a mercenary purpose by theft, fraud, appropriating, embezzling or abusing an official by his official position. All of these ways of stealing are united by a closed, non-obvious, one can say invisible, secret for the victim and other persons the nature of taking possession of someone else's property (objects) or property rights.

Non-violent and violent robbery distinguishes from the stealing the open nature of their commission, which brings them beyond the scope of the stealing. By their legal nature, they are independent ways of taking possession of someone else's property and logically must be described as separate kinds of crimes (parts 1 and 2 of Article 186 of the Criminal Code).

The most successful in full compliance with the norms of the Ukrainian language are disclosed ways of stealing in Article 51 "Petty stealing of another's property" of the current Code of Administrative Offenses of Ukraine (in the wording of Laws No. 2598-IV of 02.06.2005 and No. 1449-VI of 04.06.2009) , where under it means theft, fraud, appropriation and misappropriation of someone else's property. But this list should be supplemented by another disguised way of taking ownership of someone else's property, namely by abusing an official by his official position. This approach, in our opinion, covers all non-obvious (hidden, disguised, imperceptible, secret) ways of taking possession of someone else's

property (right to property), which corresponds to the meaning of the term "stealing".

Thus, in the norms of the special part of the current Criminal Code of Ukraine, the term "stealing" is given different meaningful meaning, which significantly impedes law enforcement activities. The way out of the situation may be either a complete refusal to use the term "stealing" in the norms of the Criminal Code, or bringing it to a single content in all relevant criminal law. In the case of choosing the second option, which seems to be the best, based on the above understanding of stealing, the rules of the criminal code should be brought in line with the scientific provisions as follows:

- to supplement Art.262 of the Criminal Code with a note of the following content: under the stealing in this Article and Articles 308, 312, 357, 410 of the Criminal Code it is understood possession of the objects, substances and materials of mercenary purpose by means of theft, fraud, appropriation, embezzlement or abuse of official position;
- the names of Articles 262, 308, 312, 357,410 of the Criminal Code are to be described as "unlawful seizure" by the corresponding objects. Parts 1 of the articles cited provide for liability for stealing, in parts 2 for robbery and extortion, not combined with violence dangerous to the victim's life and health, parts 3 - for robbery and extortion, combined with violence that is life-threatening and harmful to life the victim;
- Part 3 of Art. 262, part 3 of the Article. 308, part 3 of Article 312 of the Criminal Code, the words "robbery for the purpose of stealing" shall be replaced by "robbery for the purpose of capture";
- In part 1 of Article 186 of the Criminal Code, the words "open stealing of someone else's property" shall be replaced by "the taking possession of an alien property for mercenary purposes";
- In Art. 188-1, the phrase "the stealing of electric or thermal energy by its unauthorized use" is replaced by "the unauthorized use of electric or thermal energy";
- in the title and Part 1 of Article 146 of the Criminal Code, the words "stealing of a person" shall be replaced by "the capture and detention of a person";
- in Art/432 CC - replace the word "stealing" with the word "seizure".

4. Criminal liability for taking possession of someone else's property by blackmail

Blackmail is a rather widespread criminal offense, which is foreseen by the criminal law of many European countries, in particular Spain, France, Bulgaria,

Romania and others. But in each country it has its content and varieties depending on the degree of social danger of a criminal offense, legal traditions, peculiarities of culture and the mentality of the nation.

Despite the importance of the outlined problem, the concept of blackmail and its types in the Ukrainian legal literature was not systematically investigated. To this issue, some scholars turned out to be fragmentary, usually when considering the way of extortion (V. Kuts, P. Matashevsky, M. Panov, and others) and some other crimes, including human trafficking (B. Borisov), counteracting legitimate economic activity (V. Pedan). But until now, in the domestic theory of criminal law, the systemic investigation of blackmail as a method of criminal encroachment remains unresolved, there is no clear definition of the legal category "blackmail" and a structural analysis of its content and types, which raises difficulties in qualifying criminal acts related to threats of disclosure information that the victim wants to keep secret results in ambiguous interpretation and application of relevant criminal law in practice.

The current Criminal Code of Ukraine of 2001 does not contain a separate part of the crime of blackmail, but the legislator directly uses this term in the disposition of the four crimes in order to describe the manner in which they were committed, in part 1 of Art.120 of the Criminal Code "Proving to Suicide", in Part 1 of the Article 149 of the Criminal Code "Trafficking in persons or other unlawful human rights" in the wording of Law No. 3316-IV (3316-15) of January 19, 2006, in part 1 of Article 258-1 of the Criminal Code "Invulsion to commit a terrorist act" in the wording of Law No. 170 - V (170 - 16) of September 21, 2006, in Part 1 of Art. 303 of the Criminal Code "Pimping or taking a person into prostitution". But at the same time in any of the mentioned articles or notes to them the content of the term "blackmail" does not reveal the legislator.

In another three crimes, the term "blackmail" is not used directly, but actually describes one or another variant of this method of committing a crime. Thus, in Part 2 of Article 144 of the Criminal Code "Forced to enter into sexual intercourse" we are talking about the use of the threat of disclosure of information that defames the victims or their close relatives, and in Art. 386 of the Criminal Code is one of the means of preventing the appearance of a witness, victim, expert and forcing them to refuse to testify or conclude the disclosure of information that offends these individuals or their close relatives.

Part 1 of Article 189 of the Criminal Code of Ukraine, "Extortion" among the methods of committing this crime is called blackmail (although this term is not used here), namely the threat of disclosure of information that the victim or his

close relatives wish to keep secret, and in hours. 2 st.154, art. 386 CC - the threat of disclosure of information that defames the victims or their close relatives.

Thus, in the current criminal law of Ukraine, we have a general definition of blackmail (in its broadest sense - any information) and kind of it (in its narrower sense - only information that defames a person).

In its social essence blackmail is, of course, intimidation of the victim, a kind of mental coercion (pressure). But can it be attributed to mental violence at the level of threats of murder or use of physical violence? The views of scientists on this issue are different. I believe that the threat of disclosure of information is a special type of influence (pressure) on a person, which is not connected with the use of physical force to the victim even in the case of failure to fulfill the demand, and therefore blackmail should not be attributed to mental violence. In this case, there is no encroachment on the physical integrity of the person. In turn, mental illness should be understood as the threat of using physical force precisely to the injured person (this may be imprisonment, bindings, beatings, torture, body injuries, deprivation of life).

According to the authors of the commentary on Part 1 of Article 149 of the Criminal Code of Ukraine Borisov V.I, and Kozak V.A. under the blackmail of this part of the crime should be understood as "mental violence, which consists in the threat of disclosure of information that the victim or his relatives want to keep in secret" [7, p.417]. V.V. Stashis, in paragraph 4 of the commentary to Article 120 of the Criminal Code, disclose the content of blackmail as a "threat to disclose information that the victim wishes to keep secret (for example, information about illness, extramarital affairs, etc.). This information can both be true and false. It is important that they are of such character that the victim does not want to disclose them "[7, p.359].

V. Pedan proposes the definition of a criminal-legal category of blackmail - "intentional acts committed by the subject of a crime in the form of actual and real intimidation of the victim to spread among other persons information previously unknown to them, defame the victim or his relatives or others information, in order to force him to fulfill the demands or provide favorable for guilty party behavior "[10, p.78].

It is obvious that the criminal law "blackmail" has its own content and is characterized by such structural elements as threat, demand and purpose. A threat is a statement of the person who is blackmailing, to bring to the attention of another person (persons) certain information (information about certain facts). The method of disclosure and the number of persons who are threatened to bring

undesirable information to the victim in accordance with the current CC are of no legal significance, although they may affect the degree of social danger of the perpetrator, depending on the perception of the victim. Therefore, this gives the legislator the opportunity to foresee certain types of blackmail as qualifying signs of committing criminal offenses depending on the method of disclosure (for example, the threat to disclose information in social networks, in printed form, etc.) and the nature of the information.

The requirement is to present to the victim an ultimatum to commit or refrain from committing a certain action in exchange for silence (non disclosure of certain information).

The purpose of a criminal blackmailer always has a dangerous criminal nature - to achieve a criminal result (for example, to take possession of someone else's property while extorting, to force the witness to give false testimony, etc.).

So-called noble blackmail in order to force a person to pay alimony for child's maintenance, undergo treatment for alcoholism, etc., excludes criminal liability, since it does not pursue a criminal purpose.

From the point of view of the current Criminal Code of Ukraine, blackmail is a deliberate unlawful socially dangerous way of committing one or another criminal offense.

System and structural analysis of the place and content of criminal blackmail in the crime of extortion (Article 189 of the Criminal Code) among mercenary crimes against property shows that this complex socio-legal phenomenon needs a clearer definition and deserves the allocation of a separate crime.

The above arguments give grounds for proposing the following definition of the criminal legal concept of "blackmail" as an independent mercenary crime against property in Section VI of the Special Part of the Criminal Code of Ukraine:

Article 189 - 1. Property blackmail

1. Intimidation (threat) of a person disclosing information about his or her relatives that he or she wishes to keep secret from others or degrading her honor or business reputation in the eyes of other people in order to force her to provide the person, who is blackmailing, the property benefits (property, property rights, property actions) as a condition for non-disclosure of such information - is punishable ...

2. The same actions, repeated acts, or by a previous conspiracy by a group of persons, or those that caused significant harm to the victim - is punishable ...

3. The same actions that caused property damage in large amounts - is punishable ...

4. The same actions committed by an organized group or those that caused property damage in especially large amounts - is punishable ...

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§ 2.4. THE SPECIFICS OF THE LEGAL STATUS OF OFFICIAL IN LABOR RELATIONS

Scientific and technological progress, intensive socio-economic processes in recent years in Ukraine and in the world as a whole led to the transformation of market relations, resulting in new forms of employment, new categories of workers. As a result, many new legal acts have been adopted in the national labor legislation, as well as a number of changes in the current legislation. All these measures were implemented to promote the development of labor relations in our country and, accordingly, economic prosperity.

The state of the economy in society depends on a number of political, social, cultural and other factors. Nevertheless, the qualitative organization and effective implementation of the objectives of enterprises, institutions and organizations of all forms of ownership is directly related to the performance of officials of such enterprises, institutions and organizations, which are largely responsible for the effective direction of management. In view of the great economic and organizational role of officials, it is possible to speak of their political, moral, economic and legal responsibility. The development of the problem of the official in general in legal science and in practice is characterized by the confrontation of two trends: to expand the concept of the official and, conversely, to its narrow understanding. In this aspect it is possible to speak about existence of a certain problem in understanding of the official by other branches of the law. This increased attention to officials by scientists of labor law is due to the adoption of the Law of Ukraine “On amendments to some legislative acts of Ukraine on the protection of investors rights" dated 13. 05. 2014 No. 1255-VII [1], which supplemented part one of article 41 of the Labour Code of Ukraine (hereinafter - the Labor Code of Ukraine) [2] by paragraph 5, according to which an additional basis for termination of the employment contract on the initiative of the owner or its authorized body with certain categories of employees under certain conditions is the termination of powers of officials. The relevance of the chosen topic is due to the diversity of the importance of the correct establishment of the essence of the official in labor law, despite the fact that there is no direct indication to the essence of such a category in the legal norm of labor legislation, because the

correct establishment of the content of the definition of "official", the definition of its characteristics depends on the correct understanding and application of certain rules of labor law.

The features of legal regulation of labor relations with officials are caused by the fact that such workers simultaneously perform the functions of the employer's representative in relation to other employees who are in labor relations with the organization. The features of definition of the content of the employment contract of officials in the labor legislation of Ukraine are not clearly defined, although in practice the specifics of the employment of such workers is clearly traced. All this leads to the conclusion that the official is an employee with a special status. In this regard, the need to determine the specifics of the content of the employment contract with the official is obvious.

The problems of determining the content of the employment contract with a relevant person to a greater or lesser extent was the object of research of such domestic and foreign scientists as A. V. Andrushko, M. D. Boyko, N. B. Bolotina, V. Ya. Buriak, C. Ya. Vavzhenchuk, V. S. Venediktov, V. V. Zhernakov, A. M. Ivchenko, M. I. Inshin, I. Kiselev, M. Klemparskyi, R. Z. Livshyts, I. V. Mustets, P. D. Pylypenko, S. M. Prylypko, V. O. Protsevskyi, R. S. Kharchuk, N. M. Khutorian, G. I. Chanysheva, V. I. Shcherbina, O. M. Yaroshenko and others. Nevertheless, without belittling the importance of the contribution of each of them to the development of the doctrine of labor law in the context of the studied topics, it is worth noting that the clarification of the status of an official in labor relations requires detail and general theoretical generalization, which led to the relevance of our study.

The purpose of the article is to define the concept of an official in labor law, the characteristics of its essence, as well as the features of the content of the employment contract with officials.

One of the priorities of the labour legislation of Ukraine is its focus on providing legal guarantees in the process of citizens' exercise of the right to work and its decent protection. Modern research in the field of establishing the essence of the concept of "official" in the system of labor law are characterized by the search for common features of the official. The need to develop an appropriate concept in the system of labor law is substantiated by the fact that within the framework of the unified national system of law an unambiguous interpretation of key concepts and institutions should be carried out.

The problems of clarification of the essence of the concept under study, as well as its properties in the aspect of labor relations remain debatable both among legal scholars and among legal practitioners. Moreover, neither in legal science nor in legislation there are systematic and unified directions and approaches to the understanding of this legal category.

O. V. Valetska rightly noted that the introduction of the term "official", which is characterized by legal uncertainty and according to the content of which it is difficult to establish a circle of such entities, is a weak point in the regulation of labor in Ukraine. In addition, the term “official” is not defined in the labor legislation, and therefore it is necessary to carry out a terminological analysis of administrative, civil legislation and law enforcement practice [3, p. 288].

In the scientific literature, taking into account the retrospective aspect, since Soviet times the official was defined as a person endowed with the means to ensure the implementation of the orders, directs the activities of other employees and the person who is responsible for the work of the subordinates [4, c. 83].

In article 2 of the Law of Ukraine “On service in bodies of local self-government” [5] it is stated that an official of a local government is a person who works in bodies of local self-government, has the appropriate authority for the implementation of organizational-administrative and advisory functions and receives wages at the expense of the local budget.

According to the Law of Ukraine dated 11. 07. 95 No. 282/95-BP [6] in the Code of Ukraine on administrative offences the term "service official" was replaced by the word "official". Thus, the legislator identifies the concept of "official" and "service official". Similar statement in the conclusion was made also by the State inspection of Ukraine concerning work in which it was noted that the specified concepts are synonymous. We can not agree with this position, as hereinafter explanations of the State Inspectorate of Ukraine on labour [7] cites the provision of article 364 of the Criminal Code of Ukraine, which stipulated that service officials are persons who permanently, temporarily or by special authority exercise functions of representatives of authorities or local self-government and occupy permanently or temporarily in the bodies of state power, bodies of local self-government, at state or communal enterprises, institutions or organizations, posts, or administrative and economic functions, or perform such functions under a special power,

which a person is vested with an authorized body of state power, a local government body, a central government body with a special status, an authorized body or an authorized person of an enterprise, institution, organization [8]. As you can see, the legislator himself distinguishes officials and officials as separate legal categories, and therefore the conclusion of the state labour Inspectorate of Ukraine is erroneous and does not solve the issues of understanding the category of "officials" not only in the field of labour law, but in general in the general theory of law.

Long before that, representatives of the judicial branch had tried to bring some clarity to the understanding of the category of "official". So, Plenum of the Supreme court of Ukraine dated 26. 04. 2002 No. 5 "About court practice on cases on bribery" [9] determined the official through the prism of its administrative duties and responsibilities for the management of the industry, the workforce, the work area, the production activities of individual employees at enterprises, institutions, organizations regardless of forms of ownership. The analysis of the provisions of the above-mentioned resolution of the Plenum of the Supreme Court of Ukraine gives grounds to conclude that there is no clear distinction between the concepts of "service official" and "official" neither in the legislation, nor in judicial practice. The implementation of the employee administrative/ administrative-economic obligations is the basis for attributing it to the category of service officials/officials with all relevant legal consequences for him

In turn, the Ministry of justice of Ukraine in the Letter dated 22. 02. 2013 No. 1332-0-26-13/11 [10] explained that when defining of concept "official" it is necessary to proceed from law-enforcement practice which notes that the main criterion of reference of the person to the circle of officials is existence at it organizationally-administrative or economic functions.

The impossibility of an unambiguous solution to this legal problem is due to the uncertainty of the term "officials" in labor law, within the meaning of which it is difficult to establish a circle of “officials”, the termination of whose powers should serve as the basis for termination of the employment contract at the initiative of the employer. It is therefore necessary to clearly define the labour legislation, namely the Labour Code, the list of officials that may be terminated the employment contract on the specified basis [3, p. 288]. It is worth noting that the establishment of a comprehensive list of officials

the employment contract with whom may be terminated on the basis of paragraph 5 article 41 of the Labour Code of Ukraine is objectively impossible due to the presence of a large number of names of posts of workers, which nevertheless will not give the ability to accurately set them as belonging to the category "official" in the sense of item 5 article 41 of the Labour Code. In addition, a simple list of officials still does not solve the question of the true essence of the concept of "official" in the system of labor law. In this case, it is necessary to develop a general definition of "official", which would be acceptable for all branches of law, including labor.

It should be noted that in the scientific literature there are attempts to formulate a general definition of an official taking into account certain distinctive features of such a category of workers. So, Yu. A. Petrov offers to refer all servants in one way or another engaged in the management of both people and things to officials of. Officials, in his opinion, can include not only heads and experts, but also separate technical performers (storekeepers, the watchman and so on) [11, page 36]. Such a broad interpretation of the concept under study can be the basis for the illegal dismissal of those workers whose duties are the least, and even in no way related to the performance of organizational, administrative and economic functions, which the Ukrainian legislator describes.

A thorough definition of the official in the field of labor was provided by I. V. Mustets: this is a separate category of an employee who, on the basis of an employment contract, directs (manages) an enterprise, an institution, an organization, their structural units or certain areas of work (production, process), is endowed with the necessary legal status, which provides for the performance of organizational, administrative and/or economic duties in relation to its subordinate employees, property, material values, etc. [12, p. 48-49].

The way of classifying employees into officials and other employees based on the criterion of whether they have regulatory power was chosen by M. Konin. Thus, in his opinion, the officials consist of the chief specialists and specialists-performers (e. g. , technician) [13, p. 27]. In turn, O. V. Petryshyn offers such a definition of the term of the term “official”: an official is a citizen who performs utility function for management on a professional basis, having at least a minimum of state powers and the ability to operate the apparatus of coercion, the special legal status and official

trappings of office [14, p. 29]. We should note the positive moment of the specified definition which consists in accurate fixing of the main sign of the official – existence in it office function on management (people, things and so forth). In our opinion, the expediency of applying the category of "citizen" in the definition of "official" raises doubts. In the aspect of labor law, the concept under study should still start with a more successful term "employee".

The best approach to the solution of the problem proposed in the draft law "On amendments to the Labour Code of Ukraine in terms of protection of workers' rights regarding groundless release", which is that the termination of the employment contract on the initiative of the owner or its authorized body in the event of termination of powers of officials can only be applied to officials of management bodies of economic societies [15]. In the Explanatory note to the specified bill [16] the adopted Law No. 1255-VII which purpose was improvement of investment climate by granting to investors (owners) of economic establishments of the right to dismiss officials (heads, members of executive bodies) without indication of the reasons, and also coordination in this context of regulations of the labor and economic legislation is rather sharply criticized. Given the positions of developers of the bill under consideration, and also known scientists in the field of labour law, guided by the principles of the impossibility of unfounded and unwarranted dismissal can be safely concluded that the amendments to the Labour Code in connection with the adoption of Law No. 1255-VII, [1], does not correspond and contradicts the objective of the law, with the result that the labour legislation introduced a new provision on groundless dismissal, which not only grossly violates the labor rights and interests of employees (officials) in terms of the emergence of additional unjustified grounds for their dismissal, but also as H. S. Honcharova correctly notes, largely neutralizes the principle of stability of labor relations, does not contribute to social peace and cohesion in society, negates all achievements in the field of social dialogue [17, p. 121].

So, taking into account all the above scientific and legislative positions in relation to the definition of the concept of "official", taking into account the peculiarities of understanding of this concept in labor law, we believe that the official – is an employee, a professional manager, who on the basis of an employment contract permanently, temporarily or under special authority

performs the functions of management and management of the entire organization (enterprise, institution) and/or its units, the work of employees, has the authority, including to control, which allows to make such decisions and carry out such actions, which entail legal consequences for other employees.

In addition, after analyzing many scientific approaches to the establishment of the characteristic features of an official in the system of law, we can distinguish the following features of an official in the system of labor law:

1) determination of the legal status of officials takes into account the requirements of labor legislation, as well as special legislation on business companies, charters and other internal acts;2) the special status of the employee-the official who is connected with performance of special functions - functions of management and the management;

3) officials in the system of labor law are professional managers whose activities should be aimed at the organization of the labor process to perform the basic statutory tasks of the enterprise (profit, expansion of material and technical base, increase productivity, reaching a new level and sales volumes, etc);

4) officials, as well as other employees, carrying out their activities on the basis of an employment contract (agreement);

5) the main functions of the officials is the management and leadership in all organizations (enterprises, institutions, organizations) and/or one of its subsidiaries, the proper work of employees;

6) an official has authority, including control powers, and may apply disciplinary measures (penalties);

7) an official may exercise his/her powers both on a permanent and temporary basis, as well as on a special power;

8) decisions and actions of officials are the cause of legal consequences for other employees;

9) officials are characterized by the presence of increased responsibility (social and legal) for non-performance or improper performance of both their duties and duties of subordinate employees. Although the list given by us is quite wide, however, it is this number of characteristic features that allows to form a holistic view of the official in labor law.

Turning to the specifics of the conclusion of an employment contract with officials, it is necessary to find out the essence of this legal category.

Despite the fact that with a common understanding the content of the employment contract is a set of conditions that determine the mutual rights and obligations of its parties, since the adoption of the Labour Code [2] neither the legislator nor specialists in the field of labor law have been able to formulate a single list of conditions and their classification, and therefore the conditions that are necessary for the recognition of a certain agreement between two persons in an employment contract with all the legal consequences that result, remain legislatively undefined. It follows logically that the characterization of the content of the employment contract, its structure and components is the result of only "doctrinal interpretation of V. 21 of the Labour Code" [18, p. 61].

The legislator in Art. 21 of the Labour Code provides a general view of the content of the employment contract. Thus, according to this norm, an employment contract is an agreement between an employee and the owner of an enterprise, institution, organization or an authorized body or individual by which the employee undertakes to perform the work specified in this contract, subject to internal labor regulations, and the owner of the enterprise, institution, organization or its authorized body or individual undertakes to pay the employee salary and provide the working conditions necessary to perform the work provided for by labor legislation, collective agreement and agreement of the parties [2].

The literal interpretation of this legislative provision gives grounds to say that the content of the employment contract is, first of all, the labor function of the employee, as well as the issue of payment of wages to the employee and providing him/her with appropriate and necessary working conditions.

In the theory of labor law, there is the prevailing view on the separation of conditions depending on the need of their entry into the employment contract, essential (mandatory) and optional (additional). The essential conditions of the employment contract are such conditions, which must be fixed in it. Optional conditions, respectively, may not be included in the content of the employment contract.

It should be noted that there is no list of neither essential nor optional conditions of employment contract in the legislation of Ukraine on labor. This issue is ambiguously solved by scientific doctrine. For example, B. I.

Nikitinskii determined only two necessary conditions: place of work and on worker's labor function [19, p. 463]. The most popular is a model of three types of essential terms of the employment contract-place of work, labour function and time (time) beginning of the works [20, p. 82; 21, p. 28].

However, in this case it is necessary to apply a systematic understanding of the Ukrainian legislation and remember the article 9 of the Labour Code of Ukraine, which defines the guarantees mandatory for accounting and fixing that provide for a minimum salary, the minimum duration of leave and the like. The terms of the employment contract should not worsen the position of the employee in comparison with those already established by the current legislation [2].

The specificity of the legal status of officials (as officials who hold the relevant positions in the bodies of state power, local self-government and officials of management bodies of economic societies) is the existence of double labor-corporate relations between them and the owner or an authorized body. The formation of a correct understanding of the peculiarities of regulation of employment of the officials through the establishment of the content of employment agreements with such category of workers depends on a clear separation of all employees – officials into two groups: 1) officials of bodies of state power, bodies of local self-government, and 2) officials of the bodies of management of economic entities.

So, Andrushko A. V. proposes to apply the concept of employment contract, which is contained in part 1 of article 21 of the Labour Code of Ukraine, in the field of public service. In this regard, the mandatory conditions of the employment contract with a civil servant include the following: the condition of the place of work (a specific body of public service and structural unit), the labor function (profession, specialty, position, qualification), the condition of the period of work and remuneration. The additional conditions of the employment contract include: tests for employment; the condition of moving an employee to another location (art. 120 of the Labour Code of Ukraine); the condition of payment of compensation for the use of their own transport, work and rest. It should also be noted that the parties entering into an employment contract must comply with the requirements of article 9 of the Labour Code of Ukraine, which establishes that the employment contract may not contain conditions that worsen the situation of the employee in comparison with the current legislation of Ukraine [22, p. 75 - 76].

The most controversial issue is the definition of the content, essence of the employment contract with officials of management bodies of economic societies, as in the case of employment of this category of workers at the same time apply the rules of both labor and civil and corporate law. Thus, according to the second part of article 89 of the Economic Code of Ukraine, officials of the economic society are individuals - chairman and members of the Supervisory Board, Executive body, Audit Commission, auditor of the company, as well as Chairman and members of another body of the company, endowed with the authority to manage the company, if the formation of such body is provided by the constituent documents of the company [23]. Thus, the specified persons are its officials therefore features of their work, acceptance and dismissal are defined by the special legislation – the Civil Code of Ukraine [24], the Law of Ukraine "On joint-stock companies" [25], the Law of Ukraine "On economic establishments" [26]. The labour law applies to this relationship only to the extent that it is not contrary to the specified regulations [27, p. 56].

Analysis of the provisions of the Laws of Ukraine "On business companies" [26] and "On joint stock companies" [25] gives grounds to state that the features of the interaction of an employee – an official of the management bodies and the employer are determined depending on the type of such company. Among all types of business companies, a special place is occupied by the company's shareholder, which is due to the detailed regulation of the activities of this organizational and legal type of legal entity and the relations that arise between the joint stock company and its participants, founders, employees, in comparison with other companies. It is on the example of this company that it is advisable to analyze the content of the employment contract with officials.

The Law of Ukraine "On joint stock companies" (hereinafter – the Law) [25] includes individuals — the Chairman and members of the Supervisory Board, the Executive body, the Audit Commission, the auditor of the joint stock company, as well as the Chairman and members of another body of the company, if the formation of such body is provided by the Charter of the company. The working conditions of the Chairman and members of the Executive body, their rights and obligations are determined by Law, other legislative acts, the Charter of the company and/or the regulations on the Executive body of the company, as well as the contract concluded with the

Chairman and each member of the Executive body. On behalf of the company the contract shall be signed by the Chairman of the Supervisory Board or the person authorized for signing of such a Supervisory Board (article 58 and 61 of the Law [25]).

The problematics of the conclusion of both employment contracts and civil law is emphasized by O. Ye. Alekseeva, who indicates the lack of legally established order and conditions for the conclusion of such contracts with members of the Supervisory Board in the current legislation. Today no approved standard form contract (civil and labor) between the company and Supervisory Board member [28, p. 26]. Agreeing with the above statement, we would like to note that in practice the content of employment contracts with officials of the Supervisory Board and the Audit Commission is determined individually, with mandatory compliance with the requirements of both labor legislation and the special law. It should be noted that the content of these employment contracts is no different from employment contracts with other employees of the company.

The situation is somewhat different with regard to the legal regulation of the content of the contract as a special form of employment agreement. The issue of the content of the contract was given considerable attention both by the Ukrainian legislator and representatives of various public authorities. Thus, the Resolution of the Cabinet of Ministers of Ukraine "On the regulation of the application of the contract form of the employment contract" [29] contains a separate section III "Content of the contract". In addition, the Explanation of the Ministry of justice of Ukraine "Employment contract and its types" [30] also has a separate paragraph that refers to the main provisions of the contract as a special form of employment agreement. In addition, there is also a Standard form of contract with the employee [31], which clearly demonstrates what main provisions should be included in the contract concluded with the employee.

In the last paragraph of the article 21 of the Labour Code it is mentioned that the contract is a special form of employment contract, in which the term of its validity, rights, duties and responsibilities of the parties (including material), conditions of financial security and organization of labor of the employee, the terms of termination of the contract, including early, may be established by agreement of the parties. The scope of the contract is determined by the laws of Ukraine [2]. The resolution of the Cabinet of Min-

isters of Ukraine "On the regulation of the application of the contract form of employment contract" also proposes to include conditions on the scope of the proposed work and requirements for quality and timing of its implementation, as well as social, domestic and other conditions necessary to fulfill the obligations assumed by the parties, taking into account the specifics of the work, professional characteristics and financial capabilities of the enterprise, institution, organization or employer.

Such dispositivity at the conclusion of the contract with employees – officials is explained by desire of the legislator to promote as much as possible more effective providing conditions for manifestation of initiative and independence of the worker taking into account individual abilities and professional skills of the official. Consequently, the working conditions of officials can be determined directly in the employment contract, as well as in the civil law contract. The absence of a specific legislative reference to the method of registration of labor relations with officials on the one hand indicates the observance of the principle of freedom of contract and unlimited expression of the will of the parties in documenting their mutual rights and obligations, on the other hand, contributes to the violation of the rights and interests of employees, deprivation of their statutory guarantees.

In order to formulate a common understanding of the content of the employment contract with officials, we propose to bring our own understanding of the working conditions that make up the content of the employment contract with the official and their classification. To do this we propose to divide them into two large groups: 1) those conditions that are common to all employees and should be included in the employment contract in any case; and 2) those conditions that are special in relation to ordinary employees and relate exclusively to the specifics of the activities of officials as employees.

General terms and conditions of the employment contract with officials should include those conditions that are proposed by the developers of the new draft Labour Code of Ukraine dated 26. 12. 2014, namely the following: 1) place of work; 2) time of commencement of the employment contract 3) labor function, which will perform the employee; 4) conditions of payment; 5) work and rest; 6) labor protection [32].

We would like to note that the special conditions of employment of the designated category of workers, are also mandatory to perform, reflect the

specifics and features of the legal status of employees – officials. In our opinion, the following should be attributed to the specified category of conditions:

1) goals (indicators), the achievement of which is assigned to the official – manager. In particular, such a provision may relate to the amount of expected income, the number of attracted investments, partners and the like. The definition of specific goals of the official depends on the type of activity of the enterprise, institution, organization;

2) the amount of remuneration of the official and additional payments that will belong to him in case of achievement of the objectives established by the contract:

- remuneration for the results achieved in the course of activity;
- compensation for the costs associated with the performance of the assigned duties of the official;

3) warning about evasion of competition during the term of the position of a member of the management bodies, as well as some time after the end of its action [33];

4) the condition on the frequency, volume and content of reports that the official is obliged to provide to the representatives of the employer;

5) mutual responsibility of the parties - the official and the employer for non-compliance with the terms of the contract, the procedure for its imposition and boundaries. The specified number of mandatory conditions of the employment contract with the official allows to form a general, holistic view of the content of the agreements of the official with the employer.

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§ 2.5. ACTUAL PROBLEMS OF IMPLEMENTATION OF THE PROCEDURAL POWERS OF THE HEAD OF PRE-TRIAL INVESTIGATION BODY

Performing tasks of criminal proceedings, which are provided by the article 2 of the CPC of Ukraine [1], the pre-trial investigation bodies are obliged to clearly and strictly comply with all requirements of legislative and other legal acts. In the conditions of the acute political situation in the country, law enforcement agencies are required to raise the efficiency of detection, suppression and prevention of criminal offenses. Particular attention is paid to the quality of pre-trial investigation in the fight against corruption, crimes against the foundations of national security and terrorism. Above-mentioned information actualizes the study of the management quality of the investigative units and the use of certain legislation powers by heads of pre-trial investigation bodies.

However, in practice, there are certain problems associated with the implementation of procedural powers of the head of the pre-trial investigation body. First of all, such problems are related to the imperfection of the legal regulation of such powers, ambiguous interpretation of certain provisions of the CPC of Ukraine and their application in practice. The above-mentioned, as well as the importance of investigation of these problems led to the relevance and choice of the research topic.

A significant contribution to the study of procedural powers of the head of the pre-trial investigation body was made by V. M. Babkov, Yu. S. Bezukladnikov, Ye. I. Voronin, D. O. Vlezko, O. P. Guliaiev, V. V. Kalnytskyi, V. F. Kriukov, P. I. Miniukov, A. P. Miniukov, D. M. Mirkovets, M. A. Pohoretskyi, O. V. Petkov, V. M. Savytskyi, O. Yu. Tatarov, V. M. Tertyshnyk, O.O. Chuvilov and other scientists.

Experts expressed two opposing positions on the scope of procedural powers of the head of the pre-trial investigation body. Supporters of one of the directions (M. A. Pohoretskyi, V. M. Tertyshnyk, O.O. Chuvilov, etc.) confirm the need to limit these powers, and others stress the feasibility of their extension (P. I. Miniukov, A. P. Miniukov, L. M., Kyrii, A. D. Nazarov, V. V. Kalnytskyi, etc.).

According to M. A. Pohoretskyi it is necessary to limit the procedural powers of the head of the pre-trial investigation body (at that time – the head of the investigation department), while expanding the administrative functions of the organization of pre-trial investigation. The procedural activity of the head of the pre-trial investigation body should be within a clearly defined procedural rules of the CPC of Ukraine, as regards the grounds and sequence of the procedural powers, their documentation and the mechanism of responsibility [2, p. 169-173]. Part of the proposals made by the scientist to improve the legal regulation of the activity of the head of the pre-trial investigation body [3, p. 59-60] was positively received by the scientific community and taken into account in the development and adoption of the CPC of Ukraine in 2012.

O. V. Petkov, concurring the idea of M. A. Pohoretskyi, also draws attention to the need for legislative regulation of the implementation mechanism of the procedural powers of the head of pre-trial investigation body. Scientist considers it appropriate to determine normatively at what stages of the procedure and in the presence of which grounds (factual and legal), the head has the right/obligation to realise given to him procedural powers [4, p. 47-48].

V. M. Tertyshnyk generally proposes to abolish the function of procedural control by the head of the pre-trial investigation body, because, in his opinion, people concerning whom the investigator is not in administrative or other dependence should carry out procedural control and supervision of the legality of the pre-trial investigation. Administrative powers should not be combined with the function of control or supervision in one person. Implementation of the idea of separation of powers into legislative, executive and judicial requires separation of administrative powers from the functions of pre-trial investigation, prosecutorial supervision and procedural control.

Taking into account the above-mentioned, the scientist affirms that the procedural control of the head of the pre-trial investigation body comes into conflict with the content of the procedural independence of the investigator, and therefore his powers should be limited to solving issues of organizational and methodological nature [5, p. 500].

The opinions of specialists on the content and scope of procedural powers of the head of the pre-trial investigation body are also noted by an extremely wide range. For example, R. Yu. Savoniuk considers procedural ac-

tivity of the head of pre-trial investigation body as a function thanks to which the direction of activity of the investigator in concrete production is defined or corrected [6, p. 13]. In his turn, Kh. S. Tadzhiev claims that such a head should control the criminal procedural activities of investigators in the unit headed by him, using appropriate forms and methods. In separate proceedings, he should directly supervise the pre-trial investigation, ensuring the quality, completeness, comprehensiveness and objectivity [7, p. 71].

It should be noted that the problem of the distribution of competence and power regarding the management of pre-trial investigation in criminal proceedings throughout the history of the development of pre-trial investigation was one of the most relevant and controversial. Numerous attempts to solve it, as a rule, led to reorganization of investigative departments, change of their subordination, creation of new structures, transfer from one department to another, etc.

The aim of the article is to analyse the legal regulation of the powers of the head of the pre-trial investigation body, to identify the problems of their application in practice.

According to the requirements of paragraph 19 part 1 of the article 3 of the CPC of Ukraine, the head of the pre-trial investigation body refers to the prosecution side. One of the constituent elements of its legal status is procedural powers defined in part 2 of the article 39 of the CPC of Ukraine [1]. The list of these procedural powers indicates that the head of the pre-trial investigation body has a sufficient arsenal of legal means, using which he is able to not only organize and control the activities of the investigator, but also to some extent to coordinate the investigation process and influence its results. The main efforts the head directs to the identification, prevention and elimination of possible shortcomings or individual violations of the law in the activities of his subordinate investigators. Thus, he is allocated with independence in the choice of legal means, which are expedient to use in a specific situation for the purpose of the proper solution of the tasks of criminal proceedings defined in the article 2 of CPC of Ukraine.

The choice of the investigative unit head of procedural impact means depends on both objective (complexity of the characterization of an act, the presence of contradictions in the evidence system, not the establishment of the separate circumstances of the crime, etc.) as well as subjective factors (lack of professional training of the investigator, his lack of experience in the

investigation of certain categories of proceedings, etc.). At the same time, as O. V. Khimicheva noted, it is important to find the optimal balance between the legal regulation of the procedural independence of the investigator and the procedural control of the head of the investigative unit. On the one hand, the procedural control of the head of the pre-trial investigation body should be effective, and on the other hand – his activities in this area should not limit the procedural independence of the investigator [8, p. 125].

The certain problem is that in the article 39 of the CPC of Ukraine, which defines the volume of procedural powers of the head of pre-trial investigation body, there are no regulations concerning the order and forms of their implementation that involves various interpretation of separate aspects of the organization of pre-trial investigation by him. Taking into account the above-mentioned, it is advisable to focus on the analysis of the problems that arise in the implementation of the most significant procedural decisions and actions of the head of the investigative unit, which he takes at various stages of the pre-trial investigation.

So, pre-trial investigation of especially serious and serious crimes, usually, demands acceptance of a significant number of procedural decisions, carrying out a number of investigative (search) actions, secret investigative (search) actions, expert researches, etc., that it is extremely difficult for one investigator to execute in criminal proceedings. This situation necessitates the creation of an investigation team. It is the team of several investigators of one or different departments, which is created for a certain time by competent officials in accordance with the requirements of the CPC of Ukraine or departmental regulations for the investigation of complex or huge proceeding or carrying out a number of time-consuming or urgent investigative actions that one investigator is not able to perform within the prescribed time [9, p. 104].

O. V. Petkov to the circumstances that should be considered when deciding on the feasibility of establishing the investigation team, include the presence of a significant amount of conflicting information about the people involved in the commission of a crime, which necessitates the inspection of a number of investigative leads. He also includes a large number of connected episodes of criminal acts; committing a number of criminal acts on the territory of different communities, which are geographically removed from the body which conducts pre-trial investigation; the criminal prosecution of a significant number of accused, who jointly committed one or more crimes;

the need to promptly collect and register a significant amount of documents and materials required for conducting complex and time-consuming forensic examinations [4, p. 95].

At present, the criminal procedural legislation does not provide for the procedural order for the creation of an investigation team, although the powers of the head of the pre-trial investigation body to determine the senior investigator of the team, who will lead the actions of other investigators, is mentioned in the article 39 of the CPC of Ukraine. Taking into account this norm, it can be assumed that the head of the pre-trial investigation body has the right to determine not only the senior investigator, but also to create such a group.

In practice, the head of the pre-trial investigation body, as a rule, decides to create an investigation team during the determination of the investigator (investigators) in the Unified Register of Pre-Trial Investigations (URPTI), who will carry out pre-trial investigation in a particular criminal proceeding. The URPTI form provides for the possibility to identify several investigators for pre-trial investigation and to appoint a senior investigator of the group, and, if necessary, to change its composition during the criminal proceedings. However, it is not specified in the CPC of Ukraine who and how is authorized to amend the composition of the investigative group.

In the context of the above-mentioned, we draw attention to the controversial provisions of paragraph 1, part 2 of the article 39 of the CPC of Ukraine, according to which the head of the pre-trial investigation body is authorized to determine the investigator (investigators) who will carry out pre-trial investigation. Analysis of its content doesn't allow getting a definite answer, does this norm authorize the head to appoint several investigators for a pre-trial investigation in the same criminal proceedings, does it mean his right to appoint any investigator from his unit to carry out pre-trial investigation of a criminal offense?

A number of experts who have researched problems of creation of the investigation team, before the adoption of the CPC of Ukraine, 2012, proposed to limit the powers of the head of the investigative unit to create the group [10, p. 69-73]. This opinion is shared by V. M. Babkova, who believes that the investigation team should be created by the prosecutor, who oversees the control of laws during the pre-trial investigation in the form of procedural guidance of pre-trial investigation [11, p. 71-73].

We believe that the head of the pre-trial investigation body is well aware of the qualities of investigators of his unit, the professional level of their training, the degree of being busy, moral and psychological climate in the team and other circumstances, which together allow choosing the optimal form of pre-trial investigation of a particular criminal offense and, if necessary, to determine the quantitative and personal composition of the investigation team. This logically follows from the powers of the head of the pre-trial investigation body to organize a pre-trial investigation, one of the components of which is the distribution of the load between the investigators, including through the creation of an investigation team.

The issue of the procedural formalization of the decision taken by the head of the pre-trial investigation body to establish an investigation team is debatable. According to a number of specialists-practitioners, the head should make a decision, and the participants of criminal proceedings become acquainted with it. However, it is difficult to agree with it, as it is defined in the article 110 of the CPC of Ukraine that procedural decisions of the investigator, the prosecutor are made in the form of the resolution which is taken out in the cases provided by the CPC of Ukraine and also when "the investigator, the prosecutor think it necessary". That is, in the list of subjects, who can make resolutions in cases when it is not directly provided by the CPC of Ukraine, the head of pre-trial investigation body doesn't appear.

The article 39 of the CPC of Ukraine provides only one case of drawing up of the resolution by the head, which is connected with removal of the investigator from carrying out pre-trial investigation. The question naturally arises, how should the head of the pre-trial investigation body issue other procedural decisions, including those related to the creation of the investigation team?

The conflict between the lack of a clear legal regulation of this issue in the CPC of Ukraine and the way it is solved in practice, casts doubt on the legitimacy of the decision of the head of the pre-trial investigation body on the creation of the investigation team. It can lead to violation of the rights of individual participants in the criminal process, non-compliance with the terms of the pre-trial investigation and other negative consequences.

Before the entry into force of the CPC of Ukraine in 2012, some scientists proposed to give the head of the investigative unit (department) the power to create an investigative team. Other specialists considered that as opera-

tional units do not submit to the head of pre-trial investigation body, the decision on creation of such group has to be made by him together with the chief of operational unit or the corresponding resolution on its creation has to be agreed with such chief [12, p. 77-81]. These organizational decision is aimed at increasing the level of rapid response by law enforcement agencies on the facts of committing resonance crimes and the mobilization of all forces and means for carrying out a complex of urgent investigatory (search) and covert investigative (search) actions in advance united standing teams in the extreme conditions of the initial stage of pre-trial investigation, primarily the inspection of the scene.

In the CPC of Ukraine 2012 the creation of the investigation group are not provided and, in our opinion, the need in it today is absent. Investigative practice has taken the way of maximal use of the investigator's power, provided in paragraph 3, part 2 of the article 40 of the CPC of Ukraine, the possibility to entrust the conduct of investigative (search) and covert investigative (search) actions with the relevant operational units, which are necessary to perform. Thus, the CPC of Ukraine granted the investigator sufficient powers to involve operational units to conduct pre-trial investigation without formal creation of the investigative team, as it was practiced until 2012.

We draw attention to certain problems related to the scope of powers of the head of pre-trial investigation body on the removal of the investigator from the pre-trial investigation. According to requirements of paragraph 2, part 2 of the article 39 of CPC of Ukraine the head of investigative unit is authorized to discharge the investigator from carrying out pre-trial investigation by the motivated resolution on the initiative of the prosecutor or on own initiative with the subsequent message to the prosecutor and to appoint other investigator in the presence of the bases provided by CPC of Ukraine for its rejection or in case of inefficient pre-trial investigation [1].

The article 77 of the CPC of Ukraine provides the cases when the investigator is not entitled to participate in criminal proceedings, in particular 1) if he is the applicant, victim, civil plaintiff, civil defendant, family member or close relative of applicant, victim, civil plaintiff or civil defendant; 2) if he participated in the same proceedings as the investigating judge, judge, defender or representative, witness, expert, specialist, interpreter; (3) if he personally, his close relatives or members of his family are interested in the re-

sults of criminal proceedings or there are other circumstances that raise reasonable doubts about his impartiality [1].

However, quite often there are questions about the necessity of removal of the investigator from conducting pre-trial investigation and the appointment of another investigator that are not defined in the CPC of Ukraine, in particular in times of illness, vacation, dismissal, long-term investigator mission, etc.

Unfortunately, practice has not developed a unified approach to solving this problem. Some heads of the pre-trial investigation body make a decision, in which justify the need to remove the investigator from the pre-trial investigation and the appointment of another investigator, sending its copy to the prosecutor. At the same time, the form of URPTI provides the possibility for the head to change the investigator during the pre-trial investigation several times, without specifying the legal grounds. Only after acceptance by the newly appointed investigator to the production of investigation of the specific offense in the form of URPTI, he should fill in data concerning the basis of implementation of the specified action where, usually, point "within one body" is noted. Thus, the legal grounds for the appointment of another investigator in criminal proceedings are specified only in the decision, which is sent to the prosecutor and attached to the materials of the pre-trial investigation.

The disadvantage of such a decision is that the removal of the investigator takes place on grounds that are not provided by the CPC of Ukraine, in connection with it the prosecutor may raise the issue of cancellation of such a decision in connection with its illegality or unreasonableness. However, the powers of the prosecutor to repeal illegal and unjustified decisions apply only to the decisions of the investigator, which creates a number of problems in the legal relationship between the investigator, the head of the pre-trial investigation body and the prosecutor.

Other heads of the pre-trial investigation body in advance, deliberately identify several investigators, creating a group in the case that someone from its composition for objective reasons will not be able to continue to participate in the investigation. In such circumstances, the head would not need to order the removal of the investigator from the pre-trial investigation and the appointment of another investigator, as any member of the team would be able to conduct the investigation. The disadvantage of this decision is that the

pre-trial investigation is carried out by the investigation team (if it consists of several investigators), which is not defined in it as a senior and is not authorized to lead other members of the group.

Some scientists think that in case of replacement need of the investigator on other bases (treatment, holiday, dismissal, etc.) the head of pre-trial investigation body has to define the investigator (investigators) who will carry out further pre-trial investigation, being guided by paragraph 1, part 2 of the article 39 of the CPC of Ukraine [13, p. 138]. However, in our opinion, such a position is debatable, because there is no norm that directly specifies the ability to change the previously assigned investigator in the law, except his dismissal in the order prescribed by paragraph 2, part 2 of the article 39 of the CPC of Ukraine.

The position of experts, expressed before the entry into force of the CPC of Ukraine 2012 remains relevant. They considered the powers of the head of the investigative unit on the transfer of proceedings from one investigator to another extremely important for ensuring timely disclosure and objective investigation of the crime, as well as respect for the rights and legitimate interests of participants in criminal proceedings. Taking into account above-mentioned, they proposed to define in the CPC of Ukraine an exhaustive list of grounds for such transfer [14, p. 37; 4, p. 94].

We must note that the proposal, unfortunately, has not been taken into account in the adoption of the CPC of Ukraine in 2012, and these problems have remained unresolved.

According to the requirements of paragraph 4, part 2 of the article 39 of the CPC of Ukraine, the head of the pre-trial investigation body is empowered to take measures on elimination of violations of the legislation requirements in case of they were made by the investigator. Thus, it is not explained in what procedural form this head has to react to the specified violations [1]. In the process of implementation of the power to familiarize with the materials of the pre-trial investigation, the head of the investigative unit can find the facts of the investigator's decisions or actions that do not meet the requirements of the law [15, p. 156-160]. In this case, he is obliged to take measures to eliminate violations of the law. Some scientists believe that such measures can be both procedural and organizational in nature. In particular, they include removal of the investigator from carrying out pre-trial investigation and providing him with the corresponding instructions on elimination of violation

of requirements of the legislation to procedural measures of influence, and attraction of him to disciplinary responsibility to organizational measures [13, p. 139].

Other scientists claim that the above-mentioned measures for the timely elimination of violations of the requirements of the law, made by the investigator during the pre-trial investigation, are not enough, and propose to expand the powers of the head of the pre-trial investigation, giving him the right to cancel illegal and unfounded orders [16, p. 320].

Under this pretence, we share the opinion of M. A. Pohoretskyi, which insists that such an extension of powers of the head of pre-trial investigation body is incompatible with the procedural independence of the investigator and may lead to the substitution of the prosecutor's supervision and departmental control [17, p. 14].

The articles 36, 303 of the CPC of Ukraine stipulates that the illegal and unfounded decisions of the investigator shall be entitled to cancel by both the public prosecutor and the court. In particular, the article 303 of the CPC of Ukraine provides the possibility to challenge individual decisions, actions or omissions of the investigator during the pre-trial investigation. Despite it, we consider mechanism of cancellation of illegal resolutions of the investigator, regulated by the CPC of Ukraine, effective and such that does not demand essential changes by expansion of procedural powers of the head of pre-trial investigation body.

However, the question remains open, how should the head of the pre-trial investigation body react if, while reviewing the materials of the pre-trial investigation, he concludes that the investigator has taken an illegal procedural decision? According to some scientists, in this case, the head of the pre-trial investigation body, not having the power to personally cancel the illegal decision of the investigator, should apply to the prosecutor [13, p. 139]. We share the opinion expressed regarding the expediency of such a response of the head of the pre-trial investigation body to the illegal procedural decisions of the investigator, but the CPC of Ukraine does not provide the power of the head to apply to the prosecutor.

The CPC of Ukraine authorizes the head of the pre-trial investigation body not only to get acquainted with the materials of the pre-trial investigation, but also to give the investigator written instructions that cannot contradict the decisions and instructions of the prosecutor. Such instruction from

the head of the investigative unit constitutes a procedural act, which contains specific provisions addressed to the investigator in criminal proceedings [4, pp. 100-101].

The implementation of this power is essential for the proper organization of the pre-trial investigation. On the one hand, the instruction is a procedural form of providing methodological assistance in the investigation of a separate criminal offense, a way to eliminate mistakes during the investigator's procedural decisions, investigative actions, etc. On the other hand, the presence in the materials of pre-trial investigation reasonable, qualified and timely instructions of the head of the investigative unit indicates his active participation in the working process of his subordinates and is one of the criteria of quality management.

Comparison of the scope of powers of the head of the pre-trial investigation body regarding the provision of instructions to the investigator on the CPC of Ukraine in 1960 and the CPC of Ukraine in 2012 indicates certain differences that relate to the content and direction of this procedural act. Thus, it was noted in the article 114-1 of the CPC of Ukraine 1960, that the chief of investigation department is entitled to give instructions to the investigator on the production of pre-trial investigation, on attraction as a defendant, on classification of the crime, on the amount of the charges, on the direction of the case and the production of separate investigative actions [18]. In its turn, paragraph 3, part 2 of the article 39 of the CPC of Ukraine 2012 determines that the head of the pre-trial investigation body is authorized to give written instructions to the investigator, which cannot contradict the decisions and instructions of the prosecutor. At the same time, the current criminal procedural legislation does not explain what aspects of pre-trial investigation should concern such instructions [1].

According to the requirements of paragraph 4, part 2 of the article 36 of the CPC of Ukraine the prosecutor is empowered to give the investigator or the body of pre-trial investigation guidance on the investigation and legal proceedings. Thus, it can be assumed that the content of the instructions of the head of the pre-trial investigation body should also be limited to certain investigative (search), secret investigative (search) and procedural actions. In the context of the above-mentioned information, we should note the powers of the head to approve a decision of the investigator to conduct such a secret investigations, as the performance of a special task on the disclosure of crim-

inal activities of an organized group or criminal organization, as well as the extension of the term of secret investigative (search) actions if it is carried out according to his or investigator decision (part 5, article 246, article 272 of the CPC of Ukraine) [19, p. 59-62; 20, p. 137-144; 62; 78].

However, law enforcement practice on this issue after the entry into force of the CPC of Ukraine 2012 has not changed significantly and the heads of investigative units sometimes continue to provide investigators with instructions in criminal proceedings in the amount determined by the CPC of Ukraine 1960. In our opinion, such practice is contrary to the norms of the current CPC of Ukraine, in a certain way limiting the procedural independence of the investigator, while the content of these instructions should be directed to improving the efficiency of the organization of the pre-trial investigation. That is, the head needs to adjust the activities of the investigator in the direction of completeness, impartiality, speed and efficiency of the pre-trial investigation [21, pp. 680-690] but not to insist on the accountability of a person (people) to determine the final qualification of the committed criminal offence or the completion of the investigation.

At the same time, the provision of implementation of written instructions is one of the elements of the quick response of the head to possible violations of the requirements of the legislation by the investigator and a component of the organization of pre-trial investigation. In other circumstances, the role of the head of the pre-trial investigation body will be limited to the work of a statistician-registrar, who will act as an intermediary between the prosecutor and the investigator.

According to the requirements of paragraph 6, part 2 of the article 39 of the CPC of Ukraine, the head of the pre-trial investigation body is mandated to carry out pre-trial investigation, using the investigator's power [1]. A similar rule was fixed in the article 114-1 of the CPC of Ukraine 1960, according to which the head of the investigation department could participate in the preliminary investigation and personally carry out the investigation, using the powers of the investigator.

According to O. V. Petkov, the participation of the head of the pre-trial investigation body in the conduct of investigative actions is one of the forms of departmental procedural control over the activities of the investigator in order to prevent, identify and eliminate possible mistakes and violations of the law. The scientist believes that the use of this power has a positive effect

on the legality, comprehensiveness, and completeness for specific proceedings and pre-trial investigation in general [4, p. 85-86].

However, the CPC of Ukraine 2012, having given the opportunity to the head of investigative unit to carry out pre-trial investigation, did not regulate the order of implementation of this power, having a little complicated its application in practice. So, according to requirements of part 1 of the article 214 of the CPC of Ukraine the investigator who will carry out pre-trial investigation, is appointed by the head of pre-trial investigation body. In this context, the question arises, who should determine the head of the investigative unit for the pre-trial investigation – he himself or his immediate chief (for example, the head of the investigative unit of the regional body is appointed by the head or vice head of the MIU)? In practice, this issue is usually resolved by determining the head of the pre-trial investigation body himself as an investigator who will carry out pre-trial investigation in a particular criminal proceeding. However, this raises another dilemma – how a prosecutor should act, who according to the requirements of paragraph 8, part 2 of the article 40 of the CPC of Ukraine is authorized, in the cases provided by the CPC of Ukraine, to initiate before the head of the pre-trial investigation body the question of the removal of the investigator from the pre-trial investigation (that is, the head of the investigative unit) and the appointment of another investigator?

According to some experts, the direct implementation of the pre-trial investigation by the head of the investigative unit makes sense only when the crime has caused a certain public outcry or criminal proceedings against it causes significant procedural and tactical complications. While investigating the crime as an investigator, the head of pre-trial investigation body, on the one hand, draws attention to the increased attention from law enforcement bodies, and on the other using his own example demonstrates to subordinates the methods of effective investigation [13, p. 139].

The ability to carry out a pre-trial investigation, using the powers of the investigator, in practice, is interpreted by different heads of the pre-trial investigation body in different ways. For example, some of them believe that since the pre-trial investigation begins from the moment of entering information into the URPTI they can perform any investigative (search), secret investigative (search) and other procedural actions. At the same time, they are

able to enter these criminal proceedings in URPTI and to provide all data and changes.

Others believe that the head of the pre-trial investigation body can only carry out pre-trial investigation when he has personally accepted criminal proceedings or is included in the investigation team. In other cases, he may not participate in criminal proceedings conducted by subordinate investigators.

The results of the analysis of the criminal procedure legislation and law enforcement activities of the pre-trial investigation allow us to conclude that the main activity of the head of the investigative unit should still focus on the organization of the investigation, rather than its direct conduct. The CPC of Ukraine provides a sufficient arsenal of legal means to ensure proper departmental control over the pre-trial investigation, without personal intervention of the head in the investigation process and carrying out investigative and other procedural actions in it.

Conclusions. Summarizing the above-mentioned information, we note that these problems can be solved by making appropriate changes and additions to the CPC of Ukraine. In particular, we offer:

– to give paragraph 1, part 2 of the article 39 of the CPC of Ukraine in the following edition: "*1) to appoint the investigator (investigators), who will conduct the pre-trial investigation, to create an investigation group to change its composition, to appoint the senior investigator of the group, who will lead the actions of other investigators;"*

– to give paragraph 2, part 2 of the article 39 of the CPC of Ukraine in the following edition: *"2) to discharge the investigator from carrying out pre-trial investigation with the motivated resolution on the initiative of the prosecutor or on own initiative with the subsequent message to the prosecutor and to appoint another investigator in the presence of the bases provided by this Code for his branch, in case of inefficient pre-trial investigation or other valid reasons (dismissal, holiday, long treatment or business trips, etc.);"*

– to give paragraph 3, part 2 of the article 39 of the CPC of Ukraine in the following edition: "*3) to get acquainted with the materials of the pre-trial investigation, to give written directions to the investigator about the conduct investigative (search) actions in time, covert investigatory (search) actions,*

other proceedings, which shall not contradict the decisions and instructions of the prosecutor;"

– to give paragraph 6, part 2 of the article 39 of the CPC of Ukraine in the following edition: *"6) in determining the investigator who will carry out pre-trial investigation, or a senior investigation of the team by the head of the pre-trial investigation body, to conduct pre-trial investigation, using the investigator's authority;"*

– to amend paragraph 4, part 2 of the article 39 of the CPC of Ukraine and to give it in the following edition: "*4) to take measures on elimination of violations of requirements of the legislation in the case if the investigator has made them and to petition to the prosecutor about cancellation of the illegal and unjustified resolutions of investigators;"*

– to give paragraph 3, the first sentence in parts 5, 6, 7 of the article 110 of the CPC of Ukraine in the following edition: "*3. The decisions of the investigator, the head of the pre-trial investigation body, the prosecutor are taken in the form of a resolution. The resolution shall be made in the cases provided by this Code, as well as when the investigator, the head of the pre-trial investigation body, the prosecutor consider it necessary".*

"5. The resolution of the investigator, the head of the pre-trial investigation body, the prosecutor consists of:".

"6. The resolution of the investigator, the head of the pre-trial investigation body, the prosecutor is made on the official form and signed by the official who made the relevant procedural decision".

"7. The resolution of the investigator, the head of the pre-trial investigation body, the prosecutor, adopted within the competence according to the law, is compulsory for individuals and legal entities whose rights, freedoms or interests it concerns".

We believe that the proposed changes and additions will contribute to the elimination of problems in the implementation of procedural powers of the head of the pre-trial investigation body and will improve the efficiency of the investigation apparatus during the pre-trial investigation of criminal offenses.

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§ 2.6. WHITE SPOTS OF THE CRIMINAL JUSTICE REFORM THE UKRAINIAN STYLE...

In today's situation, almost all media have it as their duty “to put in the ears” of ordinary people about the mythical ideals of democracy, civil society and the rule of law.

And every day, every official of any level, weight or political orientation, speaking on so-called talk shows of seemingly unbiased TV channels, being little aware of the significance of his statements, but with the appearance like almost that of a Ph. D. in Law, using declarative and template phrases, tries to bring us their version of the historical path of the Ukrainian people to a better life with European values, in which every person can be free and have almost unlimited list of rights and freedoms, as a sign of the onset of democratic changes.

The slogan of “the need to improve the level of protection of human rights and freedoms of citizens, the humanization of the criminal and legal policy of the state, as well as the need for reform of the judicial and law enforcement agencies” became a fashionable trend among some contemporary journalists and almost all politicians and their commentators, community leaders and activists, and others far from the law, those who do not want to fulfill the work, performance of which requires intellectual and physical costs.

Nevertheless, unfortunately, not every one of these people reminds Ukrainians of the list of duties that they must abide by as participants in democratic transformations on the road to the development of a rule of law and civil society. In conditions of modern “total democracy”, every Ukrainian armed with the unlimited list of his rights and freedoms, and also taking into account the mentality of our nation, often believes that his rights are unlimited, there are no obligations, and the “root of evil” is in the activity of judicial and law-enforcement agencies, the very existence of which restricts their public position, which it’s in turn causes the need for humanization of criminal justice.

Analysis of publications on the research topic. A lot of national scientists and practitioners paid much attention to the study of problem issues in the reform of criminal justice. In particular, these are I. Kozyakov, O. Lytvak, V. Malyarenko, N. Rybalka, M. Rudenko, G. Sereda, V. Sukhonos, V. Tertyshnyk, O. Tolochko, N. Topchiy and others. Without diminishing the substantial input in the development of the modern legal opinion of this noted galaxy of scientists, we note that largely, their works are devoted to the study of the theoretical foundations of criminal justice reforms, without the correlation of their scientific developments with the practical realities of contemporary law enforcement.

Problem statement. Taking into account the above, the purpose of this article is the philosophical and legal analysis of precisely the practical significance of the "phenomenon" of the Ukrainian reforms of criminal justice as a complex of organizational and legal principles of the criminal and criminal procedural policy of the Ukrainian state, including the definition of achievements and failures in the humanization of its individual areas, the development on this basis of our own extraordinary ways to improve the domestic legislation in these areas, the need is justified to limit the rights of the defense side as a priority area in the development strategy of legal system in the global instability, which is aimed the real protection and restoration of the rights and freedoms of people and society and the state.

The Criminal Procedural Code adopted in 2012, in the opinion of the vast majority of scientists, journalists, representatives of human rights and civil society organizations, allegedly was a breakthrough in the modern criminal law and criminal procedural policy of the Ukrainian state, and it embodies the implementation of European values in domestic criminal procedural law.

The entry into force of the Criminal Code of Ukraine in 2001 seemed to have contributed to the departure of the domestic criminal-legal policy of the state from the Soviet remnants, as well as the choosing by the country of a democratic vector of development.

But the practical realities of today are diametrically opposed to the often hysterical arguments of representatives of the domestic establishment, and their assistants who, acting on behalf of pseudo-public and quasi-human rights organizations, promote the need for legislative strengthening in the

criminal proceedings of the rights and freedoms of the suspects, the accused, the convicts, increasing procedural guarantees and opportunities for the defense side on the background of their reduction in for the prosecution side, the increase in paperwork, bureaucracy and formalism in the work judicial and law-enforcement bodies in the shape of strengthening their responsibility in the implementation of European values in the domestic criminal procedural law.

In our opinion, the "European humanity" envisaged by these legal act, in modern realities of the domestic legal system acts as an additional catalyst for the growth of crime, motivated by the lack of actual balance of rights and obligations between the prosecution and defense (both between themselves, in front of the court, and next to it); and also motivated by the priority of duties in the work of judicial and law enforcement bodies in the steadfast observance of the rights and freedoms of persons suspected of (accused) of committing criminal offenses, which entails the actual secondary nature of their activities for real protection and restoration of the rights of victims and ensuring the safety of other participants in criminal proceedings.

On the example of individual "achievements" of criminal justice reforms, we shall try to show the real state of human rights protection of the Ukrainian state.

Thus, according to item 11 part 1 Article 7 of the Criminal Procedural Code of Ukraine, one of the principles of criminal proceedings is the freedom from self-disclosure and the right not to testify against close relatives and family members [1]. The specified norm indirectly correlates with the Criminal Code of Ukraine, Article 384 of which provides for criminal liability for willful false testimony, including witness and victim [2]. The suspect, the accused (defendant) is not the subject of the crime, because they are guaranteed freedom from self-disclosure and the right not to testify against themselves, close relatives and family members. In fact, the freedom to self-proclaim individuals with this procedural status, which is guaranteed by law, is de facto their right to give willful false testimony. There is a rhetorical question: is this freedom a sign of equality in terms of one of the tasks of criminal proceedings – protection of individuals, society and state from criminal offenses, as stipulated in Article 2 of the Criminal Procedural Code of Ukraine?! Why is giving by the suspect, accused (defendant) of willful false testimony to the

investigator, the prosecutor, a guarantee of his right to protection, and as a rule, the chance of avoiding criminal punishment is determined by law, and the same actions of the victim, on the contrary, a duty to be subjected to it! We in no way advocate the provision of such rights to the victim or witness, but we propose to extend the list of subjects of the crime under Article 384 of the Criminal Code of Ukraine suspect and accused (defendant).

In practice, in criminal proceedings involving several individuals in the commission of grave and particularly serious crimes, there are cases when one of the suspects or accused persons, in order to minimize their participation in the commission of criminal offenses charged to him, transferring the degree of responsibility to another person or, in general, to avoid criminal liability, essentially uses his right to give false testimony to other persons, including other accomplices of the crime, thus artificially creates testimony for his defense, and for other such persons, de facto, an artificial testimony of the charge. In practice, the above-mentioned facts make it impossible to bring the suspect, the accused (defendant) to responsibility under Article 383 of the Criminal Code of Ukraine (willful false notification of the commission of a crime), because: firstly, under the current legislation they exercise their right to protection (and in fact abuse them); secondly, such persons are not warned by the investigator, the prosecutor, the court about criminal responsibility for willful false reports of the commission of a crime, since, from the point of view of the general principles of the protection of the rights of persons subjected to criminal prosecution; with the aim to exercise their right to protection, they can provide any testimony. The specified creates a closed circle, which generates both disturbance during the pretrial investigation, as well as a large number of unconsidered criminal proceedings in court, and, to the attention of the so-called “connoisseurs of European value”, has as a consequence a violation of the right, defined in part 1 Article 6 of the Convention of Human Rights and Basic Liberties (1950) - the right to a fair and public hearing of his case within a reasonable time by an independent and impartial tribunal established by law, which resolves a dispute over his rights and obligations of a civil character, or establishes the validity of any a criminal prosecution against him [3].

Therefore, in addition to expanding the subjects of the crime under Article 383, 384 of the Criminal Code of Ukraine, persons with procedural sta-

tus of the suspect and the accused (defendant), we propose in part 2 Article 383 of the Law of Ukraine "On Criminal Liability" to expand the list of circumstances, for which criminal liability is provided for willful false testimony - the artificial creation of testimony not only of prosecution but also of defense. From the moral and ethical point of view, as well as from the point of view of absolute justice, these changes would be an additional guarantee as defined in part 2 Article 22 of the Criminal Procedural Code of Ukraine, the principles of equality of rights of the parties to criminal proceedings for the collection and filing of court cases, documents and other testimony [1], since under the literal perception of the current version of part 2 Article 384 of the Criminal Code of Ukraine gives the impression that the state, on the pretext of strengthening the rights and freedoms of perpetrators of crimes and those who help them to avoid punishment under the pretext of providing legal and other assistance, allows (at least does not punish) giving false testimony for the purpose of artificially creating proof of protection!

Another negative example of a destructive criminal-policy policy of the state, is the entrenchment in part 5 Article 193 of the Criminal Procedural Code of Ukraine, of the norm that during the consideration of a request for the selection of a preventive measure, any statements or pronouncements of a suspect, accused, made during the consideration of a petition for the application of a preventive measure, cannot be used to prove his guilt in a criminal offense, in the act of which he or she is suspected, accused, or in any other offense [1]. The above provision facilitates only manipulations of the defense side in the immediate decision of the court on the selection, continuation or modification of a preventive measure for the so-called "legal" avoidance of its selection or for the application of its less severe form.

Therefore, in order to level out the above nuances, it was appropriate to exclude a part of this article, or vice versa, to confirm that the statements or pronouncements of the suspect, the accused, made during the consideration of the petition for the application of a preventive measure, can be used to prove his guilt in a criminal offense, in whose deed he or she is suspected, accused, or in any other offense.

Given the practical realities of today's global instability, the rise in crime rates (taking into account the real state of latency of certain types of serious and especially grave criminal offenses), including the most dangerous

of its manifestations, such as group and organized crime, as well as with corrupt connections, the problem becomes obvious of protection and real renewal of human rights and interests of the state, which resulted in harm as a result of criminal acts, and the bias of such facts in the future as one of the elements of law enforcement and human rights state mechanisms.

Therefore, we will also try to focus on the economic component of the feasibility of limiting the rights of the defense side as a priority in the strategy of the development of the legal system in the conditions of global instability.

For comparison, the victim, that is an individual, in the sense of part 1 Article 55 of the Criminal Procedural Code of Ukraine, to whom a criminal offense has caused moral, physical or property damage, has fewer rights and more responsibilities than the person directly causing such damage. In particular, if a person whose average monthly income at present exceeds 3682 UAH (two subsistence minimum rates as of November 2018), is harmed by a crime, he or she does not have the right to such legal services of secondary legal aid in criminal proceedings as representation in courts and the drawing up of procedural documents. Instead, the criminal himself is given by state, at the expense of the state budget guarantees, free legal assistance in the course of detention, in the selection of a preventive measure in the form of detention, on suspicion or accusation of a person in the commission of a particularly grave criminal offense (in cases where the sanction of the article on the criminal liability provides for punishment in a term of imprisonment of more than 10 years). However, behind these dry legal definitions of subjects of the right to free secondary legal aid, which are entrenched in items 5, 6, 7 part 1 Article 14 of the appropriate [4], the essence lies of the shameful state policy of providing guarantees for free legal assistance to offenders who are entitled to use it at the expense of taxpaying citizens.

Thus, especially serious criminal offenses in the sense of Article 12 of the Criminal Code of Ukraine are logically the most socially dangerous criminal-punitive acts, and in case of charging a person with it, he or she is guaranteed to be provided with free legal aid.

A special part of the Criminal Code of Ukraine includes more than 80 types of particularly serious criminal offenses, in which the defender's participation is obligatory, and the state guarantees its participation from its budget in case of impossibility or reluctance (or in certain cases, even contrary to the

will of the offender) to have his own defender. Among these crimes we shall also note the most socially dangerous acts as an intentional murder (Article 115), hostage-taking committed against a minor or an organized group (part 2 Article 147), trafficking in persons committed in relation to a minor, or organized by a group (part 3 Article 149), rape committed by a group of persons, a minor or an under-aged boy or girl, or which caused particularly grave consequences (parts 3, 4 Article 152), forcible satisfying sexual desire in an unnatural way, committed against a minor or an under-aged, or if it caused particularly grave consequences (part 3 Article 153), theft, committed in particularly large amounts or organized by a group (part 5 Article 185), a robbery committed in particularly large amounts or organized by a group (part 5 Article 186), robbery combined with penetration into a home, another room or storehouse, or aimed at taking possession of property in large or especially large amounts, or committed by an organized group, or combined with causing serious bodily injuries (part 4 Article 187), extortion, which caused property damage on a particularly large scale, committed by an organized group, or combined with causing severe bodily harm (part 3 Article 189), fraud, committed in particularly large amounts or organized by a group (part 4 Article 190), appropriation, embezzlement or possession of property by abuse of office, committed in particularly large amounts or by an organized group (Part 5 of Article 191), intentional damage to the objects of the power industry, which caused the death of people or other grave consequences (part 3 Article 194-1), creation of a criminal organization (part 1 of Article 255), banditry (Article 257), a terrorist act that led to the death of a person (Part 3 of Article 258), the creation of a terrorist group or a terrorist organization (Part 1 of Article 258-3), the abduction, appropriation, extortion, extortion of firearms, ammunition, explosives or radioactive materials or taking possession of them by fraud or abuse of office, committed by an organized group (Part 3 of Article 262), damage to communication routes and means of transportation, if they caused the death of people (Part 3 of Article 277), pimping or involvement in prostitution, committed by an organized group or against a minor (Part 4 Article 303), illegal production, manufacture, acquisition, storage, transportation, transfer or sale of narcotic drugs, psychotropic substances or their analogues, committed by an organized group (Part 3 Article 307), inclining to the use of narcotic drugs, committed against a minor (Part 2 of Article

315), the deliberate infliction of a serious bodily injury to an employee of a law-enforcement agency or his close relatives in connection with the performance of his official duties (Part 3 of Article 345), the deliberate infliction of a serious injury to a judge, people's assessor or a juror or his close relatives in connection with their activities related to the implementation of justice (Part 3 of Article 377), an encroachment on the life of a lawyer or a representative of a person in connection with activities related to the provision of legal aid (Article 400) and other crimes.

For greater clarity, let us give a comparison. A person capable of work, with a total income of 3683 UAH (as of November 2018), who does not fall under other vulnerable categories of citizens defined in Article 14 of the Law of Ukraine "On Free Legal Aid", having become a victim of a robbery, combined with causing him grave bodily harm, has no right to free secondary legal aid in the form of protection and compilation of procedural documents, since, unfortunately, the state does not guarantee such assistance to the victim of the crime, but to the person who committed it (from the time of the detention and selection of a preventive measure in the form of detention). In such circumstances, the lawyer, acting on the basis of the Center for the provision of free secondary legal aid, proceeding from the client's point of view, and, while working out his fee, will, on the pretext of providing protection services and the completion of procedural documents, take any measures aimed at "ruining" the materials of criminal proceedings, including minimization, or even lack of participation of his client in the commission of a crime, the search for deficiencies in the work of the prosecution, systematic compilation and submission of complaints to various instances in order to create conditions for diverting the investigator, the procedural leader, the representative of the operational unit from their work to establish the objective circumstances of the criminal proceedings. Instead, the victim of this robbery attack, while in treatment and spending all his average monthly income, which (in this case, exceeds the two subsistence minimum rate with as much as 1 UAH), recovering from the experience, is obliged to pay for the representative's services at his own expense, prove the possession of the property which became the object of a crime and the involvement of a particular person in its commission. As practice demonstrates, the services of the victim's representative in the form of protection and the drafting of procedural documents,

unfortunately is extremely necessary in order to "procedurally compel" investigators or prosecutors to carry out their work on measures taken to protect a person from a criminal offense, gather testimony of the involvement of another person in a criminal offense and bring him to criminal liability. Therefore, a logical but rhetorical question arises: whom does the state protect from criminal encroachments – the person and his rights, or the one who infringes on them?! Nevertheless, the more rhetorical question is: for whom and for what in the 2017 did the state allocate from the state budget 127 771 000 UAH for payment of services and reimbursement of expenses of the defense lawyers for provision of free secondary legal aid [5]?! What purpose is there for the criminal proceedings, defined in Article 2 of the Criminal Procedural Code of Ukraine concerning the protection of individuals, society and the state from criminal offenses [1] and the utopia of the state guarantee specified in Part 1 of Article 13 of the Law of Ukraine "On Free Legal Aid", which is to create equal opportunities for access to justice [4], if the offender has legal, financial and procedural advantages over the victim of the crime?

With the purpose of real protection of the individual, society, state from criminal offenses, their actual renewal in the case of committing crimes against them, as well as ensuring the proper legal behavior of members of society, preventing the participants from committing criminal offenses and their prevention, we propose to limit the right to defense in the form of a gratuitous secondary legal aid on compulsory participation of a lawyer in criminal proceedings concerning particularly grave crimes against the life and health of a person, sexual freedom and sexual integrity of a person and against property, and to amend the Law of Ukraine "On Legal Aid", which will automatically trigger amending the Law of Ukraine "On State Budget".

One of the progressive chapters of the Criminal Procedure Law of 2012 is the need to specify the specific time limits for using the most stringent preventive measure, such as detention and adherence to the procedural form in case of its selection, change or continuation.

However, an imperfect procedural form, defined by Articles 183, 193 and 331 of the Criminal Procedural Code Ukraine regarding the implementation of such procedural action as consideration of a petition for its use (selection or prolongation) of a preventive measure in the form of detention during a pretrial investigation or a trial of a criminal proceeding raises numerous

abuses of rights on the part of suspects accused, as the defense side discredits the adversarial process of the criminal process and distorts the judicial and law-enforcement system. For example, in practice, the specified category of persons, aware of the maximum and specific period of validity of the decision on the chosen preventive measure in the form of detention, often creates obstacles to the actual consideration of such petitions: a deliberate disruption by the defense side to hold sessions of the court, which is intended to consider these petitions, including via the physical refusal of the suspects, the accused to leave the places of imprisonment in chambers, convoy rooms of court premises; arrangements with defenders to create artificial conditions for the "impossibility" of their participation in such meetings (subject to their mandatory participation in the consideration of certain categories of crimes), etc.

Thus, Part 1 of Article 193 of the Criminal Procedural Code of Ukraine states that consideration of a petition for the application of a preventive measure shall be carried out with the participation of the prosecutor, the suspect, the accused, his counsel, except in cases provided for in part six of this article (which provides for the possibility of considering such a request in their absence only through raising the suspect or the accused in alert). Thus, the actual presence of a suspect or accused in the courtroom (or elsewhere in the use of videoconferencing) and the physical capacity of an investigating judge, a court to directly see them and ask questions is a prerequisite for adherence to the procedural form of consideration of a petition for the application of preventive protection.

However, in today's realities, the issue of the direct involvement of the suspect and the accused who are held in places of pretrial detention remains unresolved, because of their deliberate ignoring of such meetings, which are aware of the impossibility of applying physical measures of influence on them for forced delivery to the courtroom, do not leave the camera or the convoy of the court room, artificially delay the time for the expiration of the final period of validity of the decree, on the basis of which the person is detained, after the occurrence of which and in the absence of another such decision, he or she should be immediately released. In practice in the case of failure to provide the accused with a jail and / or his categorical refusal of a video conference, the courts sometimes make a decision to extend the detention

without a suspect or accused, provided that they stay in the courtroom of the defense counsel (including the designated secondary legal aid centers), basing this on the fact that the lawyer will be able to give reasons for the presence or absence of risks specified in Article 177 of the Criminal Procedural Code of Ukraine for the application of a preventive measure. Nevertheless, we believe that the procedural algorithm is not a panacea, but it is a more extreme exit, but it can cause irreparable legal consequences for the state in case of appeal of such court decisions to the European Court of Human Rights.

To solve this problem we propose to make changes to Article 193 of the Criminal Procedural Code of Ukraine, supplemented by its provisions that an investigating judge, the court may consider a petition for the selection or change of preventive measure in the form of detention in the absence of a suspect, accused in the event of their deliberate reluctance to participate in such a meeting in any way (directly or through video conferencing), refusing to be physically present during the consideration of such a petition, incl. by refusing to leave the premises of the places of pretrial detention, the location of the convoy or special transport, if such refusal is duly recorded (video recording, written statement of employees of the place of detention, convoy, written statement of the suspect, accused, etc.).

One of the shortcomings among the novelties of the application of preventive measures under the Criminal Procedural Code of 2012 is the existence of a single term (up to 60 days) of detention, regardless of the category of the crime charged to the suspect (accused).

The said creates an unnecessary "bureaucracy" when organizing and conducting court hearings on the obligation to "continue the arrest warrant" every two months.

In order to optimize organizational and legal implementation back of me justice in criminal proceedings deem it necessary in law to provide differentiation deadline detention as a form of preventive measure depending on the category of crime, the alleged suspect (the accused).

In particular, we consider it appropriate to delimit the maximum period of detention (as a type of precautionary measure) for the gravity of the crime in which the suspect (accused) person is. Thus, in the case of incriminating a person into a crime of a minor nature, a preventive measure in the form of

detention may be applied for a period of up to 60 days (with the possibility of replacing it with a milder at the petition of the parties to the criminal proceedings not earlier than 30 days from the date of his selection or continuation); in case of suspicion (accusation) of a person for a serious crime, the period of the preventive measure should not exceed 120 days (with the possibility of substituting for a milder at the request of the parties to the criminal proceedings not earlier than 60 days from the date of its selection or continuation); in case of suspicion (accusation) of a person for a particularly grave crime, the term of the preventive measure must not exceed 180 days (with the possibility of substituting for a milder at the request of the parties of criminal proceedings not earlier than 90 days from the date of his selection or continuation). This should help to optimize the procedural aspects of legal proceedings, including to minimize those "theatrical performances" and "circus regulations", which in the present circumstances take place every 2 months with the extension of the term of such preventive measures, and also to ensure concentration of attention of the parties to the criminal proceedings and the court in the performance of their duties, without being distracted by "technical issues" for the observance of reasonable time periods of pretrial investigation or criminal proceedings (depending on the stage of the criminal process).

We also consider it inappropriate to use in case of suspicion (accusation) of a person in serious and especially grave crimes against the life and health of a person, as well as grave and especially grave crimes with the material composition of such a preventive measure as a personal guarantee, which according to Part. ___ Article 180 of the Criminal Procedural Code of Ukraine consists in the provision by individuals that the investigating judge considers the court to be credible, a written commitment that they are entrusted with the execution of the suspect, accused of the duties assigned to him and undertake, if necessary, deliver it to the pretrial investigation or the court at first that requirement [1].

The schizoid use of such a preventive measure consists of the inappropriateness of the likelihood of the risks identified in Article 177 of the Criminal Procedural Code of Ukraine, and guarantees of their prevention by the guarantor. The absence of a clearly defined algorithm, by the criminal procedural law, of the guarantor for the performance of the obligations imposed on

the suspect (accused), the amorphous and abstract terms of the term contained in Article 180 of the Criminal Procedural Code of Ukraine on guarantors as "people who deserve trust", or "one person who deserves special trust" leaves more questions than answers, and points to the politicization and bias of the application of this precautionary measure.

Under the conditions of practical realities, the persons who bail out a suspect (an accused) are usually well-known politicians, public figures and statesmen, celebrities and other public figures, and mostly in high-profile, resonant or politically motivated criminal proceedings. The so-called "idea" to take a bailiff arises as an alternative to his custody, and in the overwhelming majority it is accompanied by author's "show programs" of the same people's elected representatives, officials, "secular lions" and other interested persons, who try to press their authority onto court, violating all the postulates of its independence, in order to delay the reasonable time of pretrial investigation or judicial proceedings in criminal proceedings.

Nevertheless, the greatest subjugation of personal guarantee as a precautionary measure lies in the inappropriateness of negative consequences in the event of the attainment of at least one of the risks, defined in Articles 177 of the Criminal Procedural Code of Ukraine. First of all, it concerns the economic component of crimes with the material composition, that is, those criminal offenses in which the damage to citizens or the state is subject to the calculation in monetary terms. In particular, according to Part 4, Part 5 of Article 180 of the Criminal Procedural Code of Ukraine, in proceedings concerning offenses, for which punishment of imprisonment for a term exceeding ten years in the event of default guarantor of obligations imposed on him a monetary penalty of twenty to fifty subsistence levels [1]. But the adequacy of the preventive measure as a means for risk prevention can be discussed, if, for example, the losses under Part 5 of Article 191 of the Criminal Code of Ukraine exceed 600 and more times the non-taxable minimum income of citizens (as of November 2018, the amount of damages for the crime is not less than 552,300 UAH), and on the guarantor in case of non-fulfillment of his obligations, and (as a precondition for this circumstance, the risk of hiding a suspect (an accused) of a pretrial investigation body or a court for the purpose of avoiding criminal liability) may be fined in the amount that does not exceed (as of November 2018) 92 500 UAH. There is a rhetorical question

about the expediency and proportionality of the use of such a preventive measure in criminal proceedings with millions of losses. If individuals who show a desire to be guarantors of suspects (accused), who are charged with "economic" articles, are confident in their integrity, honesty and innocence, let them act as guarantors of their due process, acting as a pledgor.

On moral and ethical considerations, we shall not give any comments on the absurdity of applying a personal guarantee as a kind of precautionary measure in crimes against human life and health.

Therefore, we propose, by making appropriate amendments to Article 180 of the Criminal Procedural Code of Ukraine to provide on a legislative level for the impossibility of applying personal bail as a type of preventive measure in grave and especially serious crimes with material composition and crimes against human life and health.

The declarativity of personal bail as a type of precautionary measure is also indicated by Part 6 of Article 180 of the Criminal Procedural Code of Ukraine that the performance of obligations of personal bail is supervised by the investigator, and if the case is in court proceedings – by the prosecutor [1].

First, the logic of the use of personal bail as a type of preventive measure is that it can be applied if an investigating judge or a court recognizes persons, who have expressed a desire to bail out the suspect (the accused) as trustworthy, or one person, who deserves special trust. That is, to determine whether a person falls under such criteria is the exclusive prerogative of a minister of Themis, and not that of an initiator of the petition for the selection of a preventive measure.

Secondly, as practice shows, the necessity of applying a personal guarantee as a kind of preventive measure arises spontaneously by representatives of the political and other elite, and as an alternative to a preventive measure in the form of detention in the panicky attempts to "save the victim of the repression of a law enforcement machine".

That is, under such circumstances, the investigator or the prosecutor filed a petition for the selection of another preventive measure, and the investigating judge, the court, in his consideration, chose a completely different type, using the notion of "trust" or "special trust". But according to the logic of Part 6 of Article 180 of the Criminal Procedural Code of Ukraine, he (the

investigating judge, the court) transfers the lever of control of persons that he had recognized as deserving trust or special confidence, precisely on the investigator or prosecutor, which actually indicates the absence of personal responsibility of “the person in the mantle” and the neglect of the court control over the protection of the rights and freedoms of citizens, the interests of society and the state from criminal offenses.

The modelling of practical implementation by the investigator or the procedural supervisor of this “control” indicates only the ridiculousness of the legal construction of this legal norm. In particular, imagine the situation in which the guarantor was a member of Ukrainian parliament, and the investigator or prosecutor, in compliance with the requirements of Part 6 of Article 180 of the Criminal Procedural Code of Ukraine will simulate the control over the fulfillment by him (the people’s deputy) during his stay on “parliamentary holidays” of obligations on personal bail of his colleague in the party. The question about the procedure and the algorithm for such "control" does not so much provoke a smile, as it inspires writing a short film about the gray routine of the investigator or prosecutor.

Therefore, it would be appropriate to stipulate, at the legislative level, that in the case of selection of an investigative judge by a court of a preventive measure in the form of a personal guarantee as an alternative to another preventive measure, he or she or she shall be subject to control over the fulfillment of obligations of personal guarantee.

This would help to reduce the pressure on the court by guarantors, would increase the efficiency of legal proceedings and strengthen judicial control as a guarantee of the rights and freedoms of citizens, the interests of society and the state from criminal offenses.

In general, the legislative changes proposed in this scientific article will, in practice, contribute to a more realistic provision of the following: 1) the procedural equality of the parties to the criminal proceedings; 2) implementation of the principle of inevitability of punishment; 3) prevention of all kinds of manipulations on the part of the defense and the court, making it impossible for them to abuse their powers; 4) fulfillment of the task of criminal proceedings regarding the protection of individuals, society and the state from criminal offenses; 5) rapid pretrial investigation and judicial investigation; 6) the establishment of objective truth in criminal proceedings;

7) reduction of crime; 6) strengthening the rule of law and law; 8) introduction of a real human rights mechanism of the state capable of ensuring and guaranteeing the rights and freedoms of citizens who adhere to them and respect the law.

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Monograph

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