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STATUTORY REGULATION OF ACTIVITIES OF FOREIGN CORPORATIONS IN THE RUSSIAN EMPIRE OF SECOND HALF OF XIX – EARLY XX CENTURIES

Summary

The article analyzes statutory regulation of foreign corporations in the Russian Empire in the second half of nineteenth – early twentieth century during modernization of legislation in the Russian Empire. Basic regulations that govern activities of foreign corporations are considered and analyzed.

Key words: corporation, cooperative society, charter, law, foreign capital, legal regulation.

Formulation of the problem. One of the topical issues of modern historiography is the review of the aspects of legal regulation of foreign corporations in the Russian empire XVIII - early XX century. Russian historians, historians of law, economists today are paying enough attention to this large area of research as opposed to Ukrainian researchers. There are

considered and analyzed the basic regulations that govern the activities of foreign corporations

Analysis of recent research and publications. The question about the peculiarities of legal regulation of foreign corporations, entrepreneurs were put in the 1902 by L. Shalland. Published in the newspaper «Law», he defined such terms and the issues as: "foreign company", "right of the judicial protection", order of formation, etc. [14, 15].

In Soviet times, research in this area were leaded by the Leningrad scientists L.E. Shepelev and V.S. Dyakin [16, 17, 7].

The purpose of this paper is to analyze the legal regulation of foreign corporations in the Russian Empire in the late nineteenth - early twentieth century modernize legislation in the Russian Empire. Considered and analyzed the basic regulations that govern the activities of foreign corporations.

Presenting main material. Legislation on the activities of foreign corporations, entrepreneurs can be grouped into four groups. The first group includes national regulations. The second special regulations (decrees of the emperor, the position of the Committee of Ministers, the opinion of the State Council). A considerable part of them later became part of the law. The third group includes separate legislation. This regulatory acts are similar enough that regulate the conditions of the Russian Empire of each company. The fourth group consists of documents of emergency legislation. They were issued during the First World War and set certain restrictions (temporary or permanent) prohibit activities of foreign corporations.

Activities of foreign corporations can be divided into two components: location, legal status of foreigners and regulations, the legal status of foreign enterprises. Usually these components combined, as conditions of enterprises depend on the legal status of foreign citizens (subjects) [15, p. 224 - 225].

Before the abolition of serfdom (1861) foreigners were limited to the right to freely engage in trade and industry in the Russian Empire. Under the current at the time the legislation of the Russian empire all foreigners had recorded the

state of "foreign guests" whose rights compared with the rights of Russian nationals that have been greatly limited. At the same time the status of "foreign guests" provided the right to engage in business activities, manufacturing, buying, building company (factory, factories), to participate in the management and development of businesses that already exists.

The right to participate in the joint-stock companies form new foreigners treated only with the personal approval of Russian Emperor separately. Crown authorities also determined the range of possible actions of the new company, including defined scope, size, directions of trade, power and direction of production. Due to regulatory restrictions of foreign corporations protected the economic interests of the Russian Empire, formed the antitrust laws [2, p. 4 - 19].

January 1, 1863 was adopted "Regulation on duty for the right to trade and other industries." Article 21 of that provision granted the right to obtain merchant and industrial certificates to persons of both sexes Russian citizenship and foreigners [4, p. 7]. February 9, 1865 issued a new "Regulation on duty for the right to trade and other industries" supplemented and revised [5, p. 160]. Article 20 of the new position has confirmed the right of foreigners to business.

However, in both positions kept estates division. This archaic to the late nineteenth century, failed to remove from the adoption of the new "Regulations on the state tax on" published in 1898 [2, p. 20 - 31].

XIX century 80s were awarded to revise trade laws define the basics of trading activity [17, p. 35]. In 1892 it was approved a new "Charter of the industry."

All the above regulations significantly influenced the legal status of foreign entrepreneurs. They recorded the principles of equality of Russian and foreign nationals in the field of entrepreneurship.

Thus, in accordance with Article 177 of the Charter of industry foreigners allowed to open factories without changing allegiance and get rights and privileges, such as patents. The restrictions were of course, handled military companies or those companies that have been associated with the manufacturing of military orders. Their owners and managers could only be Russian subjects [12, p. 265].

According to Article 183 of the Charter of industry foreigners received equal rights with Russian nationals to engage in trade, transportation maritime cargo and passengers. However, regulation of the participation of foreigners in the maritime trade has always been the state. It determined the exclusive right of Russian nationals in almost all activities related to the shipping and maritime transport. Thus, in accordance with Article 184 coasting, under Article 138 the right to raise the Russian flag in the maritime trade belonged exclusively Russian nationals [13]. Even corporations and trading houses, engaged in shipping and marine transportation should have been created exclusively by Russian nationals [13].

Important for the development of entrepreneurship, especially for foreign nationals was recognition of equal rights of Russian nationals in the ownership of real property, including land ownership. Thus, in accordance with Article 830 'Law on states' foreign nationals were allowed to acquire ownership of movable and immovable property through sale, inheritance (by law and the will), donation, allocation of state [9].

But the rights of foreigners with Russian nationals were still some limitations. The right to possession and use of real estate limited geographically. Foreign nationals had the right to acquire ownership of the property, to own and use it past the port and urban areas in ten provinces of the Kingdom of Poland and eleven western provinces of the Russian Empire [10]. This procedure was introduced nominal decree of March 14, 1887 and kept it until 1914 [10]. There are limitations on the ownership of real estate and operating in Asian, Caucasian and Siberian regions of the Russian Empire.

Equal rights of foreigners with Russian nationals has been extended also to the tax official relations with public and private institutions.

The procedures for establishing joint-stock companies in the Russian Empire by the Act of December 6, 1836 was the same as for Russian and foreign citizens. Licensing system practiced their formation.

During the period from 1863 to 1904 Russian state signed several international conventions and agreements on mutual recognition and protection of joint-stock companies from 10 countries including France, Belgium, Germany, Switzerland,

the UK, North American States. Under these arrangements installed judicial protection of joint-stock companies, but the Russian government left the right permission to create and determine the scope of joint-stock companies [1, p. 1-2].

Mixed review in the legal interpretation was the notion of "foreign company". The debate on the definition of the issue continued until 1917 so famous lawyers like I. Gorbachev and G. Shershenevich foreign company determined a company that established abroad, the central office and therefore much of the property, also located abroad [6, p. 49; 18]. In contrast to this position advocated L. Shalland, which defined a foreign company as being based abroad, there is a central office, and availability of property abroad is not essential. It came with a sustainable practice that has developed in the last decades of the nineteenth century in the Russian Empire [14].

The activity of each foreign company determined special "Business conditions". These conditions produced the Ministry of Finance, Interior, Foreign Affairs for each company separately. For the first time there were similar conditions in late 1871, and they became mandatory in December 1886 [16, p. 126-127; 6, pp. 347-348]. The usual list of "conditions" consisted of about 10 - 15 articles. Among them are the following: company name, purpose and nature of its activities, the amount of capital announcement, reporting and order management disputes, the procedure for the closure and liquidation. Separately defined conditions for the payment of the interest and satisfaction by statutory or mortgaged property [3, p. 51].

At the turn of the XIX - XX centuries. Russian government was abolished, rather it simply ceased to appear among the "conditions of work" section on the right of the Russian government at any time without explanation or circumstances in its sole discretion to withdraw the permission for conduct of joint stock companies on the empire [8 Art. Art. 1545, 1547, 1678, 1680]. This was due to the rapid increase in the number of joint stock companies and government interest in increasing the inflow of foreign investments to the economy of the Russian Empire.

Usually, the opening of a foreign company in the Russian Empire had to go through three successive stages. At the first stage it was necessary to create a

Joint abroad in a country that had the Russian Empire relevant convention or agreement. The second phase required had to receive approval to operate in the empire. This step is occupied from one month to several years depending on the speed of Russian officials convinced of the need for such companies, registration of all necessary documents and obtaining consent of the emperor. In the third stage corporation was to begin operations in the empire. Bureaucratic red tape, corruption, hinder the rapid development of foreign joint stock companies, increased foreign investment in the imperial economy on the one hand, on the other defended the national interests of the Russian economy.

During the First World War the treatment of foreign corporations has changed, according to the order in which the side stood a country. For example, foreign corporations with German and Austrian capitals were severely limited in activities and some simply eliminated. Liquidation or change of ownership of enterprises was carried out using emergency regulations.

Conclusions. Thus, the legal regulation of foreign corporations in the Russian Empire carried out in accordance with the principle of equilibrium between foreign and Russian citizens. At the same time, foreign corporations, there are many different limitations, most of whom defended the interests of the Russian imperial capital. Among these could be called territorial restrictions and restrictions on certain activities rather complicated permitting system.

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FUNCTIONS OF JUDICIAL PRACTICE

Summary

This article is devoted to the functions of the judicial practice, the basis of tendencies of their influence on law reality, which reflects the matter of judicial practice, its significance and mechanism of evolution. The following functions of judicial practice should be underlined: lawmaking, signal, administrative, enforcement, law enforcement, cognitive, educational, informative and orientation. The notion and approaches of implementation of the function of judicial practice are defined.

Key words: function, judicial practice, functions of judicial practice.

Formulation of the problem. Understanding the judicial practice, as one of the key elements of the legal system of the state, without analyzing the defective carried this element functions.

The problem of the functions of judicial practice in legal science has not been studied comprehensively. Basically, on the functions of judicial practice devoted to individual episodic aspects of scientific research of an author, that the object of his study of the functions themselves are not set.

Analysis of recent research and publications. From all not numerous diversity of scientific opinion on the existence of the functions of the judicial practice, it is possible to speak generally, those authors considered that the function of law enforcement, law-making and interpretive sense [8; 9; 12].

Thus, if the existence of the first two is no doubt the majority of researchers, the relative isolation of the third (law-making) and its substantive content is debatable.
The most comprehensive analysis of the functions of the judicial practice, in

our view, failed Zmievskoy S.S. [7, 91-99], which is on par with the functions, which it calls the main (enforceability, interpretational, law-making), also highlights the "non-core, or derivatives" [7, 95] (the orientation, signaling, general information and professionalization of the function). The basis of this classification, the author puts the sphere of influence of judicial practice. In the first case - the elements of the legal system, the second - the other social institutions and systems.

In general, agreeing with Zmievskoy S.S. with the release of a number of functions of judicial practice, we note that their division into basic and derived here is, in fact, an artificial classification (jurisprudence simultaneously influences the society and the legal system, in view of its intermediate position between public relations and regulatory control) that only introduces additional complexity to the process of understanding.

Among the Russian authors note the analysis and classification of the functions of judicial practice carried P.A. Hooke [4, 14]. He identifies these groups of functions of judicial practice, as general social (ensuring the law, filling the law, lawmaking, recovering the law) and specially-legal (function unity of judicial practice, signal and information, regulatory, interpretation of the law, punitive, educational and preventative and others.). This division of functions scientist justified social role of judicial practice in the legal system and its specific legal impact on the social relations and the individual elements of the legal system.

Note that in itself the idea of clustering general social importance of judicial practice, no doubt, deserves attention. However, the substantial characteristic of general social, understanding P.A. Hooke's features reveals in them a huge amount of legal components that washes away the very basis of the classification. In turn, the educational function of the assignment to a group of specially-legal, we see the illogical, since the scope of the impact in this case is the society itself and the individual.

The purpose of the article. In our view, the definition of the main functions of the judicial practice is necessary to begin with a definition of the concept of the function of judicial practice.

Statement of the basic material. In a general sense, the function of (lat. Functio - the commission, execution) - an activity, a role which is performed subject or object in a specific field of activity.

The term "function" is the object of study of humanities scholars, and the various branches of knowledge it is used in many senses, always embedded in it a certain sense [3, 21].

We believe that the most appropriate in this case is to determine the functions of the judicial practice as the main areas of influence (impact) on the legal validity, reflecting the essence of the judicial practice, its purpose and patterns of development. Realization of functions - is always purposeful action (impact) on certain areas of public life and the legal reality. This impact is not arbitrary and chaotic, and is focused on the impact of a certain circle of relations. The function itself can not influence or affect the scope of a particular relationship or the elements of the legal system, which requires appropriate regulation, for its implementation requires the active activity of the subject of court proceedings. The mechanism of the effects of functions is also reflected in the appropriate documents (in the judgment, for example).

Options jurisprudence have characteristic properties that have certain features that characterize the direction and impact of jurisprudence on social relations. So, they are characterized oriented jurisprudence as an activity for certain objects to accomplish the goals and objectives; It follows from the results of such activities; reflect the most focused on the impact of the settlement of the court practice of public relations.

In addition, the function and required constant throughout the life process of judicial practice, and their implementation produces consequences for the subjects of relations.

Given the set position on the understanding of the functions of the judicial practice, is possible to specify the same order of not giving off any special function groups [6; 10; 11; 14].

We explain that all of the following functions of the judicial practice, in our opinion, fully disclose its nature and social purpose, and, therefore, are of the same order and complementary. At the same time, regarding the judicial practice as a

kind of bridge social relations with their normative (legal) framework, considers it unnecessary grouping functions of judicial practice on the basis of the characteristics of its social and legal role.

We select functions such jurisprudence that most clearly reflects the characteristics of its essence and content, emphasize its social and legal importance, called law-creating, warning, institutional, law enforcement, law, cognitive, educational, information and guidance.

The proposed list, among other things being equal, after all, I would like to emphasize law-creating function (formation of legal rules), which, of course, most clearly reflects the main facets of the legal nature of the judicial practice.

Its essence is revealed through the results of jurisprudence - law, "acquiring property is required not only for the parties to the proceedings, but also for other actors" [5, 11]. In the process of judicial practice open deficiencies of existing legal acts and, at the same time, manifest their best options elimination, proposals to improve, structuring the legal framework, which is based on the experience of the practice materials. There is no doubt that in the "legal provisions, developed the jurisprudence gathered experience with laws most important economic, social and legal issues of society" [1, 116-118].

The problem here is the place to be, as a function of law-created jurisprudence suggests an understanding of the latter as a source of law. However, as correctly notes Khoroshkovskaya D.J., "the term" jurisprudence - source of law "can not recognize the absolutely correct theory" [13, 30] due to the presence of activity-is the essence of judicial practice, which can not be regarded as a source of law.

Leaving the problem of judicial practice as a source of law open, select function within law-created jurisprudence such as the sub-functions: the function of overcoming the gap in right and specification of the function of legal norms. The possibility of allocating these sub-functions again, dictated by the peculiarities of the scope of the activity that forms the essence of jurisprudence.

Alarm function. The jurisprudence develops in the areas of law enforcement, where there are flaws in the legal regulation (absence of specific provision too

general regulator). Therefore, the result of the formation of judicial practice in a given field of regulation of public relations, encourages the legislator to pay closer attention to the integrity of the regulatory relations.

The organizational function. It included an understanding of the formation of social and legal experience with legislation aimed at improving the efficiency of enforcement procedure and improvement of legislation. Often it is in the course of judicial activity first appeared judgment causing innovatory regulation or any change in public relations.

Law enforcement functions. In the process of judicial practice are formed, and its results are made public-power positions on the application of the law to specific situations.

Law enforcement functions. Legal provisions, fixed in a judicial act, submitted formation of the local law and the order in the sphere of the social relationship that spawned one or another right or wrong visions of the legal condition of the subject. Consistency in the implementation of judicial practice contributes to the protection of regulated social relations.

Cognitive function. Litigation is a "source of empirical evidence on the basis of which there is an understanding and analysis of objective regularities operation of law" [5, 11]. It is very important for the process of formation of the "discretion of the court," which has a lot of subjective characteristics.

Educational function. Litigation affects the sense of justice. The assessments the Court on the application of the right to act on people's ideas as being subjects of dispute and others. In this regard, the jurisprudence is a powerful factor in the formation of justice.

In judicial practice are reflected progressive, humane, relevant interests of the individual, the progressive provisions, whereby it receives some psychological support after reaching its result. However, it should be noted that in this case the quality of the impact on the judicial practice of justice depends on the authority of the entire judicial system of the state.

Orienting function. Litigation is designed specifically to merge and uniform nature of the activities of law enforcement agencies in dealing with the legal incidents. This practice manifests itself as an element of the legal system, which, together with the appropriate regulatory framework serves as a mechanism of legal regulation, directing judicial and other authorities of the State law-applying offering them specific uniform guidelines, based on a certain experience in the use of legal norms for the proper resolution of subordinate Affairs. In the words of S.S. Alekseev - judicial "practice creates a kind of the legal environment surrounding the existing legal rules, determining the nature and direction of their application in solving legal cases" [2, 260].

Information function. Features jurisprudence, the analysis of its results, make it possible to draw conclusions about the nature of social relations in the country, the laws of the economic base, of cultural and other achievements of the society. Litigation accumulates, and then outputs a lot of information about various aspects of social life. It contains definitions and scientific, legal formulas, historical information, political assessments, legal advice, and more.

Conclusions. In general, these functions jurisprudence represent directional vectors that integrate, synthesize numerous ways, forms and methods of judicial activity, specifically focuses on the most important provisions of a legal nature. That is a definite focus functions jurisprudence describes it as a legal phenomenon that can affect the public relations and legal system.

Directly to the functions shown practice ability to bind together the various elements of the legal system, to form the regulatory framework, to specify the legal provisions to ensure their implementation, monitor and protect the rights and obligations of legal entities, to create the preconditions for the implementation of the advanced nature of public and private interests. The functions of the judicial practice manifested its essence, content, form, concretized her hand and properties.

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LEGAL REGULATION OF PERMIT TO PRACTICE OF LAW IN UKRAINE AND THE USA

Summary

The article focuses on studying the requirements set to persons intending to practice advocacy, and the possibility of admission to advocacy for lawyers of foreign countries in the USA and Ukraine.

Key words: advocacy, practice of law in the US, lawyer in the USA.

Formulation of the problem. Recently among experts and in the media there is an active discussion on admission to the Bar in Ukraine, the lawyers of the foreign states and the requirements that apply to lawyers of Ukraine, after the adoption of the Law "On the Bar and the legal profession".

Analysis of recent research and publications. The study of the legal status of a lawyer and demands made to practice law in the United States devoted to the work of such scientists as: Barschevsky M.J., Burobin V.N. Varfolomeeva T.V., Smolensky M.B., Mikheenko M.M. However, due to the fact that in the USA, each state makes its own requirements future lawyers and implements various "pilot projects" regarding admission to the legal profession is not correct to talk about the universality of the requirements for candidates to the lawyers in the United States.

The purpose of the article. In order to determine the sufficiency and validity of the requirements put forward by the lawyers of Ukraine proposed to compare the requirements of the lawyers in the United States, where the legal system is complex and traditionally high role of legal regulation of society predetermine the special place the legal profession compared to other professional groups.

Statement of the basic material. Lawyers hold many key positions in the economy and public-political mechanism of the United States [1]. The following data show the social and political role of the holders of a law degree in the United States: forty-two USA presidents and twenty-five were lawyers; In particular, lawyers by profession were Abraham Lincoln, F. Roosevelt, G. Truman, R. Nixon, B. Clinton; Two-thirds of the senators and nearly half of the members of the USA House of Representatives - lawyers. Holders of law degree is half of state governors and 40% of diplomats. About 45% of those held since the 60s the highest positions in the government, were lawyers, more than 25% of the state apparatus are former lawyers. [2] In the USA, has about 60% of the total number of lawyers around the world [3].

The process of formation of Ukraine as a state of law and implementation of the rule of law determines the need for the formation of high legal culture in the society, which is impossible without the existence of high-quality and timely legal aid is given by the independent and developed the legal profession.

Today, the role of the lawyer can not be overstated. The lawyer defends the law from the arbitrary and, therefore, the activities of the lawyer responds to the interests of individual citizens or institutions, and social and legal interests of the state and society.

Attorney - a legal adviser, a defender, a source of legal knowledge, the mediator in the dispute and, ideally, an example of professionalism and professional ethics.

In accordance with the Law of Ukraine "On Advocacy and Legal Practice", which was adopted by 5 July 2012 a lawyer can be a natural person who has a law degree, speaks the state language, has experience in the field of law for at least two years, has passed the qualifying examination , were trained (except as required by law), took the oath of Advocates of Ukraine and obtained the certificate of the right to practice law [4, p. 6]. The lawyer is a foreign state, who intends to practice law in Ukraine, becomes the qualification and disciplinary committee of the Bar of the place of residence or stay in Ukraine with the application for inclusion in the Unified Register of Advocates of Ukraine. Attached to the application documents confirming

the right of the lawyer to practice law in the respective foreign country. The list of such documents shall be approved by the Council of Advocates of Ukraine [4, p. 59].

One of the most popular and prestigious activities of a lawyer in the United States is the work of a lawyer, but in order to become a lawyer in the US, you must go through several long and not cheap at all stages, which occupy a total of about 7-8 years [5].

Step one - a higher education. Most law schools in the United States require the availability of future student education bachelor's degree (4 years of higher education) and appropriate training. It is interesting to note that the profession for which you were in college, does not really matter, that's why in law schools can meet the former accountants, financiers, chemists, and even designers. Entrance exams for law school is not in loco "the test for the ability to learn in law school", sent by mail entrant. Taking into account also assess the applicant obtained them at college. Competition for admission to law schools is quite high - about 130 thousand people about 40 thousand people; competition in elite universities - up to 40 people in place [2]. Legal education is expensive in the United States. The average price of a college education reaches 10-15 thousand dollars a year, while in law school and comes to 20 thousand dollars [6, 16]. Step Two - graduating from law school, a diploma of the doctor of legal rights. To enroll in law school, other than a 4-year higher education must also pass an entrance exam LSAT (Law School Admission Test). This test consists of five 35-minute parts (all the issues - with a choice of answers). The test result is generally in the range of from 180 to 120 points. At the end of the test is given a half-hour written assignment, the assessment of which is not included in the overall result of the test, but the job is sent to the school where the student has sent the application. LSAT test is usually held twice a year. In reviewing the documents of candidates for law school admissions committee takes into account not only the LSAT, but also the assessment that the student has received during college. And finally, the "personal story", or Personal Statement - essay 3-5 pages, where the student explains why he decided to become a lawyer, or of any event in the world of law. In this essay a future lawyer

must demonstrate their writing and analytical skills. To graduate from law school and qualify for a law license, you must learn to 3 years full-time or 3.5-4 years at the evening. To obtain the award you must pass 86 credit hours of which are binding on the clock for the field of "criminal law", "constitutional right", "analysis", "contract", "professional duties" and many other general courses. In the second year of study the student has the right to choose the courses that are interesting to him in accordance with the direction of their future profession. And choose the direction of the practice of a lawyer is not obliged to, up to the end of training as a lawyer licensed to practice in allowing certain state / jurisdiction and not in a particular direction - for example, immigration or family law. This feature allows you to change the direction of the profession practice in virtually any time a career lawyer without any additional exams or tests.

Step Three - obtaining a license to practice a lawyer. A student who has received the diploma of the doctor of legal rights will not be able to practice as a lawyer until the will not be allowed, and not pass bar examination in the state where he wants to practice. It should be noted that the degree of doctor of science in Western countries about equal to the degree of candidate of sciences in Ukraine. In addition, five states, including the states of New York and California doctoral presence is not required. California is different from other states of the loyalty of its rules on the requirements for persons who have expressed a desire to engage in advocacy. It is the only state, which allowed part-time form of legal education, as well as a bachelor's degree is not a prerequisite for the admission of any candidate for the exam or to obtain the degree of Doctor of Law. However, in this state it is a very difficult exam itself for the right to admission to the practice of law [7, 919].

The principles and conditions for admission to the practice of law is usually established by the Supreme Court staff, but the question of the admission is decided by a special commission for the admission to the Bar, the State Bar Association formed. The Commission addresses this issue by studying the moral qualities of the candidate and the results of her examination satisfied. Each state has its own lawyers organization that conducts examination for the right to become a practicing

lawyer with the appropriate license (bar examination). This exam is conducted for 4 days. The first day - a four-hour test on ethics (issues with a choice of responses). On the second day - the test for knowledge of the laws that are common to all states. It also contains a selection of the responses to the questions, and these questions often sound misleading. The last two days are dedicated to the substantive law of 15 sections, with a focus on the laws of the state where the examination. Questions open, to write a short essay for the answers given to them for 8 hours every day. The examination results are published in the press. For the exam to obtain a license must provide a diploma, a testimonial from the dean of the institution, to fill in an extensive questionnaire to be fingerprinted, to report all offenses committed (not only crimes, but even on the event of an accident), provide a list of all debts, to have an interview with "doctoral committee." To do business in federal courts permit is required, which is issued automatically to persons authorized to practice law in the state. But it should be noted that, if the lawyer decides to move his practice to another state, it will be necessary to re-pass the bar examination in the state.

As an exception, most recently in some states has implemented a so-called "diploma privilege" under which certain graduates of law schools has been granted the right to practice right after graduation without passing a special examination. To date, only in Wisconsin, the rule "diploma privilege" [7, 918].

In the USA, there is a regulatory act, which enshrines the right to a lawyer in the proceedings. Title defender derives from custom, case law, professional ethics. The fundamental condition for the participation of a lawyer in the proceedings set out in Amendment VI (1791) to the USA Constitution, "In all criminal prosecutions, the accused has the right to a speedy and public trial by an impartial jury of the State and district, previously established by law, where the crime was committed; the accused has the right to be informed about the nature and cause of the accusation, he has the right to confront witnesses against him; to have compulsory process for obtaining witnesses in his favor, and the assistance of counsel for his defense. " In turn, this amendment has found its development in a number of court decisions (1963 case "Gideon v Ueyntrayta"; 1966 case "Miranda vs. Arizona"; 1977 case "Brewer

vs. Williams" and so on. d.). The essence of these solutions is reduced to the following principles: the right to counsel is a fundamental and necessary for a fair trial, and the right to a lawyer is one who can be sentenced to imprisonment; a lawyer should participate in those proceedings where he could have accused "help to deal with legal problems and give advice, when he opposes other legal side." Thus, the participation of defense counsel necessarily in any court hearing regardless of whether the defendant is found guilty or not.

In the USA, the lawyer can practice alone or in small law firms or large law firms. According to statistics 78% of law firms have between 2 and 5 lawyers, and only 1% - more than 100 lawyers. About 27% of lawyers are engaged in private practice.

However, its importance, the main form of advocacy are large (50 or more people) law firms. Such companies usually do not deal with criminal cases and prefer to deal affluent customers, mostly corporations. Lawyers working in the company, divided into two categories - the partners (co-owners of the company, dividing the income) and staff (lawyers who receive a salary from the company).

The court has the discretion to grant a license without examination to practice as a legal adviser in the State of an alien who has reached the age of 26 and meeting the following criteria:

• a person in a foreign country for at least five years immediately preceding the conversion, a lawyer;

• it has the required moral character and meets the general eligibility requirements for membership in the Association of Lawyers of the State;

• it intends to practice in the state as a legal adviser, and have for this office in the state.

Subject to certain restrictions person licensed to practice as a legal adviser, said the lawyer, took place with the Bar Association of the State, and has all the ensuing rights [3]. To date, the US registered and employs more than one million lawyers (this one lawyer for every 300 inhabitants), more than two hundred schools of lawyers, about forty thousand new lawyers receive a diploma of the doctor of the legal rights and pass bar examination every year [5].

Conclusions. Despite the different legal systems in Ukraine and the United States Institute of Advocacy it has some common features, describing the requirements that are put to future lawyers should be noted that both the United States and Ukraine are quite serious: the availability of special education the need to take a qualifying examination, an opportunity to work for a lawyer a lawyer of a foreign state. However, there are some differences, because in Ukraine one of the requirements for candidates for entry into the legal profession is the availability of work experience as a lawyer and in the USA does not require this, as well as the requirement of a six-month mandatory internship.

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LEGAL REGULATION OF THE INSTITUTION OF CITIZENSHIP IN UKRAINE

Summary

The article focuses on analysis of legal regulation of Ukrainian institution of citizenship. It stipulates the system of legal regulations of Ukraine that govern the institute of citizenship and prospects of development of legislation in this area.

Key words: institution of citizenship, citizen, foreigner, stateless person, acquiring the citizenship, termination of citizenship.

Formulation of the problem. Citizenship plays an important role in everyone's life. Article 15 of the Universal Declaration of Human Rights nationality was considered to be one of the fundamental human rights. Its meaning is that the full range of human rights can have only if citizenship. The state gives its citizens a greater volume of rights and responsibilities than people in other civil status - foreigners, stateless persons, refugees and displaced persons. Only citizens of the state have the right and opportunity to define the political life of the country and society. Given the importance of this institution of citizenship in public life, as well as the existence of complex social relationships that develop in this area is certainly the need for legal regulation of these issues.

An important aspect of the research institute legal regulation of citizenship is a trend of granting citizenship to foreigners Ukraine, followed by their involvement in the operation of power.

The legal system of our country based on the Constitution [1], which is aimed at ensuring democracy, rights and freedoms of man and citizen. Development of the Institute of Ukrainian citizenship, including the Law of Ukraine "On Citizenship

of Ukraine" dated January 18, 2001 [2] requires further research in this area. It should be noted that the said law is developed taking into account international standards and significantly democratized Institute of Ukrainian citizenship. However, there are still many unresolved issues that require analysis and outline solutions.

Analysis of recent research and publications. The problem of the citizenship of Ukraine as the constitutional-legal institution is multifaceted, which necessitates studying and summarizing works of local and foreign scientists and representatives of various industrial jurisprudence. Highlights of the institute of citizenship under national and international law as reflected in the works of M.O. Baymuratova, Y.R. Boyarsa, O.V. Zhuravki, O.L. Kopylenko, V.S. Kulchytsky, I.I. Lukashuk, O.M. Mironenko, A.I. Sienkiewicz, E.S. Smirnova, Yu.M. Todyky, B.M. Topornina, S.V. Chernichenko and others.

Despite the fact that the issue of citizenship devoted a lot of scientific works of foreign and domestic scientists, college citizenship Ukraine needs further comprehensive study on the new legal basis in the context of European integration, given the complex nature of this institution. Special attention needs analysis of regulations that govern the institution of citizenship.

The article is an analysis of regulations that define the concept, content, principles, most common and frequently used methods and forms of legal regulation of the institution of citizenship of Ukraine, as well as outline the range of issues of current legislation on citizenship and offering solutions.

Presenting main material. Citizenship, like any other state-legal phenomenon is a unity of form and content. Their knowledge depends on understanding the legal nature of citizenship. The legal nature of citizenship is revealed with the help of legal regulation of this institution. To find out the specifics of legal regulation of the institution of citizenship, we turn to the substance of regulation. Rights - is one of the main means of state influence on social relations with a view to streamlining the benefit of man, society and the state. A characteristic feature of the regulation is that it has a

specific mechanism, which includes structural elements of the law, in objective regulations [3, 40-41].

Thus, the legal regulation regulates social relations by means of regulations designed for repeated use for their presence provided by the same circumstances. In this context it should talk about the regulation of citizenship of Ukraine. At the same time need to pay attention that the Constitution of Ukraine and other legal acts regulating citizenship relations exist not in isolation but are in a certain subordination, forming system.

System regulations in the area of citizenship inherent features that are characteristic of any system: 1) the structural elements that form the system; 2) the backbone links between elements; 3) formation of the integrity of the system as a result of the relationship and interaction between the elements that constitute it; 4) if the structural elements of a system of autonomy and relative independence [4, 7]. Moreover within regulated legal acts of Ukraine regulating citizenship relations and form of an organic system, make citizenship legislation of Ukraine. This law is understood as a system of the regulations state that laws and regulations [5, 17-18].

Before the direct analysis of the legislation on the citizenship of Ukraine, it should be noted that domestic scholars constitutionalists distinguish between different types of sources Institute nationality. V.F. Pohorilko and V.L. Fedorenko distinguished: 1) the Constitution of Ukraine; 2) Law of Ukraine "On Citizenship of Ukraine"; 3) other legal acts of Ukraine, issued in accordance with the Constitution and the aforementioned Act [6, 114].

V.V. Kravchenko, believes that the institution of citizenship sources are: 1) The Constitution of Ukraine; 2) Law of Ukraine "On Citizenship of Ukraine"; 3) international treaties of Ukraine on citizenship; 4) regulations [7, 107]. Meanwhile, the current Law of Ukraine "On Citizenship of Ukraine" recorded three kinds of regulations covered by this legislation, namely the Constitution of Ukraine, given Law and international treaties of Ukraine (Art. 4) [2]. At the same time the Law of Ukraine "On Citizenship of Ukraine" as amended on 8 October 1991 it was expected that issues related to citizenship are regulated by the Constitution of Ukraine, this Law and

adopted in accordance with the laws of Ukraine (Art. 3) [8] . After modification and additions 16 April 1997 to the sources, who fixed the law regulating relations on the citizenship of Ukraine, was attributed Constitution of Ukraine, the Law of Ukraine "On Citizenship of Ukraine" and other normative legal acts issued in accordance with this Law (Art. 3) [9]. As you can see, the system of regulations governing the institution of citizenship is not streamlined.

Certainly, the leading role in legislation on citizenship of Ukraine, as in all other institutes of national law ranks Constitution of Ukraine. The constitutional provisions that directly reinforce basic fundamental provisions in the citizenship of Ukraine are contained in Articles 4, 24, 25, 106 of the Basic Law of our country.

According to Art. 4 of the Constitution of Ukraine, single citizenship. This constitutional principle of single citizenship specified in p. 1, Art. 2 of the Law of Ukraine "On Citizenship of Ukraine". Article 4 of the Constitution of Ukraine also provides that the acquisition and termination of citizenship of Ukraine by law. This complies with the provisions enshrined in para. 2 ch. 1, Art. 92 of the Constitution of Ukraine, according to which citizenship, the legal citizens, the status of foreigners and stateless persons are determined by the laws of Ukraine.

According to ch. 1, Art. 25 of the Constitution of Ukraine citizen of Ukraine can not be deprived of citizenship and right to change citizenship. According to ch. 2, Art. 25 of the Constitution of Ukraine citizen of Ukraine can not be expelled from Ukraine or extradited, as under the exclusive jurisdiction of the state. The provisions of this rule interacts with ch. 2, Art. 33 of the Constitution of Ukraine, according to which a citizen of Ukraine can not be deprived of the right at any time to return to Ukraine. Part 3. 25 of the Constitution of Ukraine stipulates that Ukraine guarantees care and protection to its citizens who are abroad.

The Constitution of Ukraine defines the powers of the President of Ukraine in the field of citizenship in para. 26, ch. 1, Art. 106, according to which the President of Ukraine adopts a decision on granting the citizenship of Ukraine and termination of citizenship of Ukraine. Decrees of the President of Ukraine for the citizenship of Ukraine and termination of citizenship of Ukraine by its legal grounds are indi-

vidual acts that do not define general rules of behavior, and the specific requirements, addressed to a particular individual, used once and exhaust after implementation of the action.

After the Constitution of Ukraine in the hierarchy in the system of legislation are international treaties ratified by the Supreme Council of Ukraine, which according to Art. 9 of the Constitution of Ukraine is a part of the national legislation of Ukraine. It is in this status they should be applied when regulating citizenship relations. In the event of discrepancies legislation of Ukraine the laws of such international agreements subject to the application of the latter. This is enshrined in ch. 2, Art. 19 of the Law of Ukraine "On international agreements of Ukraine" dated 29 June 2004 [10] and in ch. 2, Art. 4 of the Law of Ukraine "On Citizenship of Ukraine". Besides these international instruments formed the basis for the development of legislation on the citizenship of Ukraine, as they contain generally accepted standards of human rights and, therefore, the right to citizenship.

After the Constitution of Ukraine and international treaties of Ukraine ratified by the Supreme Council of Ukraine, the third act of legal force of legislation on the citizenship of Ukraine is the law. The main sources of this group is the Institute for Citizenship Law of Ukraine "On Citizenship of Ukraine" dated 18 January 2001 with subsequent amendments. It regulates the largest number in terms of public relations in the field of citizenship and is a fundamental act of citizenship legislation of Ukraine. This Law determines the legal status of citizenship Ukraine, the grounds and procedure for acquiring and termination, competency of state authorities involved in matters of citizenship of Ukraine, order of appeals against decisions on citizenship, actions or omissions of public authorities, their officials and officers.

Essentially, this law defines the legal integrity of the institution of citizenship and the Constitution of Ukraine serves as a regulatory framework for the formation of this institution. However, the said law can not be recognized as codified in the citizenship act as codification act always significant in size, has a complicated structure and a fairly high degree of stability regulatory and legal requirements designed for a long period of validity. In turn, the Law of Ukraine "On Citizenship of Ukraine" is a

small volume and to it was amended several times. The most significant amendments were made to 16 April 1997 and 18 January 2001 In fact, January 18, 2001 the Parliament of Ukraine adopted a new version of the Law of Ukraine "On Citizenship of Ukraine" which replaced the Law of Ukraine "On Citizenship of Ukraine" dated October 8, 1991. Despite its small size, this Law is legally holistic, coherent and consolidated in content, since it provides regulation of social relations in the area of citizenship. Besides his role is to form a stable and uniform availability of legal regulations in the area of the right to a nationality.

An important group of legislative acts of Ukraine on citizenship are laws that regulate the relations in other spheres of society, but briefly touched Institute and citizenship. This so-called related laws which are not directly related regulation of citizenship, but in its regulated define the different legal relations arising on the definition of belonging to citizenship of Ukraine, acquisition and termination of citizenship. This group includes, in particular, the Law of Ukraine "On Succession of Ukraine" dated September 12, 1991.

It should be noted that the Law of Ukraine "On Citizenship of Ukraine" and related laws are together in a relationship of subordination inside. It is primarily about the laws of Ukraine, enshrining the legal status of foreigners and stateless persons in Ukraine. Among them - the laws of Ukraine "On Legal Status of Foreigners and Stateless Persons" and "On Immigration", "On refugees and persons in need of additional or temporary protection", "On Foreign Ukrainian."

By related laws in the area of citizenship are also the Family Code of Ukraine on January 10, 2002, the Civil Code of Ukraine on January 16, 2003, the Law of Ukraine "On procedure of exit from Ukraine and entry to Ukraine citizens of Ukraine" dated 21 January 1994. Law of Ukraine "On Police" dated December 20, 1990, the Law of Ukraine "On the Cabinet of Ministers of Ukraine" dated February 27, 2014, the Law of Ukraine "On the Supreme Council of Ukraine on Human Rights" from December 23, 1997.

Among other legislative acts of Ukraine on citizenship separate group to highlight subordinate legal acts, which is defined the acts issued in accordance with

the law, by law, to specify the legal regulations and their interpretation of the primary rules or setting [11, 334]. Subordinate regulations differ in legal force, depending on the position of the state, that issue these acts, their competence and the nature and purpose of these acts.

One of the main places after laws in the structure of the legislation on citizenship Ukraine occupy decrees of the President of Ukraine. Among the decrees of the President of Ukraine in the field of citizenship occupy a significant place orders aimed at ensuring the implementation of the Law of Ukraine "On Citizenship of Ukraine". This group belongs to the Decree of the President of Ukraine "Issues of organization of the Law of Ukraine" On Citizenship of Ukraine "dated March 27, 2001 as amended and supplemented by the Decree of the President of Ukraine on June 27, 2006 The final decree was approved a new edition of the Regulation on the Commission of the President Ukraine on citizenship [12] and the order of proceedings for applications for citizenship of Ukraine and the implementation of decisions [13]. This procedure is essential for the proper implementation of the Law of Ukraine "On Citizenship of Ukraine". It contains a list of documents submitted for the establishment, registration and verification of belonging to citizenship of Ukraine, the citizenship of Ukraine, registration of acquiring the citizenship of Ukraine, termination of citizenship of Ukraine, cancellation decisions on registration of acquiring the citizenship of Ukraine, as well as the procedures for filing these documents and proceedings them, the implementation of decisions on citizenship Ukraine.

Commission under the President of Ukraine on citizenship is a subsidiary organ of the President of Ukraine. The main tasks of the Commission are: 1) consideration of applications for the citizenship of Ukraine, withdrawal of citizenship of Ukraine views the loss of citizenship of Ukraine, termination of citizenship documents of Ukraine on the grounds provided by international treaties of Ukraine, President of Ukraine proposals on these issues; 2) monitoring the implementation of decisions on citizenship adopted by the President of Ukraine; 3) participation in drafting laws and other regulations on citizenship, making appropriate proposals to the President of Ukraine; 4) learning and generalization of the practice of the legislation on citi-

zenship of Ukraine, President of Ukraine proposals on its improvement and improvement of the executive authorities related to the implementation of the legislation on citizenship; 5) study and synthesis of international instruments on citizenship legislation on citizenship of other countries and its practical implementation.

An important group of decrees of the President of Ukraine to ensure implementation of the Law of Ukraine "On Citizenship of Ukraine" are acts that reveal and specify its initial legal requirements concerning documents confirming the citizenship of Ukraine.

However, it should be noted that a number of provisions of the documents proving the citizenship of Ukraine, the rules of registration and issuance approved not by decrees of the President of Ukraine, and other types of subordinate legal acts, namely, resolutions of the Supreme Council of Ukraine and the Cabinet of Ministers of Ukraine. Yes, sample and order the issuance of a passport of citizen of Ukraine identity and confirms citizenship of Ukraine by the Regulations on the passport of citizen of Ukraine, which was approved by the Supreme Council of Ukraine "On approval of regulations on the passport of citizen of Ukraine, the birth certificate and the passport Ukraine for traveling abroad, "as amended on February 23, 2007.

Provisions for other documents to prove citizenship of Ukraine approved by the Cabinet of Ministers of Ukraine. They are issued under and pursuant to the Constitution and laws of Ukraine. Because of the Cabinet of Ukraine sells its executive and administrative functions in the area of human rights and freedoms, including the right to a nationality. Thus the Cabinet of Ministers of Ukraine, within its competence, in some cases, take appropriate decisions on its own initiative, and in others - it follows from the relevant laws, decrees of the President of Ukraine, resolutions of the Supreme Council of Ukraine. In the latter case, the Cabinet of Ministers of Ukraine include legal requirements that reveal and specify the primary legal requirements, contribute to their implementation. This group of the Cabinet of Ministers of Ukraine in particular include those that approve: 1) Rules for the issuance and service of Citizenship, Immigration and Registration of Persons certificate of citizenship of

Ukraine of April 14, 2004; 2) The rules of registration and issuance of a temporary certificate of citizen of Ukraine on July 17, 2003; 3) Regulation on the identity card to return to Ukraine of August 25, 2004; 4) The rules of registration and issuance of a passport of citizen of Ukraine for travel abroad and travel document the child, their temporary detention and removal as amended on March 24, 2004.

A certain place in the hierarchy of subordinate legal acts in the area of citizenship taken by departmental acts by which to understand written documents issued by ministries and other central executive authorities within their competence. They are aimed at implementing laws, decrees of the President of Ukraine and the Cabinet of Ministers of Ukraine [14, 43]. Among them: the Order of the Ministry of Internal Affairs of Ukraine "On approval of the application form for registration of a temporary certificate of citizen of Ukraine and their accounting journal" of December 25, 2003; Order of the Ministry of Internal Affairs of Ukraine "On approving sample documents submitted for the establishment of belonging to citizenship of Ukraine, the citizenship of Ukraine, registration of acquiring the citizenship of Ukraine, termination of citizenship of Ukraine and cancellation decisions on registration of acquiring the citizenship of Ukraine" dated July 20, 2006; Order of the Ministry of Foreign Affairs of Ukraine "On Approval of registration and issuance of diplomatic missions and consular offices of Ukraine passport for travel abroad" on January 9, 2006 and others.

These acts are internal, interdepartmental legal significance. That is regulating social relations that are within the competence of the executive structure. However, there are among them those that are of general importance, beyond specific departments, applicable to a wide range of subjects.

Conclusions. The material shows that different types of regulations that covers legislation on the citizenship of Ukraine are not isolated, but are certain subordination, form a system. The system of legislation on the citizenship of Ukraine is not limited by the Constitution of Ukraine, the Law of Ukraine "On Citizenship of Ukraine" and international agreements of Ukraine. This system should include Ukraine related laws and subordinate legal acts issued by the President of Ukraine, Verkhovna Rada

of Ukraine, the Cabinet of Ministers of Ukraine, ministries and other central executive authorities and related institution citizenship.

However, the legislation of Ukraine on citizenship is dynamic because constantly changing - adopted new regulations, changes made to them, canceled obsolete legal provisions this leads them to organize, to bring science-based system.

An important aspect of the legal regulation of the institution of citizenship of Ukraine is the implementation of systematization of legislation in this area. It is advisable to pay attention to incorporation as regulations in the field of citizenship can be grouped into collections or collections in a particular order (chronological, alphabetical, systematic and objective) without changing their meaning. However, today, the official incorporation of legislation on citizenship Ukraine not done. Regarding the informal, the first collection of legal acts of Ukraine on citizenship was issued in 2000, where the acts are in chronological order, for the period from 1918 to 2000 [15]. Therefore, regulations on citizenship, adopted in the future, do not systematic. Therefore, at this stage must first make a chronological and systematic incorporation of legal acts of Ukraine on citizenship. This will ensure consistency exposition law on citizenship, avoid duplication and increase efficiency of application in practice. Only then can reflect on codification of legislation on the citizenship of Ukraine.

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ACTIVITY OF LOCAL SELF-GOVERNING AUTHORITIES AS ELEMENT OF STATE GOVERNANCE

Summary

The article focuses on characterization of local self-government as a part of state governance of Ukraine. The features of functioning of local self-governing authorities are specified in the context of administrative activity in the state, as well as prospects of improving their activity

Key words: state governance, local self-governing authorities, administrative activity, competence, interaction.

Formulation of the problem. One of the defining features of a democratic, social state ruled by law is its fully functioning local government. After the local government realized the idea of people exercise power directly solve important issues of cooperation between the state, local community, person. In modern states, including Ukraine, unfortunately, there are factors that cause differences in the field of state interests and the interests of a particular community. Local authorities calling civilized reconcile these differences by implementing state-management functions.

Local authorities play an important role in ensuring the stable and effective management in the country. Their work is based on the norms of law and aimed at the achieving objectives of the state in the functioning of local authorities, and to ensure proper management activities aimed at filling the state and local budgets.

Constitutional and legal bases of management of local government in Ukraine enshrined in the Constitution of Ukraine, which reflects the important relationships that arise during the organization and functioning of local government in Ukraine, in particular, the territorial organization of local self-trim and shape its implementation, formation and use communal property rights guarantees self territorial communities [1].

Local government provides the right and the ability of local authorities, within the law, to regulate and manage a substantial part of public affairs under their competence, in the interests of local people. The European Charter of Local Self-Government in 1985 by the Supreme Council of Ukraine ratified 11 September 1997, defines local government as the right and real ability of local governments to regulate significant part of public affairs and manage it, acting within the law, under its own responsibility and in the interests of local government [2].

Thus, local governments and their activities are a direct part of the state administrative activity and government in general. Meanwhile, public administration, public authorities, and representatives of government activities in connection with the performance of their duties in public administration as a category and phenomena are interrelated, interdependent, are in interaction [3, 3]. The authorities to carry out duties in public administration law vested powers.

Analysis of recent research and publications. Research on local governments, as part of the public administration devoted quite a number of scientific papers. In particular, this studied field P. Bilenchuk, V. Bordenyuk, O. Boryslavska, Ya. Juravel, O. Lazor, B. Kalinowski, N. Kaminska, V. Campo, A. Kolodiy, O. Korpan, O. Pasternak, A. Rusnak.

The article is an analysis of tasks, responsibilities and principles that the local government as part of the state administration of Ukraine, as well as range of issues defining the current legislation in this area and proposals for their solution.

Presenting main material. Public administration is a type of the state activity exercised by the executive, legislative and judicial power, which is known to be a kind of public authorities. Each organ of state power in one way or another exercise

managerial functions, and therefore is a body of public administration. Thus, public administration associated with the activities of all bodies of state power and their influence on managerial behavior guarantees and ensures stability in society and in the state.

The concept of the government in legal theory scholars understand differently. Thus, M. Weber State under the authority understood the political enterprise that provided the installation to subordinate human behavior and material resources and a monopoly on the legitimate use of violence [4, 644-648], G.V. Atamanchuk - like relationship in during which people voluntarily or under duress recognize the supremacy of the will of others [5, 35]. There are other points of view that differ, perhaps only nuances.

The definition of public administration and many-sided. Thus, N.A. Kurtikov consider it as a process of creating targeted interaction of subjects and objects to achieve socially significant results [6, 9]. State Department recognized a form of exercise of power (A.E. Lunev); practical, organizing and regulating the state's influence on public

livelihoods of people with a view to ordering, maintenance or conversion, based on the imperious force (G.V. Atamanchuk); Activity entire state apparatus of regulation of public relations, public administration as well as their own affairs (B.P. Kurashvili) [6, 10].

This wide range of views on the definition of state power and governance complicates consideration of their relationship. However, these concepts certainly considered in their continuity and dialectical interaction. Public administration can not oppose state power, as it is carried out by public authorities and officials representing U.A. Tikhomirov [7, 31] and other experts note that the mechanism for implementing power finds its expression and manifestation of a comprehensive governance, power and control dialectically interrelated. G.V. Atamanchuk on this occasion said that the state is an inherent part of public administration and governance is as an integral part of the functioning of the government [5, 21-22].

The question of the relationship of government and public administration also among the discussion. Some authors demarcates governance of state power, treating the first time as a specific kind of state activity, resulting in state agencies on classified government agencies and state authorities. Other researchers governance considered only in connection with the executive government, not the entire system of state power.

In legal literature also found expression that the term "executive state power" can be replaced by the term "governance". This statement is objectionable. These concepts identical in nature, scope and content of the second term of the first widely. Similarly dubious position, according to which the executive power derives from the public administration. It should be borne in mind that the executive authority - always a government body, but not every government body is the executive body.

More convincing is the view of experts who recognize public administration as a type of state activity, carried out by the executive, legislature and judiciary, which are known to the state of the varieties authorities. Each organ of state power in one way or another exercise managerial functions, and therefore is a body of public administration. Thus, public administration associated with the activities of all bodies of state power and their influence on managerial behavior guarantees and ensures stability in society and in the state.

The legislative, executive and judicial power is a complex multifaceted phenomenon. Each of these branches of government forms an independent system that has all its features, and at the same time acts as a subsystem of a larger system - the public authorities. And defining common for these categories is the concept of "power" that has multifunctional character.

The literature differently defined the essence of public administration. For example, G.L. Kupryashin understand it as the activity of the legislative, executive, judicial and other powers of the state to fulfill its organizational, regulatory and service functions in society as a whole and in its individual parts [6, 64].

The position of other authors, public administration carried out by all public authorities. D.Y. Shapsugiv believes that the essence of governance is that it is

the main channel for the implementation of the entire system of government, not just its individual variety, and receive return signals on the state of facilities management accounted for in the work every kind of government is necessary for the effective functioning of the entire system of government [6, 360].

The system of governance includes public bodies which are organizational structures of government. In the literature, the state apparatus is defined as a system of organs through which the state power, the main functions performed, achieved and the challenges facing the country at various stages of development [8, 151]. As part of the state apparatus are government bodies: judicial, law enforcement, regulatory and other state authorities and local governments.

Reporting directly by public authorities are the most important attributes of the state, justice, finance, communications, military, service, internal and external security, other military units, which include internal troops, police, customs authorities, penal institutions, etc. Normal functioning of public authorities, based on the activities of its members, is a condition for the stability of the state and society life.

Public relations related to state-management activities, referred to as public relations management. Governments of different government agencies, businesses, non-administrators. The management relationships arise, on the one hand, between the subjects of management, representing the state in the face of public authorities, on the other hand, individuals and legal entities. The bearer of public relations management is an administrative activity [9, 9].

The nature of local government, by its nature is fully consistent signs of administrative relations. On the legitimacy of such activities in the implementation of local government representatives indicating performance of their duties following a limited framework, that is within the jurisdiction provided by the legislation. If the local government goes beyond the powers granted to him, his acts are illegal [10, 32].

Meanwhile, state management activities deemed legitimate if it: 1) does not exceed the powers vested in them; 2) shall be subject to the law. The activities of legitimate authorities, based on the requirements of the law and provided for him. That current legislation specifying the functions, aims and objectives of public authori-

ties, powers, rights and duties of their representatives, that determine the competence of persons authorized state and local governments.

One of the important tasks of management should be considered counter external disorganizing factors, social protection system of its natural disturbing factors, arbitrariness individuals. Relations between people on the management of the functions do not create material wealth and spiritual values, but they are indispensable and essential for the development of the economic, political, family and other social relations. Permeating all spheres of public life, administrative relations can have, therefore, economic, political, ideological and other direction. A characteristic feature of administrative relations is the management, disposal on the side of one entity and fulfilling, subordination - on the other side. The relations in the sphere of observance performers include laws and decrees and orders based on these requirements and their competent authorities representatives, compliance relevant actors of the state and social discipline.

Social management is conscious character. His exercise usually special organs that specifically affect the behavior of individuals and collective activity groups to achieve certain effects. In its subjective structure these relations are divided into several types, but on the problem in question, we shall speak only about the relationship between the government (state and non-state and their representatives) - on the one hand, and citizens - on the other. These relations have a place in the exercise of governmental activity by state and local authorities in particular. They occur in connection with the administrative and regulatory functions within mutual rights and responsibilities and ensure the normal functioning of these bodies in the implementation of state policy in the field of management.

To characterize the relations occurring in the implementation of local government administrative functions important to clarify their structure. The most optimal structure of social relations suggested V.K. Glistin which included the structure of social relations subject of public relations, social communication (content) relationships between the parties and the subject of public relations [11, 30].

The subject, or of possible relationships - a set of specific relations of participants (at least two - authorized and obliged) [12, 377]. In order to properly determine the subjective part of any relationship to apply to regulations governing a range of public relations. The subjects of administrative relations in general are the citizens, legal entities, local governments and public authorities. If you talk about subjects directly concerning administrative relations of local government, then they can act on the one hand - the most local governments and their representatives and, on the other - citizens and legal persons.

According to the Law of Ukraine "On Local Government in Ukraine" executive powers exercised and executive bodies of village, town, city, city district (if established) Councils [13]. Under the provisions of Art. 16 of the Act, local authorities are given powers of executive power, in the exercise of which they are controlled by the relevant executive authority.

According to the Law of Ukraine "On local government in Ukraine", the authorities can recognize and heads of local governments and their elected representatives. Local government, in particular through village, town and city councils and their executive bodies, and through district and regional councils, which represent common interests of territorial communities of villages, towns and cities. The Council is a representative body of local government, which consists of deputies and empowered to represent the interests of local communities and make decisions on its behalf [14].

In the village, town, city relevant territorial community on the basis of universal, equal and direct suffrage by secret ballot elected village, town and city mayor. He exercises his powers on a permanent basis.

Thus, according to function, the subjects studied relations have, on the one hand, representatives of local governments, and, on the other - the person with whom they interact.

The next structural element of public relations is its subject. The subject of public relations called all things about which or in connection with which there are relationships [11, 47]. The subject we are studying the public relations advocates the need to fulfill the statutory representatives of local governments delegated powers.

Thus, the powers of village, the mayor included management executive committee of the village, town or city council, which he heads, and chair the respective council.

Acts of the council, village, mayor, head of the district in the city council, the executive committee of village, town, city, city district (if established) Board adopted within their powers are binding on all arranged the respective territory executive bodies, public associations, enterprises, institutions and organizations, officials and citizens who permanently or temporarily reside in the territory.

In addition, the acts of the executive committee of village, town, city, city district (if established) Board adopted within their powers are binding on all the relevant located on the territory of executive bodies, public associations, enterprises, institutions and organizations, officials and citizens permanently or temporarily residing in the respective territory [15, 128].

he final element of public relations is a social communications, public relations or content. Analysis of the implementation of the management of local government provides grounds to conclude that the content of these social relations is the right of local governments and their representatives to the normal exercise of delegated powers by law and the right of individuals and entities on the implementation of the constitutional rights and freedoms of Ukraine.

Conclusions. In summary, we note that management activities of local government is part of the state administration of Ukraine. It should be remembered that management activities local government is considered legitimate if it is not beyond the powers vested in them and shall be subject to procedure established by law. That is such a legitimate activities of local authorities, which is based on the requirements of the law and provided for him.

Features of functioning of local government in the context of administrative activity in the state is that it current legislation specifying function, purpose and objectives of local government powers, the rights and duties of their representatives, that determine the competence of the authorized persons in local governments this area.

To improve the efficiency of the management of the local government the necessary legislative changes related to improvement of the system of local government. In particular it should be a change in the Constitution of Ukraine.

But this is a very important matter that requires: firstly, a complete integrated conceptual vision of the final result of the local government; secondly, the timely development and acceptance of the vast array of legislation that would ensure implementation of constitutional and legal provisions; thirdly, the political will of officials of all levels of government, socially and politically active population by the introduction of new concepts to life.

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ASSOCIATION AGREEMENT OF UKRAINE AND THE EU AS SOURCE OF THE CONSTITUTIONAL LAW

Summary

The article analyzes the Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and its Member States, on the other hand, as a source of constitutional law. It expands to the innovative nature of the Agreement, which being an international treaty nevertheless contains a number of norms of constitutional law. Article analyzes structures and status of institutions created in cooperation with the European Union which are new for the Ukrainian law.

Key words: association with the European Union, sources of constitutional law, association bodies.

Formulation of the problem. The Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and its Member States, on the other hand [1], or in abbreviated form the Association Agreement between Ukraine and the European Union - an international treaty that aims to deepen the integration between Ukraine and the EU in the fields of politics, trade, culture and the strengthening of the security and to replace the former Agreement on Partnership and Cooperation between the European Communities and Ukraine in 1994, this contract is for Ukraine and the Ukrainian people not only international act, one of the many signed and ratified by Ukraine, and the document, which resulted in drastic changes in the fate of the country, its foreign and domestic policy, a document that has an impact on all spheres society, governance, and including

constitutional and legal relations at various levels. Therefore, the author believes that the agreement is an act of the country and constitutional law as at the time of the EU Treaty became part of the constitutional law of the Member States. And many positions of the Agreement are directly applicable and do not require the implementation of additional measures.

Analysis of recent research and publications shows that the Association Agreement between Ukraine and the EU is not yet seen as a source of constitutional law. In the society and the expert community vigorously discussed compliance with the Constitution of Ukraine the Agreement but before the signing of the draft agreement has been recognized by the Ministry of Justice with the Constitution. [2]

The aim of the article is to identify the key provisions of the Association Agreement between Ukraine and the EU, which can be attributed to the constitutionally-legal, and characterization of the agreement as a source of constitutional law.

Statement of the basic material. The negotiations of an Association Agreement took place between Ukraine and the European Union since 2007. The text of the document was finalized as early as November 2011, but due to the complicated relations between the EU and Ukraine, its signing was postponed several times, while the European Union has put forward a number of Ukrainian leadership preconditions. March 30, 2012. The agreement was initialed by the heads of delegations of Ukraine and the European Union. In November 2013, a few days before the Vilnius summit of "Eastern Partnership", where it was planned to hold the signing of the Association Agreement, the process of preparation for the signing was at the initiative of the Ukrainian government suspended [3]. The refusal of President Viktor Yanukovych to sign an agreement with the European Union [4] led to a riot in the city center, and after almost three months of hard confrontation at the end of February 2014 in Ukraine there was a change of power. March 2 the new government ordered to resume the process of preparation for the signing of the Agreement. March 21, the EU and Yatsenyuk signed a political bloc of the Agreement - the part of the document, which deals with political cooperation, security issues and the fight against ter-

rorism [5]. June 27, 2014 President of Ukraine Petro Poroshenko was signed the economic part of the Agreement [6].

16. 09. 2014 The Supreme Council of Ukraine in sync with the European Parliament ratified the Association Agreement EU-Ukraine [7].

According to the Law of Ukraine on ratification [8] The Agreement shall enter into force on the first day of the second month following the date of the deposit with the General Secretariat of the Council of the European Union last instrument of ratification or the last instrument of approval of the Agreement. Since the ratification of the Agreement by all the Member States may take some time, the Verkhovna Rada decided to apply provisionally the Agreement pending its entry into force.

In particular, the Agreement shall be applied provisionally from the first day of the second month following the date of the receipt by the General Secretariat of the Council of the European Union - EU posts of completion of the procedures required for this purpose, indicating the part of the agreement, which will be applied provisionally; and - the instrument of ratification of Ukraine.

In addition to the entry into force only declarative and general rules of the Agreement, the provisional application of the Agreement provides for the opening of a dialogue between Ukraine and the EU on visa facilitation and the mobility of citizens of EU Member States and Ukraine.

At the same time, according to the Note Verbale of the Council of 09.12.2014, to December 31, 2015 [9] postponed the provisional application of the agreement on the so-called deep and comprehensive free trade area. Thus, up to 31.12.2015, the delayed start of the creation of a free trade area (in particular, the application of Section IV, which deals with trade and issues related to mutual trade).

However, in this period, we plan to continue providing the autonomous trade measures by the European Union in favor of Ukraine.

The Rome Statute of the International Criminal Court should also be noted that at the time of ratification of Ukraine stated that its commitment to ratify, 1998, provided by the Association Agreement and to strengthen peace and international justice, will made after making appropriate changes to the Constitution of Ukraine.

The Association Agreement between the EU and Ukraine is the first of a new generation of agreements between the EU and Eastern Partnership countries, and has a comprehensive, non-traditional for such agreements, the EU, innovative. The Association Agreement is a new stage in the development of contractual relations EU-Ukraine, which provides for political association and economic integration, and opens the way for further progressive reforms. The agreement provides for the joint maintenance of close and lasting relationship based on shared values, in full compliance with democratic principles, the rule of law, good governance, respect for human rights and fundamental freedoms.

It put forward European Union requirements to comply with democratic norms complex - full realization of human rights and freedoms, the value of democracy, the rule of law, principles of sovereignty and territorial integrity, inviolability of borders and independence - a basic constitutional values of the EU, which are key in the any partnership. They are connected with the history and with the strategic vision of the European Union of its role in the modern world, and lie at the heart of its regulatory powers. These values can not be the subject of bargaining and compromise, and the EU, using the right of the stronger party to most of the negotiations that he has to clearly and pre-defines just such a framework. For Ukraine, it would be a fundamental mistake to ignore it or to think that these demands can somehow get around. If the whole history of the Ukrainian European integration something and teach, it is that without democratic reforms about any rapprochement with the EU, we can not move on. Moreover, that is usually not the EU, and the other side initiates and takes his own decision on the application for EU membership or association with the EU assumes unilateral obligations to achieve the level of development of democracy, human rights, economics and finance close to that already in the EU.

An ambitious and innovative agreement - this is a well-defined way of using the dynamics of relations between Ukraine and the EU to support key reforms, economic recovery and growth, the implementation of government and industry cooperation in more than 30 areas, such as energy, transport, environmental protection, cooperation in industry and small and medium businesses, social development and protec-

tion, equality, consumer protection, education and youth policy, mobility and migration, as well as cultural cooperation. The close economic integration through free trade zone will be a powerful impetus to the economic growth of the state. It is planned to bring the laws, regulations and standards of Ukraine to EU standards. As a key element of the Association Agreement the free trade area will create business opportunities in the EU and Ukraine and contribute to economic modernization and integration with the EU. All this should lead to higher standards of products, better service to citizens and, most importantly, a willingness to compete effectively in international markets. However, under pressure from Russia, the largest reservoir of norms has not yet come into force before the end of 2015.

The Association Agreement between Ukraine, on the one hand, and the European Union, the European Atomic Energy Community and its Member States, on the other hand, has 1,200 pages, including 236 pages of text, including 486 articles, and consists of the following [1]:

- Preamble as an introductory declaration to the Agreement defines the objectives and basic principles of the Agreement;

- Seven sections, such as "General Principles," "Political cooperation and foreign and security policy," "justice, freedom and security", "Trade and related issues (DCFTA)", "Economic and industrial cooperation", "Financial Cooperation and the fight against fraud ", as well as institutional, general and final provisions.

- Annex 43, which are determined by regulations of the EU, which should be taken before a certain date, and 3 of the Protocol.

This article will not be analyzed the whole text of the Agreement, as it directly to the constitutional law can be attributed not all articles, as is evident from its title. The most important to look at the spirit of the Association Agreement and its objectives, goals, analyze the parts that directly regulate and give rise to constitutional-legal relations.

Overall, the agreement aims to accelerate and deepen political and economic relations between Ukraine and the EU, as well as to ensure the gradual integration into the EU internal market, including through the establishment of a free trade

zone; It offers a way to use the dynamics of relations between Ukraine and the EU, with special attention to the support of major reforms, economic recovery and growth, the implementation of government and industry cooperation; determines the agenda of reforms in Ukraine, which is based on a comprehensive program of approximation of Ukrainian legislation to EU legislation, will be a reference point for all partners of Ukraine in the work and support.

The Preamble to the Agreement lists the most important aspects of relations between the EU and Ukraine, including the desire for a close and lasting relationship. Although the Preamble has an optional introductory character, it contains significant references to common values and defines the total scope of the Agreement. The preamble also contains the following elements:

- A reference to the common values on which the EU is based, namely, democracy, respect for human rights and fundamental freedoms and the rule of law, which divides Ukraine; - A reference to the recognition of Ukraine's European nation with a common history and common values with the EU Member States; - A reference to a long-standing European aspirations of Ukraine. The EU welcomes Ukraine's European choice, including the obligation to build a permanent democracy and market economy.

The Parties recognize the dependence of political association and economic integration of Ukraine with the EU on the status of implementation of the Association Agreement, as well as Ukraine's success in enforcing the general principles of the EU closer to the EU in political, economic and legal aspects.

Section 1 is precisely defines the general principles that will form the basis for internal and external procedures of the Association between the EU and Ukraine, namely respect for the principles of democracy, human rights and freedoms, the rule of law; ensuring compliance with the principles of sovereignty and territorial integrity, inviolability of borders and independence, as well as the fight against the proliferation of weapons of mass destruction. The key elements of the maintenance and expansion of relations between the EU and Ukraine, which will form the basis of the relationship is the principle of a free market economy, good governance, fight against cor-

ruption and the various forms of transnational organized crime and terrorism, promoting sustainable development and effective multilateral contacts.

Section II: «Political dialogue and reform, political association, cooperation and convergence in the field of foreign and security policy" of the Association Agreement provides for the strengthening of political dialogue and cooperation between the EU and Ukraine, given the gradual convergence in the area of Common Foreign and Security Policy. Section II introduces into our constitutional and legal lexicon of concepts such as political dialogue, dialogue and cooperation on internal reforms, as well as common foreign and security policy. These concepts long familiar to Europeans even by the Treaty of Rome the EEC, Euratom, the Treaty on European Union, the first association agreement with the UK and other countries in the future have become full-fledged, not associated with the EU.

What is the concept of "political dialogue"? Based on the text of the Agreement, it is the interaction of the participants in the management and policies of democratization and international cooperation. By itself, it will focus on: - deepening political association, increase the efficiency and the degree of closeness to the political and security; - To promote international stability and security on the basis of effective multilateralism; - Strengthening cooperation and dialogue on issues of international security and crisis management, in particular to respond to global and regional challenges and key threats; - Strengthening results-oriented and practical cooperation for peace, security and stability on the European continent; - Raising the level of respect for democratic principles, the rule of law and good governance, human rights and fundamental freedoms, including minority rights, non-discrimination of persons belonging to national minorities, and respect for diversity, and promoting the strengthening of internal political reforms. Apparently, the EU undertakes to promote the interests of Ukraine, while Ukraine will support the EU's position on the issues of security and cooperation at the international level. Will the foreign and security policy really common for Ukraine and the EU, while this does not follow. Too streamlined, non-specific standards, by and large, are not strictly fixing the rules of conduct of participants of the political dialogue.

But at the same time, the agreement provides a number of specific tools for policy dialogue. Section VII «Institutional, general and final provisions" provides special education for the institutional relations between the EU and Ukraine:

• At a high level is held EU-Ukraine Summit, which will provide high-level dialogue and a platform for meetings between the presidents.

• At the ministerial-level dialogue will be held in the Association Council, which will hold meetings in any format. The Association Council will be empowered to make binding decisions.

• Help Association Council in carrying out its duty to provide the Committee on the association, in which the sub-committees will be set up sectoral cooperation. At the meetings in a special format for the Association Committee is considering specific issues of free trade zone.

• The Association Agreement provides for parliamentary cooperation, in particular through the creation of the Parliamentary Committee for the Association, which will provide a platform for meetings and exchanges of Deputies of the European Parliament and the Supreme Council of Ukraine.

• The Association Agreement also promotes regular meetings with representatives of civil society. To do this would be to create a platform of civil society, which can make recommendations to the Association Council.

It must be said that the rules on the establishment of the institutional structure of the association, in fact, the new government agencies whose decisions are within the scope of the Agreement are binding for all are constitutionally legal. This is a prime example of how the international legal contract becomes a source of constitutional law. Both public authorities of all branches of power should be used solutions of the Association Council, the Association Committee, the Parliamentary Committee for the Association, and others. But these decisions largely also become sources of constitutional law and regulators constitutional-legal relations, even if they mostly contain provisions so called "soft law", that is, standards-declaration standards, goals, standards-task. So Parliamentary Committee held its first meeting and its

adopted its first decision regarding the general situation in Ukraine after the Revolution through the dignity of EU assistance, both military and financial, condemning Russia's aggression against Ukraine [10].

Thus, the powers of the Association Council referred the control and monitoring of the application and execution of the Agreement, to consider any major issues arising within the framework of the Agreement and any other bilateral and international issues of mutual interest; Association Council decision taken in the cases provided for by the Agreement and in the framework of the Agreement.

Consequently, the powers of the Board do not contain any signs of over-sovereignty and supranationality, because it does not provide for the delegation of sovereign powers to an international body, decisions are agreed by the parties, the decision of the Council and the Committee of the association will be legally binding if adopted by both sides, which creates the obligation to ensure their implementation through the taking all appropriate measures, they are binding on all members of the constitutional-legal relations [2].

In accordance with Part 3 of Article 465 of the Agreement the Association Committee is empowered to take decisions in the cases provided for therein, and in the areas in which the Association Council has delegated its powers to it. The Association Committee is preparing its decision on the agreement between the parties.

Analysis of the Agreement makes it possible to identify several types of decisions of the Council and the Association Committee, in particular those:

Association Council: on organizational and procedural matters (Part 2 of Article 462); on the implementation of certain provisions of the Agreement (Part 2 of Article 18); on amendments and additions to the agreement, including application updates thereto (Part 2 and 3 of Article 463).

The Association Committee: decisions under delegated authority by the Association Council; on the implementation of certain provisions of the Agreement (Part 4 of Article 29, Part 15, Article 44, Article 96, Part 3 of Article 106, Part 3 of Article 145, Part 3 of Article 147, paragraph 3 of Part 3 of Article 149, Article 153 and 154, Part 3 of Article 222 Article 326, Part 3 of Article 327, Part 6 of Article 331).

The agreement does not specify the method of entry into force of the decisions of the Council and the Association Committee, in addition to the provisions, the decisions of the Association Council prepared "by agreement of the parties, after the respective internal procedures" (Part 3 of Article 463).

Constitutional and legal questions and concerns Section III of the Agreement "justice, freedom and security". This is the rule of law and respect for human rights, personal data protection, cooperation in the field of migration, asylum and border controls, the treatment of workers and labor mobility, the movement of persons, money laundering and the financing of terrorism, cooperation in the fight against drug trafficking, the fight against crime and corruption, cooperation in the fight against terrorism, as well as cooperation in the field of law.

It should be noted that in accordance with Art. 471 Agreement, which will also operate within the provisional application of the Agreement, the parties undertake to ensure that all individuals and legal entities non-discriminatory access to the competent courts and administrative bodies to protect their personal and property rights. This means that Ukrainian entrepreneurs will have access to the European human rights protection mechanisms (in the case of the need to protect their rights in the EU), and entrepreneurs from the EU will have the same access to the Ukrainian judicial and administrative bodies. This feature can be used, for example, in the case of unreasonable restrictive measures by government regulators for exports from Ukraine to the EU, or from the EU to Ukraine. Thus, it can be argued that the agreement creates an additional mechanism for the protection of constitutional rights of citizens, both within their own state, and outside it, in the borders of the EU.

To ensure the proper implementation of the text of the Agreement contains general and final provisions. One of the key provisions in the Agreement is based, defines the principles of gradual approximation of Ukrainian legislation to EU norms and standards. Set specific deadlines for harmonization of Ukrainian legislation with that of the EU, which range from 2 to 10 years after entry into force. The agreement provides for the concept of a dynamic convergence, as the EU legislation is not static and is constantly evolving. Therefore, the process of approximation will be dynam-

ic in nature, and its rate should correspond to the major reforms in the EU, but in proportion to the ability of Ukraine to implement such an approach.

To verify that the obligations established by the Agreement contains specific provisions on monitoring, in this context, means to control the application and implementation of the Association Agreement. This means implementation of the permanent status of implementation of evaluation and implementation of actions and commitments under the Agreement.

The Agreement provides for a dispute resolution mechanism that will be used if any of the parties fails to fulfill its obligations. Validity of the Association Agreement between the EU and Ukraine is unlimited. At the same time in five years the parties will conduct a comprehensive analysis of the achievement of the objectives of the Agreement.

Conclusions. Thus, the analysis of the Association Agreement between Ukraine and the EU shows that, despite a complex and comprehensive nature of the contract and regulation them a wide range of relations in various spheres of cooperation between its members, a number of rules quite clearly regulates the internal constitutional and legal relationship, so we can say that ratified and published properly Agreement is a source of constitutional law in Ukraine, even if it is temporarily not executed in full. In addition, you need to realize that the signing of this document is strategically means the inclusion of Ukraine in the sphere of regulatory influence of the EU - with its consequences in the political and legal spheres, as well as security issues, in this connection, sources of constitutional law are not only the Association Agreement, but also the current standards of European law, both primary and secondary, which requires adjustment of all levels of law enforcement and law-making, especially the activities of state and municipal authorities. Ukraine gets additional rights to participate in certain activities of the EU institutions, whose work directly or indirectly concerns the provisions of the Agreement or the participation in which is important for Ukraine as a whole. In the second part shall be governed by separate agreements with the selected EU agency under the terms of co-financing. The introduction of this practice opens for Ukraine access to trust funds and joint projects of the EU Member States, as

well as takes into account the national interests of their implementation in various areas of cooperation.

You can emphasize once again that the Association Agreement between the EU and Ukraine is the first of a new generation of agreements between the EU and Eastern Partnership countries, and has a comprehensive, non-traditional for such agreements, the EU, innovative. The Association Agreement is a new stage in the development of contractual relations EU-Ukraine, which provides for political association and economic integration, and opens the way for further progressive reforms. The agreement provides for the joint maintenance of close and lasting relationship based on shared values, in full compliance with democratic principles, the rule of law, good governance, respect for human rights and fundamental freedoms.

Also, the Association Agreement includes a political component, and the author's opinion it is this fact makes agreement a major source of constitutional law, even if it stood alone, and dropping out of the traditional hierarchy of constitutional law in Ukraine. Deviations from the democratic standards certainly call into question its ratification by the parties or by the parties in the implementation of the future. In this context, evidence of violations of human rights, freedom of speech and political freedoms will become key insurmountable obstacle on the road to full membership of Ukraine in the EU.

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FOCUS AREAS OF ACTIVITY OF STATE MIGRATION SERVICE OF UKRAINE

Summary

The article focuses on the institutional support of activities of the State Migration Service of Ukraine. The features of the development and reforming of the migration service today are revealed. The main tasks and forms of structural units of Migration Service of Ukraine are identified.

Key words: State Migration Service of Ukraine, functions, powers, forms of activity, tasks, battling illegal migration.

Formulation of the problem. Ukraine, due to its geopolitical position, gradually transformed from a transit country to the destination that promotes settling of illegal immigrants [1]. The above factors necessitates urgent measures aimed at increasing the efficiency of combating illegal activities, upholding the national interests of Ukraine in the field of migration, strengthening national security and good governance of migration flows.

Thus, during 2014 to prevent and combat illegal migration, another violation of the law Ukraine in migration and hold violators accountable regional bodies DMS Ukraine were organized and carried out targeted preventive measures to identify foreigners and stateless persons illegally present on the territory of Ukraine [2], as

well as measures for the supervision and enforcement of legislation in the field of migration codenamed "migrant" [3].

Prior to these events involved members of the Interior Ministry, Security Service of Ukraine, the State Border Service of Ukraine, other state authorities and local governments.

As a result of actions by territorial authorities LCA was found 3135 illegal immigrants (in 2013 - 1853), relative to 2,384 illegal migrants decided to forcible return (in 2013 - 1413), 98 foreigners violating expelled from Ukraine by enforcement (in 2013 - 83), 55 foreigners posted to the MAC (in 2013 - 73), 512 foreigners banned from entering the country for 3 years (in 2013 - 387).

According to the Code of Ukraine on administrative offenses were brought to administrative liability 17,031 offenders (in 2013 - 15,950), including Art. 203 - 13,851 (in 2013 - 13,581), art. 204 - 184 (in 2013 - 165), art. 205 - 2921 (in 2013 - 2146), for st.206 - 75 (in 2013 - 58). Fined in the amount of 7.1 mln. UAH Collect fines amounting to 6.8 mln. UAH (95.8%).

The purpose of the article. The article studies the formation and development of the State Migration Service of Ukraine, considering its main activities, finding new methods of management in the implementation of migration policy, determine ways to improve organizational and legal support of LCA Ukraine.

Analysis of recent research and publications. The organizational and legal issues for migration policy dedicated to domestic labor as (O.M. Dzhuzha, I.B. Berezovsky, V.O. Ivaschenko, V.V. Kovalenko, V.I. Krivenko, O.V. Kuzmenko, M.V. Kuts, O.A. Malinowska, A.P. Mozol, O.V. Nadon, V.O. Novik, K.M. Rudoi, A.M. Cherniak, S.B. Czechowicz, V.I. Shakun, M.O. Shulga et al.) and foreign scientists (M. Viyyers, R. Wohlwend, V.V. Lunyeyev, M. Puhli, John. Salt, R. Havsman, P. Holmes, A. Shloenhard).

Presenting main material. State Migration Service of Ukraine was established by Presidential Decree Ukraine from 09.12.2010 № 1085/2010 (hereinafter - the Decree № 1085) As part of the December 2010 administrative reform with the laying on

her with implementation of the state policy on immigration and Registration of persons and migration within the limits set by the legislation on refugees [4].

The activities of these structures is regulated by the Regulations on the State Migration Service of Ukraine (hereinafter - Ukraine LCA), which is approved by the Decree of the President of Ukraine from 06.04.2011 № 405/2011 [5].

Under this Regulation, LCA Ukraine is part of the executive power and formed to implement the state policy in the areas of migration (immigration and emigration), including countering illegal (illegal) migration, citizenship, registration of natural persons, refugees and other certain laws categories workers. Its activities are directed and coordinated by the Cabinet of Ministers of Ukraine through the Minister of Internal Affairs of Ukraine.

Thus, the functions LCA Ukraine, by Decree number 405, compared with Decree № 1085 were greatly expanded, particularly in combating illegal (illegal) migration.

Simultaneously Decree of the President of Ukraine of 06.04.2011 № 383/2011 approved the Regulations of the Ministry of Internal Affairs of Ukraine, according to which the main body in the system of central executive authorities to combat illegal (illegal) migration is MIA Ukraine [6].

In order to streamline the activities of LCA Ukraine, the Cabinet of Ministers of Ukraine issued a series of legislative and administrative acts that formed the territorial authorities LCA Ukraine approved the maximum number of central staff LCA Ukraine and its territorial bodies took proposal MVD and VMI Ukraine to transfer integral property complexes temporary stay, temporary accommodation and state-owned enterprises "Document" and "State Center for personalization of documents" to the management of LCA Ukraine.

MIA of Ukraine to arrange cooperation with Ukraine to LCA implementation of the state policy in the sphere of combating illegal (illegal) migration, order of 29.12.2011 № 978 defined Service Minister responsible for cooperation with Ukraine LCA [6].

Paragraph 3 of the Decree № 405 determined that the legislative regulation of the organization and activity of the State Migration Service of Ukraine to ensure the fulfillment of the State Migration Service of Ukraine tasks of state policy in the field of combating illegal migration, as well as bringing to administrative responsibility for violation of legislation on registration individuals, issuing of identity and proof of citizenship, to form the Ministry of Internal Affairs of Ukraine police units migration control total maximum quantity of 1500 units, functional subordinating it to the State Migration Service of Ukraine [7].

Also, the implementation of this decree, order of the Interior Ministry of Ukraine of 20.02.2012 № 142, within the structure of the Ministry was established migration control police department and approved changes to the order of the Interior Ministry of Ukraine of 17.12.2009 № 530 [8] "On normative provision of organizational work "in which a part of the main departments, departments of MIA of Ukraine in the Autonomous Republic of Crimea, Kyiv and Sevastopol (hereinafter - the Interior Ministry, Ministry of Internal Affairs of Ukraine) were formed by migration control units. The creation of these units was due to the reduction in the number of posts in the relevant departments of Citizenship, Immigration and Registration of Persons.

Law of Ukraine of 18.09.2012 № 5294-VI [9] and of 16.10.2012 № 5459-VI [10] (p. 222-2) to the office of LCA Ukraine fully functions were transferred against illegal migration and bringing to administrative responsibility for violation of legislation in the registration of persons, issuing identity and confirm citizenship (Articles 197-201, the first part of Article 203, Article 204, 205, 206 CAO).

Because of the mentioned Law of Ukraine MIA of Ukraine Order of 01.12.2012 № 1108 eliminated Police Department Internal Affairs of Ukraine migration control and migration control police units in the Interior Ministry (MIA) of Ukraine. However, other units that would perform the task of preventing and combating illegal migration were not created.

Thus, with the elimination of police units migration control and the lack of similar units in the system migration service formed administrative gap. The above was the impetus for LCA Ukraine in terms of the necessary training and refer-

ral coordination ministries and agencies of the Government draft decree "On introducing amendments to Annexes to the Cabinet of Ministers of Ukraine" from 07.09.2011 № 937 [11] and of 14.11.2011, the number 1184 [12], which stipulates increased by 1,500 the maximum number of active employees of LCA Ukraine. However, VMI offers Ukraine were returned to the Ministry of Finance without approval.

The absence of these powers and operational units that would perform these functions effectively led to the suspension of search operations for the prevention, early detection and expulsion from the state of illegal migrants, exposing the causes and conditions conducive to the commission of the illegal action, the implementation of crime prevention Ukraine.

Thus, reduced in 2012 police units migration control, the Interior Ministry of Ukraine and the Government fails unleashed existing legal and organizational problems in combating illegal migration, effectively leaving them to the discretion of LCA Ukraine, which it does not have the appropriate capabilities, resulting in activation of systemic risks formed illegal migration containing a threat to national security, primarily due to the inability to reduce the number of identified and expelled from Ukraine of illegal migrants.

No less important role in improving and accelerating the performance of tasks Migration Service to combat illegal immigration plays no part in Ukraine LCA subjects of operational activities, as defined by the Law of Ukraine "On operative-search activity" [13] and lack of cooperation on the issue of access to information files of the Ministry of Internal Affairs of Ukraine, Ministry of Foreign Affairs of Ukraine and the State Border Service of Ukraine. In these databases focused information about foreign nationals, which is essential migration structures. To access this information at the state level necessary to decide the possibility of the use of such databases in the region by State Migration Service of Ukraine.

The essential problem is the absence in the State Migration Service of qualified interpreters. At present, it is solved by the so-called "people from foreign countries," which actually provide foreigners, and in some cases non-governmental organ-

izations (and communities, national and cultural societies, etc.). However, these interpreters have no special philological education, which complicates the necessary procedures involving foreigners and may in some way affect their quality. Particularly acute, this problem occurs when courts in resolving the issue of forced expulsion of foreigners. Yes, at the request of the court in materials that come to the court decision on forced expulsion of foreigners, copies of documents should be qualified interpreter who speak Ukrainian language and alien. Explanation foreigner, the decision on forced return of a foreigner in the country of origin, administrative action should also be translated into written language communicates a foreign citizen. In addition, the passport of a foreigner to be translated into Ukrainian and notarized in need of additional expenses not covered DCC estimate Ukraine. The same problem arises when placing foreign citizens for temporary stay of foreigners and stateless persons, because no interpreters in the state MAC has significant obstruction of the Migration Service employees properly legal measures [14].

Another important problem in combating illegal immigration is the lack of detention of foreigners and stateless persons from the moment of detention pending a decision on their placement in the temporary stay of foreigners and stateless persons who are illegally staying on the territory of Ukraine. The most acute this question arises in the absence of a detained foreigner document of identification.

The lack of documents makes it impossible decision on forced return of a foreigner in the country of origin, since it is not possible to identify a limited time and in no stamp stamped the documents taken appropriate action. In this regard, has no access to court to address the issue of forced expulsion of a foreigner, as according to Art. 30 of the Law of Ukraine "On Legal Status of Foreigners and Stateless Persons" [15] Forced deportation must necessarily precede forcible return.

It should be noted that despite imperfect institution to combat illegal migration and to address deficiencies in combating illegal migration in the second quarter of 2014 in the structure of the apparatus LCA Ukraine was formed department combating illegal migration, which operates within the Department of Immigration and individuals stateless. Central Ukraine VMI apparatus measures taken to change the

structure of local authorities, which provided for the formation and operation of migration control units, which actually functions rely on combating illegal migration [16].

Conclusions. From today to the main activities of the State Migration Service of Ukraine include:

- Firstly, the immediate development of the provisions of subsections combating illegal migration, their recruitment and performance of specified tasks to identify violators of immigration laws and bring them to justice in accordance with the legislation, administrative and applicable practice, voluntary return, forced return, forced expulsion, the placing of illegal migrants to the MAC, readmission, etc;

- Secondly, development of standard plans for the organization and conduct of measures against illegal immigration, which should include both organizational and practical measures, including: analysis of the real state of compliance control by foreigners, as well as legal and natural persons in Ukraine that adopt them or provide them with services, legislation on the legal status of foreigners and stateless persons; identification of priority directions of measures, drawing up a list of objects that will be checked, and outline the main objectives and the ultimate objective of the planned activities, to bring their content to the units to be involved in their implementation; to identify and setting common objectives, interoperability, information sharing, of coordination meetings with invited representatives of the prosecution, the courts, the Security Service, Customs authorities and the State Border Service and other law enforcement and governmental regulatory authorities; the calculation of required capabilities that are intended to use for events, carrying out preparatory work prior to the event involved staff, including the study of the general rules of communicating with foreigners, etc; check foreigners and stateless persons for compliance with the legislation on their legal status, pay special attention to identify these persons among illegal migrants at the same time ensure that the individual rights guaranteed by the legislation of foreigners and stateless persons; verification of educational institutions, tourism organizations and other businesses that accept foreigners to identify among them those that do not fulfill the obligation of stay of foreigners in the country, spe-

cial attention is paid to detect instances of arbitrary legalization of foreigners and stateless persons by submitting false information on the real purpose of their stay; check hotels, hostels, private housing and other facilities providing hotel services, to identify among them those that provide services to foreigners who are illegally staying on the territory of Ukraine; detection channels (entry, transportation, accommodation, legalization, exit) illegal migration of foreigners in Ukraine, establishment of organizers and accomplices of the illegal movement of persons across the state border of Ukraine. Particular attention is paid to information on organized criminal groups of interregional and interstate connections, which transmit without delay to the competent authorities; check commercial enterprises founded by foreign citizens working merchandise and food markets in order to establish the legality of receiving foreigners and stateless permits for business activities. If necessary, pay special attention to the existence of the employment permits for employment of foreigners and practices of trade in the markets through nominees - citizens of Ukraine; working railway stations, bus stations, river and sea ports, checking passenger trains and vehicles in order to detect cases of transportation and harboring of aliens who are illegally staying on the territory of Ukraine. Particular attention is paid to transport groups of foreigners for 3-5 people or more vehicles interregional connections.

And also, in the case of national measures foreseen by order of the Interior Ministry, Ministry of Social Policy and MES from 04.09.2013 № 850/536/1226 «On approval of the maintenance of the measures to monitor and control the implementation of legislation in the field of migration" [17] in HUDMS apparatus, UDMS create working groups, which put functions for the organization and coordination of the territorial units during such events, as well as summarizing the results of implemented measures.

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RELEVANT PROBLEMS OF BATTLE OF INTERIORS OF UKRAINE WITH ILLEGAL MIGRATION

Summary

The article researches the organization and legal providing of sphere of counteraction to illegal migration: to the problems, tendencies and mechanisms of decision of the modern legislative failings. Realization of public policy in the field of counteraction to illegal migration is not so much in the exposure of facts (fixing) of violations of migratory legislation, but in realization of complex of the prophylactic events sent to warning of this phenomenon: with other law enforcement authorities and services development and liquidation of channels of illegal migration, that lie in and through Ukraine, exposure and bringing in to responsibility of persons that assist passage of illegal foreigner, realization of explaining conversations among citizens, foreigners and person without citizenship about observance rules been in Ukraine. The article focuses on the institutional and legal support of combating illegal migration: problems, trends and legal mechanisms to address current shortcomings.

Key words: battling illegal (unlawful) migration, foreign nationals, interior bodies of Ukraine, forms of activity, interaction.

Formulation of the problem. Despite the significant branching and numerous actors prevention of illegal migration, still the main burden of combating illegal migration lies with the internal affairs bodies, namely the departments of the State Migration Service of Ukraine. State Migration Service of Ukraine (Ukraine

LCA) is the central body of executive power with activity directed and coordinated by the Cabinet of Ministers of Ukraine through the Minister of Internal Affairs of Ukraine.

Reduced in 2012 police units migration control, the Interior Ministry of Ukraine and the Government fails unleashed existing legal and organizational problems in combating illegal migration, effectively leaving them to the discretion of LCA Ukraine, which it does not have the appropriate capabilities, resulting formed revitalization systemic risks of illegal migration, containing a threat to national security, primarily due to the inability to reduce the number of identified and expelled from Ukraine of illegal migrants [1]

Analysis of recent research and publications. The urgency of the problem is confirmed by the large number of foreign and domestic scientists who were involved in the development of migration. Among domestic researchers should be noted paper of V. Andrienko, O. Bandurka, O. Dzhuzhi, M. Koval, V. Kolpakov, S. Konstantinov, O. Kuzmenko, V. Kutsa, A. Leonova, M. Loshitski, O. Malinowski, N. Nyzhnyk, V. Olefir, O. Piskun, N. Pobeda, Yu. Rymarenko, V. Sushchenko, A. Khimich, S. Czechowicz, V. Shakun, M. Shvets, M. Shulga, N. Yuzikovoyi, O. Yunina and others.

The purpose of the article. The article is devoted to actual problems of organizational and legal support activities of internal affairs of Ukraine in combating illegal migration, as well as the disclosure of certain areas of improving law enforcement in this area.

Presenting main material. In order to improve and accelerate the performance of their tasks Migration Service to combat illegal migration becomes important legislative consolidation of Ukraine as a part of LCA subjects of operational activities, as defined by the Law of Ukraine "On operative-search activity" [5] and cooperation in the issue of access to information files of the Ministry of Internal Affairs of Ukraine, Ministry of Foreign Affairs of Ukraine and the State Border Service of Ukraine. In these databases focused information about foreign nationals, which is essential migration structures. To access this information at the state level necessary to decide the

possibility of the use of such databases in the region by State Migration Service of Ukraine.

Another important problem in combating illegal immigration is the lack of detention of foreigners and stateless persons from the moment of detention pending a decision on their placement in the temporary stay of foreigners and stateless persons who are illegally staying on the territory of Ukraine. The most acute this question arises in the absence of a detained foreigner document of identification.

The lack of documents makes it impossible decision on forced return of a foreigner in the country of origin, since it is not possible to identify a limited time and in no stamp stamped documents taken appropriate action. In this regard, has no access to court to address the issue of forced expulsion of a foreigner, as according to Art. 30 of the Law of Ukraine "On Legal Status of Foreigners and Stateless Persons" [6] forcibly expelled must necessarily precede forcible return.

Substantially and adversely the sphere of combating illegal migration affects the unimproved by Ukraine LCA system of interaction with other law enforcement agencies of our country, especially the Security Service of Ukraine and the Ministry of Internal Affairs of Ukraine. Often it concerns situations where the Security Service of Ukraine bodies when making decisions on the prohibition of entry into Ukraine, according to Art. 13 of the Law of Ukraine "On Legal Status of Foreigners and Stateless Persons" is not checked the status of foreigners in Ukraine. Thus, legal collisions occur when the Security Service of Ukraine takes decision to ban entry of persons who are legally residing permanently or temporarily in Ukraine. Such decisions are formal in nature, since it is unknown whether a foreigner in the coming years to leave the Ukraine. In addition, such decisions contravene existing migration legislation.

Thus, the decision to ban entry to Ukraine must verify whether the person is in Ukraine, if it is, then decide on which documents or which status. In addition, in cases where the alien has a permanent residence permit, a decision to ban entry must precede cancel the immigration permit and the withdrawal of a residence permit. In the presence of a temporary residence permit and the decision on cancellation of permit.

On interaction with the Interior Ministry of Ukraine, according to Art. 12 of the Law of Ukraine "On immigration" [7], immigration permit is canceled if the immigrant is convicted in Ukraine for more than one year and the verdict came into effect. However, no reports from investigators of MIA of Ukraine indicated on Ukraine to LCA does not arrive, making it impossible timely application of the said legal rules.

This practice can be traced in case of the Law of Ukraine "On Legal Status of Foreigners and Stateless Persons", which stipulates that leave Ukraine by foreigners or persons without citizenship is not allowed if it is suspected or accused of having committed in the territory of Ukraine crime or defendant for commitment crime on the territory of Ukraine if such persons under the Law decided to ban exit from Ukraine. However, such decisions of the Interior to LCA not available.

In addition, permits are canceled and immigration where immigrant actions are a threat to public order in Ukraine or is necessary for the health, rights and lawful interests of citizens. However, the internal affairs authorities that the decision to prosecute foreigners and stateless persons to administrative responsibility for violation of public order, for disorderly conduct, such as violations of the Law of Ukraine "On Prevention of Domestic Violence", information of this nature Ukraine to LCA is not received.

Another negative element is the lack of interaction possible with the use of integrated information retrieval system, owned by the Ministry of Interior and LCA Ukraine. Integration of information files of two structures have provided an opportunity to improve the experience, including the task and have created the preconditions for the creation and implementation of a single database for government and law enforcement agencies.

It should be noted that despite imperfect institution to combat illegal migration and to address deficiencies in combating illegal migration in the second quarter of 2014 in the structure of the apparatus LCA Ukraine was formed department combating illegal migration, which operates within the Department of Immigration and individuals stateless. Central Ukraine VMI apparatus measures taken to change the

structure of local authorities, which provided for the formation and operation of migration control units, which actually functions rely on combating illegal migration.

Currently LCA Ukraine, urgently, measures to strengthen the staffing of relevant units of territorial bodies [8]. At the same time before the heads of territorial bodies were delivered to the relevant task associated with the following steps:

1) Immediate development of the provisions of subsections combating illegal migration, their recruitment and performance of specified tasks to identify violators of immigration laws and bring them to justice in accordance with the legislation, administrative and applicable practice, voluntary return, forced return, forced expulsion, placing illegal migrants to the MAC, readmission, etc;

2) Develop model plans for the organization and conduct of measures against illegal immigration, which should include both organizational and practical measures, including:

- Analysis of the real situation to monitor compliance foreigners as well as legal and natural persons in Ukraine that adopt them or provide them with services, legislation on the legal status of foreigners and stateless persons;

- Determination of priority directions of measures, drawing up a list of objects that will be checked, and outline the main objectives and the ultimate objective of the planned activities, to bring their content to the units to be involved in their implementation;

- To identify common objectives and setting, interoperability, information sharing, of coordination meetings with invited representatives of the prosecution, the courts, the Security Service, Customs authorities and the State Border Service and other law enforcement and governmental regulatory authorities;

- The calculation of required capabilities that are intended to use for events, carrying out preparatory work prior to the event involved staff, including the study of the general rules of communicating with foreigners, etc;

- Verification of foreigners and stateless persons for compliance with the legislation on their legal status, pay special attention to identify these persons

among illegal migrants at the same time ensure that the individual rights guaranteed by the legislation of foreigners and stateless persons;

- Verification of educational institutions, tourism organizations and other businesses that accept foreigners to identify among them those that do not fulfill the obligation of stay of foreigners in the country, special attention is paid to detect instances of arbitrary legalization of foreigners and stateless citizenship by providing false information about the real purpose of their stay;

- Check hotels, hostels, private housing and other facilities providing hotel services, to identify among them those that provide services to foreigners who are illegally staying on the territory of Ukraine;

- Detection channels (entry, transportation, accommodation, legalization, exit) illegal migration of foreigners in Ukraine, establishment of organizers and accomplices of the illegal movement of persons across the state border of Ukraine. Particular attention is paid to information on organized criminal groups of interregional and interstate connections, which transmit without delay to the competent authorities;

- Checking commercial enterprises founded by foreign citizens working merchandise and food markets in order to establish the legality of receiving foreigners and stateless permits for business activities. If necessary, pay special attention to the existence of the employment permits for employment of foreigners and practices of trade in the markets through nominees - citizens of Ukraine;

- Working railway stations, bus stations, river and sea ports, checking passenger trains and vehicles in order to detect cases of transportation and harboring of aliens who are illegally staying on the territory of Ukraine. Particular attention is paid to transport groups of foreigners for 3-5 people or more vehicles interregional connections.

3) In the case of national measures foreseen by order of the Interior Ministry, Ministry of Social Policy and MES from 04.09.2013 № 850/536/1226 «On approval of the maintenance of the measures to monitor and control the implementation of legislation in the field of migration" [9] HUDMS in the machine, UDMS create working groups, which put functions for the organization and coordination of the territo-

rial units during such events, as well as summarizing the results of the implemented measures and report them to management.

These actions of the central apparatus LCA Ukraine to strengthen countering illegal migration provided a certain result. Thus, during 2014 to prevent and combat illegal migration, violation of other laws of Ukraine in the field of migration and bringing offenders to justice LCA territorial authorities organized and conducted appropriate action.

According to the order VMI Ukraine from 31.07. 2014 № 171 [10], from 07 to 15 August carried out targeted preventive measures to identify foreigners and stateless persons illegally present on the territory of Ukraine.

According to the order VMI Ukraine from 05.09.2014 № 229 [11] during the period from 15 to 26 September conducted targeted preventive measures for the supervision and enforcement of legislation in the field of migration codenamed "migrant". Prior to these events involved members of the Interior Ministry, Security Service, SBS underline during meeting Ukraine, other state authorities and local governments.

As a result of actions by territorial authorities LCA was found 3135 illegal immigrants (in 2013 - 1853), relative to 2,384 illegal migrants decided to forcible return (in 2013 - 1413), 98 foreigners violating expelled from Ukraine by enforcement (in 2013 - 83), 55 foreigners posted to the MAC (in 2013 - 73), 512 foreigners banned from entering the country for 3 years (in 2013 - 387).

According to CAO administrative proceedings brought against the infringer 17,031 (in 2013 - 15,950), including Art. 203 - 13,851 (in 2013 - 13,581), art. 204 - 184 (in 2013 - 165), art. 205 - 2921 (in 2013 - 2146), for st.206 - 75 (in 2013 - 58). Fined in the amount of 7.1 mln. UAH. Collect fines amounting to 6.8 mln. UAH (95.8%).

Conclusions. Given the fact that the issue of combating illegal migration within the scope priorities of national security policy of Ukraine and international security as a whole, is the subject of systematic monitoring of the National Security and Defense Council of Ukraine, at the present stage for internal affairs bodies and units of

the migration service is urgent issues of organizational and staffing, and the creation of specialized higher educational establishments of Ukraine faculties with training for units of the State Migration Service of Ukraine.

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FUNCTIONS OF COMMERCIAL PROCEDURAL TIME LIMITS

Summary

Based on the definitions of general concepts the article develops notion of functions of commercial procedural time limits. It substantiates their right to exist as an independent institution of procedural law in view of the time component of their functioning. The conclusion is that the improvement of functional load of time limits in the commercial procedure will continue to optimize commercial justice. The article develops the idea of classification of functions of commercial procedural time limits.

Key words: commercial procedure, functions of commercial procedural time limits, individualization of the proceedings.

Formulation of the problem. Functions are the subject of constant scientific research, because it is through their characteristic deep an opportunity to clarify the nature of the content and legal institutions is based on a comprehensive assessment of all system functions reveals its regime.

Analysis of recent research and publications. The study features in the economic procedural law involved in O.A. Belyanevych, S.V. Glushchenko, M.V. Jafarova, L.M. Nikolenko, D.M. Prytyka, V.D. Chernadchuk and some other scientists, but research functions in terms of the economic judicial proceedings had not carried out that determines the relevance of the research topic.

The purpose of this article is the definition of the functions of economic-procedural terms and their species.

Presenting main material. Function - this kind, of course, the method of exposure. Function (from the Latin. functio - implementation, implementation) - an activity duty work, the outward manifestation of the qualities of a particular object in the system of relations, this role perform the appropriate institution or process on a [1, p. 1574]. The term "function" should include both a destination Institute and its impact on social relations. Actually, the function - is the realization of social purpose certain legal institution. Expresses the most important feature, the main features of procedural terms and aims to implement indigenous problems facing this institution at this stage of its development.

L.M. Nikolenko defines procedural function as a set of proceedings by the economic process aimed at achieving the goals and objectives of economic justice and economic norms regulated by procedural law [2, 133]. However, this definition of procedural functions L.M. Nikolenko not place removes Court who is not a participant in the economic process. Therefore, it should be noted that the procedural and legal context, scientists have disagreed about possible distinction vector direction of the procedural functions, namely the functions of the court, justice, justice, process and procedural law.

V.F. Pohorilko believes that the basic functions of the judiciary in Ukraine is the administration of justice, rightly bringing this thesis by reference to the Constitution of Ukraine, where the name of the relevant section of "Justice" [3, 577]. A.F. Kozlov said that the function of justice includes only features the merits, checking the legality of decisions that have not entered into force, reviewing the legality of decisions which became final and enforcement. Thus, the functions of the courts are determined only as directions and activities within the courts and the manner provided by the Constitution of Ukraine, laws and other normative legal acts of Ukraine [4, 58-63], which may include among others and control, organizational and entertaining, stimulating, preventive, cognitive-function identity, social, information, etc., which are released by such scientists as V.V. Gorodovenko, V.F. Covin [5, 75-76; 6, pp. 25-27].

While agreeing in general with the position of A.F. Kozlov on the allocation of procedural justice functions, it should be noted that it is crucial from the point

of view that the very purpose of existence of the court - the right to a fair trial, as emphasized in the Law of Ukraine "On ensuring the right to a fair trial" on February 12, 2015

I.M. Zaitsev determines trial, review and enforcement as a function of the judiciary, justifying this by saying that because of these features is realized only one function justice - law enforcement. In this respect, it provides more control functions that are not inherent in the proceedings, but inherent to the court which has in the judiciary [7, p.104].

One of the objectives of a fair trial, the author's view, is legitimate, lawful resolution of the case in terms of the procedural law. To this end, within the administration of justice can be identified such activities, as the outward manifestation of a court and participants in the economic process in the system of relations that have adjusted their activities in the administration of justice. Therefore, it should be recognized that the functions of the timing of the economic process is appropriate regarded as one of the levers that will ensure the right to a fair trial.

P.M. Rabinovich, investigating and analyzing function of time, revealed the special features that are designed to perform legal rules and other legal means, the nearest target of which is just temporal (time) side public relations. These features, in his opinion, are divided into general social and legal specially [8, p. 20]. According to this classification, the first group include, for example, support for temporal ordering of public life, providing certainty in the temporal social interaction of different actors, intensification of their life in order to save time. The second group is temporal organization of real opportunities for subjective rights and performance of legal duties, protection or redress, eliminate the effects of crime.

Calendar time, according to G.I. Petrov is used in society in five key interrelated forms: dating, duration, frequency, simultaneity and sequence [9, p. 46]. But G.I. Petrov approached this issue from the standpoint of substantive law. Given this legal position with respect to time, it is appropriate to define its function through procedural law. First of all, these forms should be put in a logical chain of interrelated forms that would reflect the essence of economic justice. This can be done as follows: du-

ration, consistency, repeatability, simultaneity and dating. From these criteria forming lines of trial give reason to identify the main lines of action in terms of economic judicial proceedings.

It should be noted that the criterion of duration shall be counted from the date of receipt of the claim / appeal Office Commercial Court to prevent delays in preparing cases for hearing, as well as its consideration to its logical conclusion at any stage of the proceedings by an appropriate procedural document.

Consistency over time is also the significant criterion for determining the timing of justice. This is because any process in dynamics should be logical judgment and actors must strictly follow the procedure of the case, do not bother hearing the details, which are not relevant to the case and build process of justice to a predefined plan of action which can be used in the trial in order to minimize repeats in a proceeding that will ensure efficiency and will not delay the process with unnecessary actions.

Recurrence is one of the important criteria for course of action in terms of using the trial due to the fact that every consideration of economic affairs, but is subject to legal requirements, which can be traced all the necessary repeatability stages of economic justice.

The criterion of simultaneity in the proceedings has great value taking into account procedural terms, since simultaneous action Economic Court and the participants in the hearing process allows quickly and in time to come to the decision on the merits as soon as possible. If the court or the trial participants disregard such criteria do not provide the prudence of their actions or inaction show not fully compatible contribute to achieving truth of the case, this criterion does not work that can destroy a logical chain of interrelated forms that would reflect the nature of the process and contributed to its efficiency.

Criterion dating calendar time in the economic judicial proceedings is also an important criterion as widely used primarily for the purpose of marking the time of consideration of economic affairs and certain proceedings, including the decision of the court and entry into force. Dating relationship reflect temporary phenomena, events, facts, duration and sequence of their development in the process of eco-

nomic justice. Dating achieved temporary link the present with the past and the future. Criterion dating of an important fact to determine the beginning and end stages of commercial litigation.

Defining criteria in economic time trial, it would be interesting to investigate the origins of these criteria in the light of the economic process functions to determine the functions of most procedural terms.

Given the time criteria that must be taken into account during the proceedings, based on the basic direction of the economic process, it is appropriate to allocate regulatory function of economic and procedural terms. Its features are especially positive in establishing rules of conduct in the trial, in the organization and coordination of procedural relations. A clear definition of procedural issues, including the terms outlining the legislator for certain procedural action has a regulatory function. In particular, the establishment of specific terms helps clear understanding of each of the participants in a trial period during which will be carried out a sequence of procedural actions and allows to plan in advance measures for the most effective protection of rights and interests.

A division in terms set by law and by the economic court, appropriate regulatory function procedural terms share and the regulatory and policy-static-dynamic. Regulatory-static component is expressed in terms of the impact on the procedural relationships by their attachment to the Commercial Procedure Code of Ukraine. Relevant legal provisions providing timing protection of violated rights of subjects of economic relations.

Regulatory and dynamic component is reflected in the influence of the right to procedural relationship through execution of motion (dynamics), according to the individual circumstances of justice regarding a specific case, namely on terms determined by the court, but within the period of the proceedings of the case.

Purpose procedural terms in this aspect is that they create the optimal timing mode for the administration of justice on the one hand, accelerate the proceedings of the case, on the other hand - to help avoid haste in implementing procedural rights and obligations.

Another equally important function of economic and procedural terms - interim. By establishing clearly defined terms of resolving commercial disputes, legislation and judicial authorities ensure the correct resolution of disputes, protect the violated rights of business entities. Failure time spans not only violates the individual rights of the defense, but it creates a negative attitude to the judicial system, contempt of law, which is critical for the country itself (it will constantly suffer financial loss as well as its image deteriorate). In this regard, urgent need today is to improve even simplify judicial procedures and their adaptation to European standards.

An important vector is the stability of the proceedings, which in the scientific sense given procedural terms may be determined through the stabilizing function of economic and procedural terms as the ability of the judiciary to act without changing the procedural burden the economic process, and find leverage to balance procedural rights and obligations of participants in a trial process and maintain sustainability in time for the judicial system in general and the dynamics of the litigation in particular. The essence of stability based on primary consideration the time factor as signs of continuity of operation can be determined through antagonism of instability, which can be related to the fact that despite the efforts of the studied process or object return or reach equilibrium at a certain interval of time, it (the process or object) is faced with certain difficulties that do not allow him to do that will hurt the truth in the trial, that would violate the essence of the trial. But stabilizing function can not be spread only on the economic activity of the court. After the trial the participants taking part in trials and correctly performing certain procedural actions by this fact procedural ensure the stability of the economic court.

The principal provisions regarding the timeliness of cases reflected in the Concept for improving the justice system to ensure fair trial in Ukraine in line with European standards, approved by the Decree of the President of Ukraine of 10 May 2006 № 361/2006, and the Law of Ukraine "On ensuring the right to a fair trial" on February 12, 2015 in para. 5 Section II Concept for improving the justice system to ensure fair trial in Ukraine in line with European standards states that the resolution of the

case in court without undue delay unjustified and is the key to effective protection of their individual rights. Courting as the work of the court, can not be effective if the court proceedings in the implementation of the economic process and participants will not neglect the implementation of specific actions in the terms defined by law or in the court announced.

An important feature of economic and procedural terms should recognize the individuality that has expression in individual peculiarities of each business case, making it necessary to decide the case in accordance with the general rules of economic procedural law, taking into account the aspect of an individual approach, but without violating the principle of equality. Ab. 10 p. 1 of Chapter IV of the Concept establishes that features the implementation of these principles in every form of justice should be conditioned by the specific subject matter of the case and the Court's task in dealing with it.

We can not agree to what is proposed in the Concept unify judicial procedures by combining in a single code of civil and commercial litigation, as there are no significant differences due to the specific proceedings. It seems inappropriate because of the loss of efficiency and speed of economic justice through written character of doing this through a strict procedure for compliance with the terms of the case in the economic process, which at this stage of civil justice can not be achieved because of certain characteristics of civil cases.

Almost nine years this declaratory document existed without any legislative attempts of conceptual ideas set forth therein. After February 12, 2015 President of Ukraine signed the Law of Ukraine "On the rights to a fair trial", where among other things paid attention to procedural deadlines. Unfortunately, the legislator did not go through speed and efficiency, and by procedural delays and increased some time, for example, in Art. 11,117 GIC Ukraine in accordance with changes made to this law application for review of the decision of Economic Court on the grounds provided for in paragraphs 1 and 2 of Article 11116 of the EPC of Ukraine filed within three months from the day the judgment for which application is made for review, or from the day the judgment, to which reference is made in support of the grounds

provided for in paragraphs 1 and 2 of Article COD 11116 Ukraine. In the previous version of the EPC of Ukraine according to the changes that were made to the Law of Ukraine "On judicial system and status of the courts" of July 7, 2010, this period amounted to one month.

However, some changes made by the Law of Ukraine "On the rights to a fair trial", decided some problems that were not solved earlier version of the law. So, before the legislative level does not indicate the deadline for filing an application for review of judgments of commercial courts by the Supreme Court of Ukraine if he missed for valid reasons. Now lawmakers found that if the time limit established part one - third article 11117 GPK Ukraine, for reasons deemed valid by the court at the request of the person who filed an application for revision of a judgment may renew this period, within one year from the day the court decision on the revision of the statement is filed. This provision should be used at all stages of economic justice, thus contributing to the legal certainty of stakeholders as having no legally defined deadline for complaints / applications for retrial valid reasons can be legal collapse inability to perform further judgment or inability turn judgment.

Given this, one can distinguish a function of economic procedural terms as individualization proceedings in cases which do not conflict with the law, which can be defined as the direction of the Commercial Court and the trial participants, based on the position of individual approach to the economic affairs at the undeniable observance of substantive and procedural law. This will provide the very idea of the existence of an economic court as a tool for achieving justice in resolving a commercial dispute.

Identification of special features designed to carry out economic and procedural terms, allows to distinguish among all the functions of those rights that are relevant to institute procedural terms. They are:

- Regulatory function, by which time addresses are governed by the Commercial Court and the terms established by the economic court, and creates the optimal timing mode for the administration of justice;

- A security feature which is to protect the rights of economic entities affected by the timing of legislative protection of violated rights;

- Stability - is the expression that economic and procedural terms "balance" stabilize the legal relations arising in the course of justice;

- Function individualization proceedings in cases which do not conflict with the law that has expression in the account of the characteristics of individual commercial cases.

Conclusions. Thus, the function of economic and procedural terms appropriate to determine how activities and external displays qualities of judgment and economic actors in economic relations procedural adjusting their activities to a comprehensive, objective and complete solution to economic affairs.

Using the functions essence of economic and procedural terms, they affect the quality of justice in terms of optimizing the time allotted for consideration of economic affairs, direct the trial to use the parameters of reasonableness in the use of time qualitative, not quantitative indicators, which enables economic process to define priorities in improving terms of economic justice.

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PARTICIPATION IN THE BUSINESS ENTITY AS LEGAL BOND

Summary

The article deals with theoretical views of jurists on the category of legal bond, the practice of application of this category by Ukrainian legislator, the analysis of which result in presentation of features and definition of legal bond. These features apply to the complex relationships that occur between the business entity and its members, resulting in the conclusion that participation in a business entity corresponds to features of the legal bond.

Key words: legal relations, legal bond, business entities

Formulation of the problem. The legal nature of relationships that occur between the business entity and its participants is one of the issues of corporate law. Typically, this issue is addressed by researchers in the context of relations of belonging to a particular group (real, obligation or institutional, civil or economic, legal, property and non-property etc.), Remains unclear however many aspects of the problem these relations in the context of general legal theory legal categories, in particular - their complex nature of the problem in the context of the legal category of communication.

The purpose of this study is to clarify the category legal relationship by analyzing theses expressed by scientists - lawyers and the practice of this category Ukrainian legislator and the subsequent extrapolation of this category to the relationship between the business entity and its member.

Analysis of recent research and publications. In the theory of law legal relationship problems studied authors such as S.S. Alyeksyeyev, E.Z. Bekbayev,

field staff A.F.Vyshnevskoho, N.A.Horbatok and V.A.Kuchynskoho, Yu.I.Hrevtsov, V.I.Leushyn, V.N.Protasov, O.F.Skakun, L.B. Tiunova, L.S.Yavych. These authors have expressed conflicting views on the legal category of communication.

Presenting main material. Thus, some researchers, including S.S. Alekseev [1, s.82-85], V.I. Leushyn [2, s.338] and A.F. Wisniewski, N.A. Horbatok, V.A. Kuczynski [3, s. 418] understand any legal relationship as the relationship and believe that these concepts are complete synonyms.

Other authors distinguish between legal categories and legal relations, but justify this difference in different ways.

In particular, L.B. Tiunova comes from the fact that "relations in science often determined through the concept of communication ... connection should be understood as a general, generic concept that underlies social relations" [4, p. 36].

Instead, V.N. Protasov believes that communication is a form of legal relationship, characterized by the interaction between the actors. In particular, the subject of property rights, according to the author said, is with others in legal, but legal connection between it and other entities available [5, c.60]. However, the legal connection, according to the researchers - is essential, together with the actors (understood as elements of relationships), their rights and duties (which are understood to be legal entities properties) as part of legal system understood as the appropriate legal framework relationship "structure formation relationship based on rights and obligations of both means occurrence relationship as a system. This is because the potential relationship elements (entities) already existed, but lacked structure, subjects were not united appropriate legal connection" [5, c.54].

If V.N. Protasov sees excellent property legal relations cooperation entities, L.S. Yavych contrary, notes that "the legal relationship different from the legal ties as the degree of specificity of subjects and their rights (Duty ' bonds) ... in legal, unlike legal ties, there is the behavior of people interacting, mutually conditioned activities ... the difference between formal approach legal relations and legal relationships is not essential and comes to specifying sub ' the composition of the object, rights and

duties "[6, s.210-211], that is, according L.S.Yavycha, in legal relations between subjects available.

Opinion O.F.Skakun is actually derived from the ideas of right and L.S.Yavycha L.B.Tiunovoyi: it understands the legal relationship as "authorized person interaction not only with a particular person obliged (as in relationship), but with all members of society, including those who are not obliged to behave actively, that legal relationship is a complex relationships, wider than a relationship where available one particular legal relationship - the right of one person strictly related to the duties of the other" [7, c. 619].

Yu.I. Hrevtsov building on ideas L.S. Yavycha understands the legal relations as enshrined right structure entities, relations between them through the regulation of the law are legal and stresses that legal relationships have always underpin legal relations [8, c.58]. According to this researcher legal relations providing for the possibility of action, while the relationship - specific interaction of the parties, therefore, the legal relationships is the stage of legal development, a prerequisite of their origin [8, c.54, 55], while "relatively independent behavior of social and legal relationship is its direct meaning, as opposed to the content of the social relations under which usually understand each other due to the behavior of the parties relationship (cooperation)" [8, c. 53-54].

The original interpretation value categories "legal connection" and "legal relations" offers E.Z. Bekbayev, who believes that the legal relationship should be divided into private legal relations and legal ties criteria for a causal relationship between participation in legal rights and his behavior: in their own legal entity comes as a result of their actions, the legal ties - by events [9].

You can see that theorists of law express a very wide range of views on understanding the essence of the category of "legal connection". However, this category is not just theoretical - it is also legal.

In particular, the legal system in Ukraine through the category defined legal relationship such an important institution as citizenship - according to Article 1 of the Law of Ukraine "On Citizenship" is a legal connection between natural person

and Ukraine that become apparent in their mutual rights and responsibilities. It should be noted that the doctrinal definition of citizenship as a constitutional [10, c.127], and internationally [11, c.157] may also repel the category of legal relationship since Soviet times [12, c.69].

This category is also used in Part 6 st. 211 Family Code of Ukraine, which states that if a child has only the mother or only father that due to the adoption lose legal relationship with her adoptive child may be a man or one woman.

The term is also used actively in the comment author's Family Code of Ukraine - st.232 Z.V. Romovskoyi to "Legal consequences of adoption," in particular, where the following described (in the following quotes, the term "legal relationship" highlighted by me – A.S.):

- If the child is adopted by a woman, "it can be saved rights and obligations of the father, and vice versa, if the child is adopted by only such people can be saved to the rights and duties of the mother of the child. Such preserve legal connection is possible only at the request of the adopter ';

- "Adoption is called" incomplete "if the law is lost legal relationship between the child and her relatives by origin - grandmother, grandfather, brothers, sisters. Regarding the legal relationship between the mother and family (or) parent and child, it is lost forever ";

- "Legal connection can be maintained only with her immediate family, grandmother, grandfather, brothers and sisters";

- "Termination of legal relationship between the adopted child and its parents and other relatives by birth - is just one of the consequences of adoption. Behind him comes another simultaneously - of personal and property rights and duties between the child and adoptive parents ... adopters receive legal status of mother, father and adopted - the legal status of the child "[13, c.444-445].

In addition, the author's comments Z.V. Romovskoyi to Part 6 st.211 Family Code of Ukraine, which, as noted above, the term "legal link" is an example to explain the content of the legal norm, which instead "lost legal connection" indicates "lost legal status" [13, c.413].

Synthesis legislator practice use the term "legal connection" in Legal System of Ukraine reveals the following essential features in this category:

- Legal connection requires a complex set of mutual rights and obligations of the two entities (citizenship as a legal connection between natural person and Ukraine become apparent in their mutual rights and obligations, occurrence or termination of the legal conn communication is the emergence during adoption or termination of the totality of rights and obligations between the parties, both property and non-property), so - legal relationship is a complex set of relationships;

- Legal relationship arising from obtaining specific legal status (in the case of citizenship - the general status of the citizen in case of adoption - the special legal status of the adopter);

- Rights that occur in individuals with regard to acquiring the legal status is exclusive (the person acquiring the status of citizen origin means provided for Article 38 of the Constitution of Ukraine rights to participate in public affairs, in national and local referendums, to freely elect and be elected to state and local governments, the right of access to the civil service and to service in local government, in turn, adoption, under Part 4 st. 232 Family Code of Ukraine provides adopters about the adopted set of all rights of parents - to determine the baby name and place of residence, his upbringing, to the child, its protection and taking children away from others, and then, under certain circumstances - for a child alimony), that such rights are not available to any other person not having a legal status and are not legal in this connection, its importance for such rights qualitatively different from the rights of any third party concerning the state or adopted;

- The above law which provides the status of citizen and the adopter is not only exclusive, but also crucial for meaningful legal relationship of the other party (the state or adopted) in the sense that its implementation largely determines the fate and state of being or adopted.

Consequently, these rights by its importance qualitatively different from rights that any other person with respect to or adopted state.

Summing up the application category of "legal connection" as a legal term legal system of Ukraine can be concluded that this category means the complex relationships between individuals arising from obtaining one of these people a certain status, characterized in that law which provides such legal status on another person and implemented in legal relations that constitute the legal relationship qualitatively different from the rights of any third parties on the other side legal due since (1) is exclusive in the sense that they are not available for those who do not have the appropriate status and not in such legal communications and (2) is of crucial significance for the other side of legal relationship, in the sense that the implementation of these rights largely determines its fate and existence.

In our opinion the above legal relationship signs are universal and can be applied to other phenomena legal reality, in particular - to a set of relations that arise between the business entity and its member.

A participant of business partnership - a special legal status of the person who was the owner of the share in the authorized capital of a business partnership due to the introduction of the authorized (share) capital contribution or purchase of such shares in the previous owner. Article 10 of the Law of Ukraine "On Business Associations", 116 Civil Code of Ukraine, Part 1 st. 88 Code of Ukraine contain an identical list of rights by a business partnership, including:

- The right to participate in management of the company in the manner determined by the constituent documents, except as provided by law;

- The right to participate in the distribution of company profits and getting their share;

- The right to receive information on the activities of the company (familiar with annual reports, reports, minutes of meetings);

- The right to withdraw from the company (not a shareholder); the right to make alienation of its share (shares).

This list is not exhaustive, since the above rules contain comments that the participants of economic societies may have other rights under the law and constituent documents. Indeed, legislation analysis indicates the presence of a large number of

other rights of business entities. So, it is a tentative list of important rights by a business partnership that he has, regardless of the size of the particles it belongs.

Ukraine st.167 Civil Code defines corporate law as a set of economic and moral rights arising from ownership of shares (shares) in the authorized capital (property) of economic organization, participation in management; to participate in getting the share of income; to participate in getting the share of assets in case of liquidation of the organization, as well as other rights provided by the law and constituent documents.

If the term "right's" always applies to individual rights and often means an abstract entitlement of any member of any society, regardless of the size of its share, corporate law - is not only individual rights but also the whole set of rights arising from acquisition share (stocks, shares) of a certain size (possession of a certain number of shares) in a particular corporate enterprises, these rights are different in terms of different stakeholders (shareholders, depositors, members).

Right by the business partnership or corporate rights not available to persons who are not relevant participant status of a business partnership, no other person, except members of a business partnership, have no right to vote at general meetings of members, receive dividends and others. Consequently, these rights are exclusive.

On the other hand, members of the business partnership resolve all important issues of economic society, who would of Directors, whether to allocate profits of a business partnership between its participants, as dividends or these funds should be used to increase share capital, and finally - whether Society in general continue or discontinue its activities through liquidation / reorganization, that is - the realization of rights of human economic society largely determines his fate and existence. Consequently, these rights are of crucial importance for their business partnership.

Conclusions. Thus, the rights of economic society qualitatively different from the rights of any third party regarding the business partnership.

Finally, it should be noted the complex nature of economic relations between the

company and its members, resulting from the complex nature of human participant.

You can see that the complex relationship between the participant and economic society have all the signs of legal communications.

This particular legal relationship, the complex relationships can be described by the term "part in society."

So part in society - a complex relationship between the participant and the business entity that has featured legal relationship.

Rights which the participant has on economic society (corporate law), qualitatively different from the rights of any third parties on commercial companies, as are exclusive in the sense that they are not accessible to people who do not have the status of participant and not in Due to this legal business entity and is crucial for meaningful business partnership as a legal party connection, in the sense that the implementation of these rights largely determines the fate of being and economic society.

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MATTERS OF JUDICIAL PROCEDURE OF DETECTION OF THE ORIGIN AND REGISTRATION OF A CHILD WHEN THE SURROGACY IS USED

Summary

The article focuses on studying materials of judicial practice of Ukraine with regards to detection of origin and registration of a child when the assisted reproductive technology is used by means of surrogacy.

Key words: judicial practice, surrogacy, detection of descent and procedure of registration of children.

Formulation of the problem. At present due to the demographic crisis and the increasing number of cases of infertility in men of reproductive age particularly acute need for surrogacy. Every year assisted reproductive technologies (hereinafter - ART) by surrogacy are becoming more and more important both in Ukraine and in the world.

The relevance of the research topics is that underdevelopment of legislative support, availability of legislative gaps, lack of a unified regulatory framework for the regulation of surrogacy indicates the need to improve the existing legislation. Thus, one of the approaches to study the range of issues that may arise in the mechanism of

legal regulation of surrogacy IVF method, is to study the materials of judicial practice.

Analysis of recent research and publications. Various aspects of IVF, surrogacy and peculiarities of legal regulation are investigated in domestic and foreign legal literature by such authors as: N. Ablyatipova, O. Ballayeva, T. Borisova, M. Baryshnikov, A. Holovaschuk, T. Drobyshevskiy, J. Drohonets , S. Zhuravlova, A. Kolomiets, Krasavchykova L., A. Cyhar, A. Lukashev, R. Maidanyk, M. Malyeyina A. Pestrykova, G. Romanovsky, Z. Romovska, K. Svitnev, I. Senyuta, P. Stefanchuk, S. Stetsenko, O. Hazova, N. Kharaja, P. Hollender and others.

The article is to study the judicial practice of establishing the child's origin, the cancellation and modification to the record of the registry offices etc., the application of ART by surrogacy, identify issues and provide suggestions for their solution.

Presenting main material. The question of the role and place of judicial practice in the mechanism of legal regulation always aroused interest even Roman lawyers, later theorists and practitioners of various historical stages of social development [1]. But the attitude of lawyers on this issue has not always been the same.

Analyzing the work of legal scholars pre-Soviet period, it should be noted ambiguity estimates place and importance of jurisprudence in the mechanism of legal regulation. G.F. Shershenevich regarded jurisprudence as a rule established by the court in its judgment of individual cases [2, 86]. M.Malyshev as M.Korkunov, considered the jurisprudence in broad terms as a separate form of common law [3, 85-86; 357-358]. D.I. Meyer, investigating the source of civil law, noted that the jurisprudence is always a law assistant, supplementing its gaps, more precisely defining the application of the law to these cases. Over time, the legislature can certainly transform a judicial customs laws [4, 59]. Y.O. Pokrovsky, investigating the problem of the certainty of law negatively assessed, in his words, "free judicial lawmaking" [5, 105].

Socialist law in general, and particularly the Soviet judicial precedent is not regarded as a source of law [6, 379].

Modern research scientists jurist nature of judicial practice also evaluated differently [1] But certainly there is a close relationship between the rule of law and

court decisions, often on the basis of generalization of judicial practice formed position of the legislator, which further secured in the provisions adopted regulations [1].

At present the registration of birth and the child of Origin regulated by the Civil and Family Code of Ukraine, the Law of Ukraine "On organs of civil registration," Rules of civil registration in Ukraine, approved by the Ministry of Justice of Ukraine of 18.10.2000 № 52/5 (as revised under the Ministry of Justice of Ukraine of 22.11.2007 № 1154/5) [7].

According to Article 49 of the Civil Code of Ukraine (hereinafter - the Civil Code of Ukraine) acts of civil status are events and actions are inextricably linked to the natural person and initiate, modify, supplement or terminate its ability to be the subject of civil rights and obligations. In particular, an act of civil status is the birth of an individual and establish its origin, which is subject to state registration. Civil registration is carried out according to law. The birth of the individual and its origin is also subject to mandatory inclusion in the State Register civil citizens in the judiciary in the manner determined by the Cabinet of Ministers of Ukraine.

Article 123 of the Family Code of Ukraine (hereinafter - UK Ukraine) stipulates that if a child born wife, conceived as a result of assisted reproductive technologies made the written consent of her husband, he recorded the child's father. In the case of the transfer of the body of another woman human embryo conceived by spouses as a result of assisted reproductive technologies, the child's parents are spouses. Also spouse parents recognized child born wife after its transfer to the body of human embryos, conceived by her husband and another woman as a result of assisted reproductive technology.

According to Art. Ukraine 139 UK Court decides disputes the claim maternity or the woman who in the birth register recorded the child's mother - the deletion of information about it as the mother of the birth record of the child, or the claim of a woman who considers herself a mother child - the recognition of motherhood and amendments to the record of the child's birth in which the mother recorded another woman. When the baby is born as a result of implantation of the embryo con-

ceived by spouses, the body of another woman or embryo, conceived by a man who is married and another woman - in the body of his wife (parts 2, 3. 123 SC Ukraine) motherhood can not be challenged [8].

The subject of proof in these cases is under no kinship between the child and a woman, as a mother recorded in the birth record of the child, and the presence of such a relationship between a child and a woman who feels her mother.

For requirements on contesting maternal woman, who is recorded as the child's mother, the limitation period is not set, but for the demands of women for recognition of her maternity statute of limitations is one year, and of course starts from the day when a woman learned (could know), a mother 's child [9].

Declaration of paternity or paternity recognition are considered by the court if the birth certificate is not indicated certain person and the child's father may be submitted mother, guardian or caretaker of the child or the child of age [10].

Despite the fact that surrogacy appeared recently, has linked with him a wide range of issues as ethics and law, and jurisprudence, which is reflected in the Unified State Register of judgments Ukraine [11], on disputes arising from the use of surrogacy can not be called an established and broad. After the study said array of judgments, can identify certain categories of civil disputes.

The fact that in determining the origin of the child when using IVF surrogacy method, in Ukraine there are problems in the application of existing law despite the fact that there is a legally prescribed procedure for registration of children born by surrogacy agencies in the Registry Office.

The first category of civil disputes include disputes about the recognition of the transaction (the contract of surrogacy) invalid.

In the absence of direct legal regulation of this contract raises the question of its form [12], as well as violations of legal requirements regarding the form of the contract leads to its invalidity.

Thus, constitutive feature of surrogacy, as the M.V. Antokolsky is the time of conclusion of the contract conception of a surrogate mother carrying a child in order to further establish the parental relationship between this child and persons who

have signed this agreement with a surrogate mother [13, 181-182]. That is, rise to legal relations concerning surrogacy is an agreement between the surrogate mother and the biological parents of the child bearing, which must act as the primary means of legal regulation of relations surrogate motherhood program participants. This agreement is a major document that defines relations biological parents of a surrogate mother, and shall consist accordance with current legislation of Ukraine, taking into account individual requirements, wishes and opportunities couple and the surrogate mother. It is essential that such an agreement should be concluded just before the moment of conception of the child, because, of course, the contract of assignment are conceived or unborn child should be recognized void as being contrary to the morals of the society [14, 383; 15].

Treaty surrogacy certainly establishes legal relations concerning two types of relationships that occur between the surrogate mother and the couple that offers its genetic material, moral and property. The treaty is of pregnancy and birth and subsequent transfer of couples, providing genetic material that provide a kind of service for which the surrogate mother receives remuneration [12].

Agreement on pregnancy and childbirth by IVF surrogacy certainly not apply to those listed mixed civil contracts, which also has the aleatory character.

Undoubtedly, in practice, this agreement is a three-way, and one of the parties serving institution, without which fertilization method surrogacy impossible and that certainly is a legal entity, which leads to compulsory use writing to these contractual relationships, which expressly provides active legislation.

In addition, the contract will certainly have a duty to make a surrogate mother and the baby, whose life is in accordance with international and national law is the highest social value.

The legislator usually involves the use of notarization, depending on the importance of the agreement for its participants and the object of the contract value. However, the contract for surrogacy in Ukraine notarial form expressly provided by applicable law.

On the necessity of the modern law of the changes shows and jurisprudence.

For example, the surrogate mother has made information about themselves as the child's mother in the state register of civil status and thus tried to challenge maternity in court. She filed a lawsuit, which requested the annulment of an agreement on joint implementation of ART by surrogacy concluded between spouses, and her health care institution "Institute of Genetics Reproductions» 20.11.2009.

In substantiation of the claim it referred to the fact that the "Institute of Genetics Reproductions» were written mutual agreement on the implementation of ART by surrogate mothers, but fathers customers contract terms are not fulfilled, not submitted to the organs Registry Office notarized consent surrogate mother for registration Italian citizens and parents of children had no parents register their births. The contract parties have not indicated the date of its signature, not his notarized testified that in her opinion was the basis for declaring it invalid [16].

The decision of Shevchenko district court. Kyiv from 25.07.2013. Was denied in full.

From the above it can be concluded that to avoid such civil disputes, surrogacy agreement with a view to preventing violations of rights and legal interests of its members and the unborn child shall be concluded in writing and certified by a notary.

This notaries should match as closely to the verification of documents submitted along with the agreement to establish the real will of the parties and strictly observe the secrecy of notarial acts and information received in connection with the identity of the treaty [12].

The second category of civil disputes make the case for establishing the fact that has legal value (de facto - paternity; cancellation of the birth record of the child).

The reason for their occurrence is the imperfect mechanism of regulation of child registration, the application by the Registry Office by IVF surrogacy.

Thus, the decision of Pervomaisky district court of Kharkiv region 03.07.2013 [17] Pechersk District Court. Kyiv from 23.08.2012 [18] for the satisfaction of claims genetic parents to cancel the record indicate that the effect of delayed execution

of the notarial agreement for the registration of the child, lack of legal regulations for the filing of the certificate of fact by fertilization surrogacy medical institution Department Registry Office, became surrogate mothers sign as real mothers of infants in organs Registry Office.

The most interesting of decisions on cases of this type, is ruling the panel of judges of the Chamber of Civil Cases of the Supreme Court of Ukraine of 04.10.2013 [19].

Thus, the purpose of the registration of genetic parents, parents of infants Department Registry Office Bar district Department of Justice Clinic "VIOTEHSOM" was granted a certificate of in vitro fertilization and embryo transfer into the uterus of a surrogate mother.

However, the surrogate mother 29.11.2010 Registered in the Registry Office of children. Baku, stating their names, noting the mother herself, and her father - her husband and refused to transfer children to their biological parents. Cassation complaints surrogate mother and her husband, Prosecutor Vinnytsia region, representative of the Supreme Council of Ukraine on Human Rights in court were rejected. The court acknowledged paternity for biological fathers of children.

Note that in all these cases the true parents of children faced with the necessity of filing another claim - "On taking children" according to Art. 163 SC Ukraine.

In order to improve the legal regulation of these cases it appears that the right solution can be to create a unified state register "The fact of the method of fertilization surrogacy" with a tolerance of registry office workers to that information, and with the consolidation of mandatory notarial form surrogacy contract, the issuance of the above no information is required.

The third type of civil disputes by using IVF surrogacy include claims on amendments to the record to register the birth in one day. Examples of decisions on cases of this type is the Pechersk District Court. Kyiv from 03.08.2012 [20]. Claimants whose claim was accepted, appealed to the court to establish that the baby is born at a certain time, justifying their claims that the couple in July 2012 had three children - a daughter born to a surrogate mother and son, also born via other reproduc-

tive technologies the surrogate mother. Children born with a difference over time in eight days. Registration of birth in one day, could further protect children from unlawful interference in their private and family life and to protect their interests.

Given that Ukraine Insurance regulates the changes adopted in the interest of the child to give birth, but are not regulated like the issue of children born using ART, the court applied the analogy of the law, namely the rules of art. 230 of the Civil Code of Ukraine to change the date of birth.

With the creation of the unified state register "The fact of the method of fertilization surrogacy" and the emergence of appropriate use instructions for this category of disputes can completely disappear, and re-registration of children in such cases will be technical in nature at the request of the biological parents to the registry office.

Conclusions. After analysis of the current judicial practice on civil disputes that arise in the application of assisted reproductive technologies surrogacy method can distinguish the following categories of cases: recognition of the transaction (the contract of surrogacy) void; establishing the fact that has legal value (de facto - paternity; cancellation of the birth record of the child); amending the record to register children in one day.

Most of the issues by using IVF surrogacy related imperfections procedure for establishing the origin of a newborn child, making changes to the record of the child's parents and the time of its birth. Said is the need to improve the legal mechanism of registration of children by the Registry Office, amending existing legislation on mandatory notarial form of surrogate motherhood agreement and the creation of a single state register "The fact insemination by surrogacy."

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LIMITATION IN CIVIL LAW OF UKRAINE: HISTORICAL LEGAL RESEARCH

Summary

The article focuses on research of historical and legal limitations in civil law of Ukraine. The article studies the questions of when and under what circumstances prescription in civil law began to emerge and finds that the limitation period was set for different types of relationships at different times.

Key words: limitation, time limit, limitation of action, usucapion.

The territory of Ukraine at different points in history was under the rule of different states. This Lithuania, Poland, Russian and Austro-Hungarian Empire. And each of these countries has left its mark on a system of Ukraine has the right as a sovereign state. To explore the issue of limitations and its role in civil matters in Ukraine, we need to address, especially in historical sources.

The aim of this work is to study the history and development since its old appearance to the establishment at the legislative level in Ukraine. Note that laid the foundation of old time, namely the period of time called a term. For the onset of old legal value has not the time, and it expired (end). At the same time, it should be noted that the expiration (ending) the term is not enough to attack the legal consequences ago.

It is advisable to pay attention and consider the origin, formation of limitations in the science of civil law in Ukraine, using as legislation (Vislytskyy charter, the Lithuanian Statute, "Rights, which is suing the Little Russian people," General Austrian Civil Code in 1811 and the Laws of Empire 1832, Civil Code of the Ukrainian

SSR in 1922 and the Civil Code of the Ukrainian SSR in 1963) and the work of researchers who studied antiquity as such or its variations throughout its development. Scientific operating time, unfortunately, was not enough to clarify many problems in this area, especially as the issue of limitation generally given little space in research.

Formulation of the problem. In reviewing scientific papers and historical sources there are some problematic aspects, which in turn is scarcely explored. First of all, it is the question of when and under what circumstances prescription in civil law began to emerge; that the limitation period was set for different types of relationships (eg, that term was set to buy estates that were mortgaged, the period for recovery of property lender widows and reclaim their money from the debtor).

Historical aspects of limitations in civil matters are considered leading scientists and lawyers, as I.E. Engelmann, M.Ya. Kirillov, I.B. Novitsky, V.P. Gribanov.

Analysis of recent research and publications. Modern studies of these same issues are marked works of Ukrainian lawyers T.M. Vahonyevoyi, V.V. Lutsya, O.V. Pyshnyak and V.I. Tsikalo which touched a wide range of issues relative terms.

Presenting main material. The first written monuments Ukrainian law does not recognize the substantive strength by prescription, for example, "n Truth" in all its editions denied the right prescription.

Prescription Ukraine in civil matters originates from Vislytskyy statute Polish king Casimir in 1347, which operated at Western. The charter of eight articles on the law of limitations that are inconsistent with casual style and presentation. In contrast to these legal instruments, which had the overall style of presentation and contained a list of requirements to which the prescription is not extended, the charter of King Casimir recalled those requirements which prescription applied [10, 283].

Vislytskyy charter in 1347 installed 30-year-old prescription to buy estates, which were pledged, 6-year-old prescription - for recovery of property widow and 2-year-old prescription - to refer a complaint to the unauthorized construction of rafts in a foreign estate. To reclaim the former trustees children, out-of-care - prescription set

period of 3 years and 3 months, and 4-year-old prescription - to reclaim the money lender to the debtor [5, 10].

It should be noted that Vislytskyy statute already provides for some elements prescription, although it is not yet such calls. For example, a person who acquired the estate without paying the full cost, and owned this estate about 3 years and 3 months, could not bring proceedings for his return to the previous owner. Obviously, the authors of this piece of legislation considered quiet possession of the estate within the statutory period provided partial payment of its value as the basis of ownership to the purchaser and the termination of ownership of disposing.

Unlike Vislytskyy statute, Lithuanian statutes, which were used in most of Ukraine have a common style of rules on the prescription and give it a name - "rural remoteness" [5, p.139].

"Everyone who is anyone in any given letter or made a record with proper certification or to the appropriate official, and he who recorded was silent for 10 years and enjoyed record such records after the expiry of the 10-year-old should not have any force. However, if anyone within the rural-old brought an action, and the silence has not lost his rights, then he does not lose it by prescription "[5, p.138].

Lithuanian Statute 1529 has assumed such a ground for rural break ago, as an appeal against the court. Lithuanian statutes also contain some rules early course of rural old. In accordance with paragraph. Section 18 of the First Lithuanian Statute 1529, if anyone within the rural-old brought an action, and the silence has not lost his rights, then he does not lose it by prescription [5, p.138].

Another feature of the Lithuanian Statute - they placed the burden of proving the legality of possession by the clerk prescription to a person who relied on prescription. Thus, Lithuanian statutes have not distinguished between prescription and limitation which only covered by - the clerk prescription. At the same time the Third Lithuanian Statute 1588 was installed 10-year-old prescription to reclaim property and the money awarded in respect of a court decision. So here are talking about executive prescription - prescription enforcement voluntarily unfulfilled obligation [10, p. 284].

Next document - "Rights, which is suing Little People" in 1743. According to this legal act, introduced various length limitations depending on the type of property that was the subject of dispute. "If anyone wanted to request a court due to him by any natural or acquired rights estates, people or any immovable property, he should not keep himself silent for 10 years, the property has the right to appeal [2, p.170].

For example, if the person whom the court decision awarded the real estate for 10 years did not require the debtor of the property, she lost him right [2, p.170]. If the plaintiff was awarded movable property it right after 10 years it is not lost, however, apply to the court for enforcement of no longer could.

Thus, the "rights which is suing Little people" supplemented Institute of limitations in civil law another reason breaks its course - bound person committing actions that acknowledge the debt, but the ground was limited in scope.

Catherine II Manifesto 1787 "On different people bestowed mercy," which distributed the Left Bank Ukraine, which at the time was part of the Russian empire, returned to uniform decade ago. "But our manifesto 17 March 1775 legalized, any case or something, that hasn't become well-known in 10 years, must be subjected to oblivion forever. This right to 10-years term applies on all civil affairs as between private persons, and so between them and government; and later, on real or movable property without the one who owns it or will not make the claim 10 years or 10 years will not be movement on submitted case co sides of someone, let such case will be repaid and case will be subjected to oblivion forever"[10, p . 284].

It should be noted that in Ukraine had the use of two major codification, namely the Austrian General Civil Code in 1811 and the Laws of the Russian Empire in 1832, which provided detailed regulation of limitation in civil relations. They provided all kinds of old and contained an exhaustive list of grounds for suspension and interruption of limitation, and relationships that are not exposed ago.

General Austrian Civil Code and the Laws of empire separately established legal consequences of the offensive limitations and conditions by the court.

In the Laws of the Russian Empire to describe different types of limitations were used the term "Zemsky (repaid) prescription" and "acquisitive prescription"; in turn, in the General Austrian civil code in 1811 acted term "prescription" and "outstay" [10, p.284].

Different was an understanding between the claim and the value of acquisitive prescription. Austrian Civil Code in this regard was based on the theory of "common limitations", which was founded in the eighteenth century.

Vesting always corresponds to his loss, and loss - acquisition because repaid (claim) and prescription were considered as two manifestations of the same phenomenon. This interpretation of old been criticized Ukrainian scientists.

In the Laws of the Russian Empire that ratio, according to Professor GF Shershenevich, interpreted differently: "Denying of the single prescription, sometimes covers all cases, at present distinguish case prescription, due which all of the rights become lost, limitations and possessions, that prospered for obtaining property rights. This is not sides of one and the same legal institute, two law this institute" [12, s.224].

Russian law provided for 10-year term for the rural old, and for the old ownership.

In the Austrian civil code establishes two terms for "outstay" - 3 years of relative motion and 30 years for real estate and a single 30-year term for "prescription"

Divers were also provided for the acquisition of property acquisitive prescription. Art. 533 Laws of empire provided that quiet, uninterrupted and undisputed possession in the form of property transformed into ownership when it lasted for statutory limitation. For the acquisition of property rights on the basis of "outstay", according to art. 1460 Austrian General Civil Code, demanded, among other conditions, also legally acquiring property and possession of good faith [1, p. 34].

As noted O. Lyubavskyy, there is no legislation that would be more for the expanded boundaries of old Russian possession and created more possible cases of acquisition [5, p.123].

The Soviet period in the history of limitations in civil matters was submitted to the Civil Code of the Ukrainian SSR in 1922 and the Civil Code of the Ukrain-

ian SSR in 1963. The peculiarity of these laws is that they refused to prescription. In explaining codification love NKYU RSFSR stated: "Civil Code provides just for case prescription, not purchased prescription, so as for juridical private persons are impossible. According to Article 58 CC: estate, which owner is unknown (no one's property) move into property state" [8, Part 1 of Article 58].

Note that the Civil Code of the Ukrainian SSR distinction introduced the statute of limitations, depending on the entities between which it is applied.

Yes, art. 44 of the Central Committee of USSR in 1922 included: "The period of limitation in disputes between state, cooperative and public institutions, enterprises and organizations in the half year, and the disputes of individuals and organizations, both among themselves and with institutions, companies and organizations - one year "[7, Part 1 of Art. 44]. The general limitation period under Article 71 of the Central Committee of USSR was established in 1963 - three years, and claims of government organizations, cooperative and other public organizations - 1 year" [8, Part 1 of Art. 71].

Thus, the Soviet Civil Code, as well as pre-revolutionary legislation were mandatory in applying the limitation period. Article 75 of the Central Committee of USSR in 1963 regulates: statute of limitations applied by the court or arbitration tribunal regardless of the statements of the parties. As for the old voluntary enforcement of the obligation outstanding (executive statute of limitations), the rules of it were placed in codes of practice, and therefore the civil science representatives considered it to procedural deadlines [8, Part 1 st.75].

The current Civil Code of Ukraine in 2003 in Art. 256 stipulates that the statute of limitations - a period within which a person may apply to the court to demand the protection of their civil rights and interests [9, st.256].

Under the Civil Code of Ukraine statute of limitations is divided into general and special. General statute of limitations set at three years, as defined in Article 257 of the Code. It applies to all claims except those which check specific rules. For certain types of claims the law with specific statute of limitations, short or long compared with the general statute of limitations [9, p. 1, Art. 258].

Limitation of action in one year applies in particular to requirements:

1) the penalty (fine, penalty);

2) to refute false information placed in the media.

In this case, the statute of limitations is calculated from the date of placement of this information in the media or from the date when the person learned or could learn of this information;

3) to transfer to the co-owner rights and obligations of the buyer in case of violation of pre-emptive right to purchase shares in right of common share ownership;

4) in connection with deficiencies goods sold;

5) termination of the contract of gift;

6) in connection with the carriage of cargo and mail;

7) appeal against the actions of executor [9, p. 2, Art. 258].

Civil Code of Ukraine has also changed some of the limitation period. In particular, according to Art. 258 limitation period on claims for a penalty, the shortcomings of goods sold in connection with the transportation of cargo and mail that previously made up of 6 months, was extended to 1 year.

Also, the Civil Code of Ukraine introduced special reduced year limitation period on claims for transfer to co-owner rights and obligations of the buyer in case of violation of pre-emptive right to purchase shares in common property right of termination of the contract of gift, appeal actions of executor.

To claims in connection with deficiencies goods sold applicable statute of limitations of one year, calculated from the date of discovery of defects within the period specified in Article 680 of the Code, and if the product is installed warranty period (expiration date), - since the discovery of defects within the warranty period (expiration date).

Conclusions. After study the formation and development of limitations in civil law Ukraine can draw the following conclusions. The first mention of remoteness on Ukrainian territories appear in Vislytskyy Polish king Casimir charter, dated 1347 year.

The following document, which refers to the antiquity - Lithuanian statutes of 1529, 1566 and 1588. In these statutes appears the concept of "rural remoteness" and the rules of course, but they do not distinguish between prescription and call sign.

In 1743, "Rights, which is suing the Little Russian people" have introduced different length limitations depending on the type of property that was the subject of dispute.

In the early 19th century in the Ukraine had the use of two major codification: General Austrian Civil Code in 1811 and the Laws of the Russian Empire in 1832. They provide detailed regulation of limitation in civil relations.

The Soviet period in the history of old was reflected in two civil code SSR 1922 and 1963. These codified acts abandoned prescription, introduced demarcation of limitation periods depending on the subjects, between which it was used, but their norms as norms of pre-revolutionary legislation were mandatory.

At present the main legal act that regulates the period of limitation in civil law is the Civil Code of Ukraine. The general limitation period is three years. Reduced special limitation period (one year) and special extended limitation periods (five, ten years) applied in cases stipulated by the Civil Code of Ukraine.

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THE MATTER OF ENFORCEMENT OF THE RIGHT TO PROTECTION OF FAMILY RIGHTS AND INTERESTS IN COURT

Summary

The article focuses on studying the issue of enforcement of the right to protection of family rights and interests in court. Based on the analysis of legislation and judicial practice on protection of family rights and interests, proposals for its improvement are formulated.

Key words: family rights; family interests; right to protection; application to court; civil capacity to sue.

Formulation of the problem. The right to protection of family rights and interests judicially settled articles of Chapter 2 and other Family Code of Ukraine (hereinafter - the Code of Ukraine) and articles of the Civil Code of Ukraine (hereinafter - the Civil Code of Ukraine). Procedural aspects of the right to defense - Civil Procedural Code of Ukraine (hereinafter - the CPC of Ukraine). The right to protection of family rights and interests are also provided to international regulations.

In judicial practice, there are many difficulties and errors that lead to violations of individual rights and interests of family relationships, and so it is important to determine the interaction of these rules and regulations and other normative legal acts in law enforcement.

Analysis of recent research and publications. The issue of protecting the rights and interests of family court considered in Yu.S. Chervonuy, I.V. Zhylinkovoy, Z.V. Romovska, O.I. Kharitonov, S.Yu. Fursa.

The purpose of this article is to examine the legal regulation of the right to

protection of family rights and interests, determining the optimal ways of applying the legislation in practice, and outline ways of its improvement.

Presenting main material. Part 1 of Art. 55 of the Constitution of Ukraine stipulates that the rights and freedoms of man and citizen are protected by the court. A Part 2 Art. 124 of the Constitution of Ukraine stipulates that the jurisdiction of the courts extends to all legal relations arising in the country.

These provisions of the Basic Law of Ukraine reflected in art. 18 SC Ukraine, which stipulates that each member of family relations, which reached fourteen years of age, has the right to directly appeal to the court for protection of his rights or interests.

Scientists are very similar to define the concept of protection of family rights.

Yu.S. Chervonuy said that "under the protection of family rights must be understood statutory measures undertaken by the state, as a rule, judicial and other, bodies and aimed at recognition of these rights, the recent renovation and laying of land violation" [1, p. 102].

I.V. Zhylinkova indicated that "a subjective right to protection of family - a legally authorized person possible to use law enforcement tools to recover his violated rights or recognition" [2, p.73].

O.I. Kharitonova believes that "Under the protection of the rights implicit under the law possible effects on social relations have undergone illegal influence, in order to restore the violated, unrecognized or disputed rights" [3, p.60].

As a general rule of procedural capacity, is the ability to personally exercise civil procedural rights and perform their duties in court arises when you reach age of majority (Part 1 of Article 29 of the Civil Procedure Code of Ukraine). However, under the age of fourteen to eighteen years of age may personally exercise civil procedural rights and perform their duties in court in cases arising from the relationship in which she personally involved, unless otherwise provided by law (Article 29 part 2 CPC of Ukraine). In addition, in the case of marriage of an individual who has not attained the age of majority, it acquires civil procedural capacity since marriage. Civil procedural capacity becomes also a minor, was granted full civil capacity (Part

3 of Article 29 of the Civil Procedure Code of Ukraine). In turn, in Part 1 of Article 18 of the Family Code of Ukraine stated that each member of family relations, which reached fourteen years of age, has the right to appeal directly to the court. Thus, for IC Ukraine minors may seek protection of their family rights and interests regardless of their entry into full civil capacity "[4, s.71] analyzing existing civil procedure, family law, concludes I.V. Zhylinkova.

Art. IC 18, establishing general provisions to protect the rights and interests of family, mentions only the legal procedures to protect the rights or interests, and duplicates the position ch.10 Art. IC 7 with the specification that the right to a personal appeal to the Court is party to family relations, which reached 14 years. Thus, there is a definition of age limits "family - civil - procedural" capacity of an individual. A similar rule is enshrined in ch. 4. 152 Code of Ukraine: the child has the right to seek protection of their rights and interests directly to the court if it has reached the age of fourteen" [3, p. 61].

With this statement we disagree. Art. CC 16 contains the principle that everyone has the right to apply to court for protection of his personal non-property or proprietary rights and interests. This rule does not apply to court relates to the age of an individual. Part 2 of Art. 29 CPC of Ukraine, establishes that minors under the age of fourteen to eighteen years of age and persons whose civil capacity is restricted may personally exercise civil procedural rights and perform their duties in court in cases arising from the relationships in which they personally involved, unless otherwise provided by law. The court may to involve in such cases the legal representative of a minor or a person whose civil capacity is limited.

In our opinion, minors aged 14 to 18 years old can go to court to protect their rights and interests in family relations only in cases provided by family law. Namely - of improper upbringing by parents (Art. 152 Code of Ukraine); with deprivation of parental rights (Art. 165 Code of Ukraine); in determining the residence (Art. 160 Code of Ukraine); Parents under the protection of the rights and interests of their child (Art. 156 Code of Ukraine).

In other cases, the possibility of a person aged 14 to 18 family law is not expected. For example, when solving the dispute by the court to participate in the upbringing of the child of the parent who lives separately from her (Art. 159 Code of Ukraine); renovation of parental rights (Art. 169 Code of Ukraine); when taking children away from parents without deprivation of parental rights (st.170 UK Ukraine); resolve disputes concerning property of parents and children (Articles 173, 177 SC Ukraine) and others.

According to Z.V. Romovska "main novelty Part 1 Art. 18 is to provide a child, who was fourteen years of civil procedural capacity. Such a child has the right to file a lawsuit to protect their rights or interests, including a petition for divorce or annulment of the marriage, recognition of paternity, alimony, adoption or abolition of revocation. Such a child has and all the procedural rights of the plaintiff in the process. It may be the defendant (in the case of recognition of paternity or alimony). The child, who was fourteen years old, she can apply to the court to grant her the right to marry (Article 23 CS)" [5, p. 40].

We do not agree with the conclusions of Z.V. Romovska the following reasons. First, ch. 2, Art. 23 SC Ukraine in the new version, states that on request of the person who has reached sixteen years (instead of fourteen) by a court it can be given the right to marry if it is determined that it meets its interests. Second, the claim for divorce or declaring it invalid shall be submitted by the minor, who is married, that under current civil legislation, are fully capable person. Thirdly, the claim for recognition of paternity may be brought mother, guardian, trustee of a child by a person who holds, raising a child, and the child who has reached the age of majority (Part 3 st.128 SC). In the fourth, the defendant alimony obligations on a minor may be cases where it is the father or mother is likely just married - has full civil capacity under civil law.

The right to appeal to the same court for cancellation of adoption or declaring it invalid, according to Art. 240 SC Ukraine have parents, adoptive parent, guardian, trustee, guardianship bodies, the prosecutor, and an adopted child who has attained the age of fourteen. That this right is enshrined in law, to which we have drawn attention above.

Therefore, in our opinion, ch. 1, Art. 18 SC Ukraine should be as follows: "Everyone has the right to go to court to defend their moral or economic rights and interests. Minors aged fourteen to eighteen years of age may apply directly to the courts for protection of their rights or interests in cases and in the manner prescribed by law".

You should also agree with the view expressed S.Ya. Fursa that the name of 18 of the UK "does not fully coincide with its content because most normally refers only to the protection of family rights and interests of family relations court and application of the Court methods such protection with a list of ways ... In this regard, it is advisable to specify the title of the article, namely: "Protection of family rights and interests of the court" or supplement the provisions of the same rule that protection can also be carried out by other bodies, in particular, guardianship authorities, notaries, and reflect this position in the name rules" [6, p.70].

In our view, a successful rule contained st. 6-2 the Code, which provided that the protection of rights arising from the marriage and family relations, by the court, guardianship authorities and bodies civil registration.

However, it should be noted that according to Art. 60 of the Code, protection of rights and interests of minor children lay on their parents, who could act without apparent authority.

Z.V. Romovska criticizing this provision, wrote that it "could be interpreted as: parents have a right to self-defense and the right of children to seek protection of their rights and interests to the competent authority" [7, p. 62]. And believes that "in art. 154 SC Ukraine this aspect of the legal status of the parents clearly defined: parents directly granted the right to defend the rights and interests of the child and to represent their interests " [7, p. 62].

Parents have the right to go to court, state authorities, local governments and NGOs to protect the rights and interests of the child and disabled son, daughter as their legal representatives without special powers thereto (Part 2 of Art. 154 Code of Ukraine).

"This means that to represent the child's interests in court parents do not need a decision of the guardianship, power of attorney or any other documents confirming their authority. They operate on the basis that they are the parents of the child "[2, p.75]. Parents have the right to seek protection of rights and interests of children and when according to the law they have the right to seek such protection (Part 3 of Art. 154 Code of Ukraine).

In the Family Code broadened the circle of persons entitled to apply for protection of the rights and interests of another person. Grandmother and grandfather have the right to seek protection of rights and interests of minors, minors and disabled adult grandchildren to the guardianship authority or the courts without special powers thereto (ch. 2, Art. 258 Code of Ukraine). Sister, brother, stepmother, stepfather may apply for the protection of rights and interests of minors, minors and disabled adult brothers, sisters, stepson, stepdaughter to the guardianship authorities or the courts without special powers thereto (Part 2 of Art. 262 Insurance Ukraine). It seems more logical to consolidate all persons are entitled to protection of the rights and interests of minors in one article of the Family Code of Ukraine, not spray them in different sections.

Conclusions. The rules enshrined in Part 1 of Art. 18 FC Ukraine do not fully comply with the current civil and civil procedural law, due, in particular, the adoption of IC non-system Ukraine and Central Ukraine.

It appears that the said article should contain general provisions relating to the order (of) protection of family rights and interests and the class of persons eligible to protecting the interests of minors, as well as an indication that persons of 14 years may independently defend their rights the court only in cases expressly provided family law. In view of the need to lay it in the new edition.

Part 2 of Art. 18 FC Ukraine establishes how to protect family rights and interests, each of which may be a separate subject of study and can be described in the following articles.

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LAND LAW, ENVIRONMENTAL LAW

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PECULIARITIES OF ENFORCEMENT OF RIGHT TO INVESTMENT IN UKRAINE BY FOREIGN NATIONALS

Summary

The article studies current issues of enforcement of economic rights of foreign nationals, one way of which is the investment in Ukraine in terms of land legislation. It analyzes practical problems of enforcement of their economic rights by foreign nationals in modern conditions.

Key words: foreign nationals, investments, right to land.

Formulation of the problem. In terms of global changes in Ukraine's economy, increase investment attractiveness of the country against the backdrop of depreciation of the currency, expanding the boundaries of the market in the context of economic relations occupy an important place guarantees for investment activity by foreign citizens that are part of many sectors of national law. This implies that the future development of the economy and its prosperity depend in particular on the state of the rights of foreign nationals, including in the area of land legislation. But now some rules of the Land Code of Ukraine creates obstacles to the implementation of investment by foreign nationals purchasing land in Ukraine.

Analysis of recent research and publications. In the scientific literature on foreign nationals to acquire land rights covered quite limited. In the writings of eminent scholars and practitioners as I.I. Karakash [1, p. 622] V.V. Nosik [2, p. 51], O.M. Pankiv [3, p. 178], attention focused on the issue of direct entry by foreign nationals as individual land ownership. However, in these studies, the acquisition by foreigners of land rights is not considered in such form as the acquisition of ownership entities with 100% foreign capital ownership of the land in Ukraine.

The purpose of the article. This publication is proposed by analyzing the provisions of the current land legislation to investigate some aspects of foreign citizens of their constitutional right to invest in Ukraine, including through the acquisition of entities with 100% foreign investments of ownership of land in Ukraine.

Presenting main material. As you know, citizens can exercise their right ownership of land directly as individuals or as a founding entities created by the acquisition of their companies.

Regarding the latter, it should first be noted that the reasons for the acquisition of land ownership entities, including restrictions on the acquisition of ownership by foreign companies, regulated by Article 82 of the Land Code of Ukraine (hereinafter - HCC Ukraine) [4]. In particular, the above article of the law stipulates that land ownership can take the following subjects:

- Legal entities Ukraine based solely citizens of Ukraine or other legal entities Ukraine - in any land (regardless of the purpose of the latter);

- Foreign entities - exclusively on non-agricultural land and only in case of acquisition of title to real estate or construction purposes such facilities;

- Joint ventures established with foreign businesses and individuals - to land on the terms and in the manner provided for foreign legal entities (ie, solely on non-agricultural land and only in case of acquisition of title to real estate or construction purposes such facilities).

In the literal interpretation of Article 82 of the Land Code of Ukraine (ie, based on the "letter" and not the "spirit" of the law), we can conclude that the ownership of the land can not be acquired those established and registered under the laws of Ukraine and in Ukraine entities that have 100% foreign capital (that is the only founder of which is a foreign individual or legal entity). This conclusion is based on the fact that the above entities are not formally fall under any of the categories of land ownership under Article 82 LC Ukraine because:

- Firstly, the founders of these entities are foreign citizens and / or companies,

and therefore can not be attributed to legal entities established citizens or legal entities of Ukraine;

- Secondly, these entities are not formally be attributed to foreign entities as a foreign entity should be regarded as a legal entity established and registered under the laws of a foreign state and its territory (at while examining legal entities established and registered for law and in Ukraine);

- Thirdly, the legal person in question can not be formally attributed to the joint venture, because according to the Law of Ukraine "On Foreign Economic Activity" is a joint venture enterprise established on the basis of the total capital of foreign business entities and Ukraine [5, Article 1] (in while examining legal entities are based on purely foreign capital, that is, without the subjects Ukraine).

If you follow the aforementioned formal interpretation of Article 82 of the Land Code of Ukraine, the appropriate legal basis for the acquisition of land ownership (even non-agricultural) legal person Ukraine with 100% foreign capital available. In particular, it is a point of view expressed by the State Committee for Land Resources of Ukraine in a letter dated 07.05.2008 № 14-17-11 / 4621 [6].

However, if you interpret the above provisions of the land legislation not in terms of "letters" but in terms of the "spirit" of the law, the aforementioned formal conclusion on the absence of legal grounds for acquisition of ownership of land nonagricultural legal person Ukraine with 100% foreign capital contrary to general principles of civil, land and constitutional law as well as legislation on protection of foreign investments that establish legal equality between subjects, in particular, foreign investors equal rights and the rights of subjects of Ukraine (except direct restrictions provided by law).

Moreover, the above formal conclusion also contradicts common sense, because the law has provided the possibility of direct foreign entities (established under the laws of foreign countries) acquire land for non-agricultural purposes, thus setting stricter limits for legal entities of Ukraine, foreign-based entities, is absurd.

Based on the foregoing, we believe that legal entities of Ukraine with 100% foreign capital "dropped" from the list of subjects of land ownership under Article

82 Land Code of Ukraine, not because of the direct will of the legislator, but because of errors (gaps in the legislation) . This, in turn, gives rise to the principle of the law of analogy (ie the possibility of acquiring distribution rights to land plots for non-agricultural entities in Ukraine with 100% foreign capital, despite the lack of direct reference in the above article). From this position most respected authors of scientific and practical comments to HCC Ukraine [7, p. 278].

As you know, contracts of sale of land subject to mandatory notarization and buyer ownership of land - compulsory state registration bodies of land resources.

In practice, most agree notary notarize a contract of sale of land to a legal entity with 100% foreign investments. As representatives of land resources, in most cases, their position is reduced to the refusal of registration of the property rights due to lack of legal basis for this under Article 82 of the Land Code of Ukraine. However, even in the event of bodies of land register title to land, such registration could potentially be made compulsorily through the courts.

Specifically, analyzing judicial practice dedicated to this issue, it can be concluded that the unique solution to this problem Ukrainian courts do not have (there are numerous court practice in favor of a literal (formal) interpretation of Article 82 of the Land Code of Ukraine, and in favor of interpretation according to the "spirit "Act).

Summing up, it should be noted that the acquisition of ownership of a legal entity with 100% foreign investment in non-agricultural land is potentially possible.

However, given the lack of direct legislative regulation of the above capabilities, while its implementation in practice legal entity with 100% foreign investment may be faced with the need to prove their ownership / reasons for its acquisition in court at the stage of registration of property rights (in the case of cancellation of land resources is the record holder), and at a later stage (in the case challenging the validity of the former owner of the land sale contract).

An alternative to the acquisition of land ownership may be the acquisition of rights to use it. For example, as provided by Article 93 of the Land Code of Ukraine and Article 5 of the Law of Ukraine "On Land Lease" land tenants can be as citizens

and legal entities of Ukraine (irrespective of the founders) and foreign natural and legal persons [8, Article 5].

From the above it follows that in respect of the lease (as distinct from ownership) current legislation of Ukraine does not provide for any restrictions or foreign legal persons or legal entities Ukraine with 100% foreign capital.

Conclusions. Analyzed in detail the provisions of the Land Code of Ukraine article is just one illustration of restrictions on the practice of foreign nationals realization of their economic rights guaranteed by the Basic Law of the country. Such restrictions are regulatory obstacle to attracting foreign investment in Ukraine. It should be emphasized that this situation not only promotes European integration vector of foreign policy, but also directly hinders its economic development. In view of the above, to unambiguous interpretation of HCC Ukraine, which is extremely important for the promotion of foreign investments by entities with 100% foreign investment, seeking to prevent a large number of lawsuits in the assertion of ownership of land, the domestic legislator in addition to HCC Ukraine should urgently and directly to fix the position of the possibility of purchasing entities with 100% foreign investment land.

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ENVIRONMENTAL DOMAIN IN STRUCTURE OF MODERN SOCIETY

Summary

Modern society is a complex multi-level social system which includes the various spheres of public life, the typology of which has not been yet fully developed. The author analyzes the structure of modern ecological spheres of society, paying special attention to environmental activities as the basis of this subsystem. It is shown that the transformation of the structure of social relations and relations between society and nature in the course of environmental activities are the main prerequisites for change in the character of legal regulation of the environmental domains of society

Key words: environmental domain of society, environmental legal regulation.

Problem formulation. Different approaches in understanding the transformation of the biosphere have generated ambiguous attitude to the various aspects of the interaction between society and nature, which ultimately led to the emergence of environmental problems. The scientific approach to the study of relations between society and nature focused on the study of man as a being with inherent only his biosocial nature, which is reflected in the understanding that human life is determined by a single system environment, including both social and biological elements.

Today, on the study of problems arising in relations between different social groups among themselves and with the environment, as well as on the investigation of the structure of these relationships, deterministic attitude towards the environment, is engaged in social ecology. These studies are conducted in a fairly limited scale and require further special development, including in the framework of environmental law in order to improve the legal regulation of the environmental sphere

of modern society [1].

Analysis of recent research and publications. Development problems of formation and structure of the environmental sectors of society is reflected in the works I.N. Remizov (1999), O.G. Rogova (2008), L.A. Zelenov (2010). Analysis of the functioning of ecological spheres of society, including certain aspects of its legal regulation, are devoted N.N. Marfenina (2006), T.G. Spiglazovoy (2009), S.A. Bogolyubov (2011), A.P. Hetman (2011), S.K. Harichkova (2012), I.V. Lesnikova (2012), N.A. Orlova (2013) and others.

Purpose of the article - to determine the place of ecological spheres of society in the structure of modern society and to examine its legal regulation preconditions. **Statement of the basic material**. Different societies are the most extensive and complex type of social structure in the modern world. Society - an association of people who have secured joint territory, common cultural values, social and legal norms, characterized conscious of social and cultural identity (self-identity) of its members. Society is complex and multifunctional social system, as a consequence, has the ability to self-regulation, as well as all organic systems [2, p. 111]. Stable connection between the individual components in the structure of society constitute a coherent set of them. Under a separate component of the system to understand the most simple element, showing its specificity. Any system can be complex or simple; a set of links in the system is its structure, which has a hierarchical structure. Modern society is a complex system, a feature of which is that it is composed of individual elements of the interconnectedness between them, each of which performs its function, and together they prevent the collapse of the system and contribute to its development. The common name for members of the social system is the term "social subject" [2-4].

Thus, the social structure covers the whole range of relations, dependencies and interactions between the individual elements (entities) in the social systems of different levels. As elements of a modern society are: people (primary care), social groups (a combination of two or more people who are united by common interests, objectives, activities), social institutions (certain groups of people, institutions and organizations, government) and the community of different types; the basic units

of social structure are norms and values [2, p. 91-93].

The social system is isolated, not only social actors but also other subsystems, most important of which is called spheres of public life. Spheres of society - is a specific set of stable relations between social actors. The life of modern man consists of a set of activities in which people engage in a variety of relationships. Depending on the nature of these relationships, they are united in separate but interconnected, large, stable, relatively independent subsystems of human activity, called spheres of society. Each scope includes [3, p. 59-61; 5, p. 110-118]: certain human activities (educational, political, religious), social institutions (family, school, parties, the church, the army, the state), and the existing relationship between people, is communications arising in the course of their activities, such as distribution and exchange relations in the economic sphere.

The various areas of public life are closely linked. In the history of the social sciences were trying to carve out a sphere of life as defined in relation to others. For example, in the Middle Ages, the conception of the special significance of religion as a part of the spiritual aspects of society, in modern times, and the Enlightenment emphasized the role of morality and scientific knowledge. A number of concepts leading role to the state and law; Marxism asserts the decisive role of economic relations. As part of the real social phenomena combine elements of all areas. For example, the nature of economic relations can affect the structure of the social structure and economic relations between themselves for the legal system of the country, which is often formed on the basis of spiritual culture of the people, their traditions in the field of religion and morality [5, p. 110-118]. Thus, at different stages of historical development, the impact of any field may vary.

M.S. Kagan i put forward the idea of the five areas of society: transformative, communicative, cognitive, value-orientation and artistic. The first two relate to the scope of the material sphere of public life, the next - the spiritual and the latter sphere, art exists as a relatively independent [6, p. 188, 198-199, 208, 217]. However, based on other approaches distinguish the economic, social, political, spiritual, and environmental spheres of public life [3, p. 59-61; 5, p. 118-128]. Thus, modern so-

ciety is a complex multi-level social system, including the various spheres of public life. The problem of the typology of the different sectors of society not fully developed, but most of the researchers on the understanding that the basis of the formation of public areas of human activity is appropriate.

Investigation of the processes of interaction between society and nature, as well as environmental problems have reached a level of integration of environmental knowledge, which resulted in the formation of a separate branch of science - social ecology. However, the process of differentiation of ecological knowledge at a new qualitative level in the framework of this science: understanding and development of its object, laws, categorical apparatus; with the most important object of social ecology becomes the environmental sphere of public life. The concept of ecological sphere reflects the nature of relations between society and nature in the concrete historical conditions of the second half of the XX century. Environmental sphere of society is one of the manifestations of social life, where there is close interpenetration of the natural and social. Each of the above-mentioned spheres of society has a certain ecological potential, realized in their ecological functions, as a result of this environmental area is capable of performing control other spheres of public life. Formed in the middle of the last century as a special subsystem of social existence, the environmental field, in cooperation with the economic, social, political and spiritual spheres ensures progress of society. The emergence of the ecological sphere expresses the global trend of development of society and its structural elements in conjunction with the natural processes of promotion to the noosphere. Ultimately, the environmental field - is the whole system of social life associated with the regulation of the real-energy interaction of society with the natural environment; its goal is the restoration, preservation, improvement of nature, as well as protection from the negative manifestations of human nature, more and more incapable of self-purification and self-regulation [5, p. 118-128; 7]. As this area of socio-natural phenomenon has a certain structure, expressing the interpenetration of the natural and social, and is understood as a certain integrity, socio-natural subsystem of society. Elements of the environmental sectors of society are: environmental

activities, the environmental attitude, environmental form of social consciousness, specialized administrative structures and material and technical base. Under this system-constructive approach much urgent to identify and understanding of the functioning of mechanisms and forms of the human activity related to the implementation of ideas and principles of sustainable development, the concept of co-evolution of society and nature [5, p. 118-128; 7].

In addition, under the area of environmental conservation and understand the work associated with the reproduction of the natural environment. Restoration and protection of wildlife - one of the phases of nature. The other two - the exploitation of natural resources and processing of natural substances belong to material production. Thus, the feature of the environmental sphere is the focus of the operation in its work for the protection, restoration and sustainable use of wildlife resources to meet the ecological and resource needs of human society. Modern environmental management system comprises two separate but interconnected interconnected subsystems: material production (identification, extraction and processing of natural substances), and environmental sphere (biogueocenosis targeted production and conservation) [8, p. 18-19].

One of the central problems of social ecology - the problem of environmental performance - core foundations of the system-an element of ecological sphere, because only in this human activity can comprehend the nature of its environmental orientation, depth environmental conviction, completeness and validity of environmental awareness, the perfection of methods, techniques, methodologies for environmental activities, the level of ecological culture, etc. [9, p. 135-138]. The source of the environmental sphere are the socio-environmental conflicts, and the driving force of this sector - a joint eco-oriented activities of the various social communities of people and interests of the person expressing them [7]. The concept of "environmental activities" was more likely to appear in the scientific literature, they operate with social scientists and natural scientists, but the nature of this social phenomenon is still little studied [5, p. 147-161].

Environ-

mental activity is characterized as an integrative concept covering various human activities, both in material and in perfect areas related to cognition, development and transformation of the environment [10, p. 96]. According to the authors [5, p. 147-161] environmental activities - this is a relatively independent line of business, including all its shapes and forms and marketed as suitable cooperation between society and nature, take into account the development of natural systems to create a favorable natural environment of life and activities of human society. The system of environmental performance is the connection of six of its components (subject, object, tools, processes, outcomes and conditions), which includes a set of links to other sorts of activities. Socio-ecological differentiation of the world's population, which was developed by the end of the XX century, manifested in the activities of the so-called anti-ecological social forces and environmental focus. Contrary to their interests and is the basis of the socio-environmental conflicts. The means to resolve them perform environmental activities, environmental relationships, and generally the environmental sphere of society [7]. Current understanding of environmental activities in the environmental, sociological and philosophical studies is that it is designed to ensure the sustainable development of society and coordinated the biosphere, through the constraints imposed on the socio-cultural development of the natural potential of the planet. The specifics of environmental activities revealed through the description of the environmental interactions in the system "man - society - environment" and allows you to specify the tasks of environmental activities in their respective sub-systems [11, p. 36-42].

The first subsystem is directly related to the person. In this area, the problem of environmental activities include: creation of favorable conditions and environment of industrial activity - the vital social and working conditions, ergonomics production environment; create a favorable social and living environment - the living conditions, environmental and psychological security (air and water quality, food resources, building materials, permissible levels of exposure to electromagnetic fields and microbiological indicators, eco-design space), treatment and preventive measures and good nutrition; Reproduction -

including physical and mental health, the preservation of reproductive capacity and transmission to future generations a healthy genotype. The objectives of environmental activities in the field of the environment include: conservation and restoration of natural environment, biodiversity and cultural heritage; Environmental Engineering (Prevention and mitigation of adverse impacts); Study the actual and projected state of the environment (eco-dynamics and environmental monitoring, cross-cultural studies of environmental issues); optimization and transformation urbanized environment, eco-design landscapes. In the field of public relations are the following three groups of problems of environmental activities: legal regulation, providing for the improvement of environmental legislation (incentives and benefits, sanctions and restrictions at all stages of economic activity, the right of citizens to a healthy environment, assessment and redress), the introduction of environmental regulation to replace sanitary and engineering and technical norms; economic regulation, including economic instruments of environmental protection (inventory, payment for use of natural resources, environmental funds, environmental benefits, environmental insurance), establishing the economic value of the work of nature (the calculations of the economic value of the environment, changes in pricing policies), the introduction of a new economic system (creation of models of circular economy, the greening of the production: low-waste technologies and closed cycles, biotechnology, technology of cleaning and recycling of waste and emissions), environmental management; as well as environmental education, upbringing and education aimed at the formation of high ecological culture. The subject of the legal regulation is the objective basis of the right to division of the industry and institutions. It is a specific field covered by the rule of law, has its own range of related items, which included actors; their actions; objects (objects, phenomena), over which the actors enter into a relationship; certain facts and circumstances giving rise to the occurrence or termination of the relationship. In addition, the subject of legal regulation determines the necessity of formation and allocation branch of law. Due to the fact that the right does not exist sectors that are completely independent of each other, to distinguish one from the other branch on a substantive criterion it is not always possible. In real conditions

of legal regulation of social relationships may be subject to a number of industries: diversity of social relations requires additional mechanisms to group norms by industry and institutions, in this case, the method helps to solve the problem of legal regulation. Methods of legal regulation is divided into types: mandatory, permissive, advisory, promotional, Subordinate et al. [12, p. 318-322].

Attention to the study of various aspects of life in the context of globalization and modernization necessitated a comparison of international and national legal means of regulating environmental and other spheres of society. Legal regulation of the relationship between society and nature is changing with changes in these relationships. In its history there are three stages: natural resources, environmental and socio-environmental. At the present stage of environmental law is not only a system of legal norms, but also a system of legal knowledge in the environmental sphere of society. On the one hand, it is an independent branch of law, but on the other - a separate subsection of legal science and social ecology [13, p. 35-59]. Restoration and preservation of dynamic equilibrium of ecosystems at all levels - is a global, human problems, so today is increasing the importance of international cooperation in the field of environmental protection, the formation and consolidation of the legal norms of correct behavior in the field of relationship with nature. International environmental law is a set of international legal principles and norms governing international environmental relations between subjects of international law, ie relations concerning environmental protection, environmental management, environmental security and enforcement of environmental human rights [14, p. 23-38]. The emergence of legal regulation of ecological relations is the result of the evolution of natural resource relations, reflecting the growing global problem of "man - society - nature». The implementation of the rights of the members should understand the possibility of environmental law and legislation in environmental management, which are not unlimited, due to economic conditions and depend on the level of scientific and technological progress. The position of the complex nature of the regulatory environment spheres of society represented a number of scientists discussion, as in the title of "ecological" they see only the envi-

ronmental aspect; especially difficult to perceive the inclusion in environmental law (and the law) land, forest, water law (and the law). Understanding environmental law and legislation as a difficult and complex area of law consisting of nature protection and natural resource parts, allowing you to see in them a common object, methods to isolate them environmental sphere of society and not to divide artificially protection of the nature and nature that, in fact, it is difficult to be separated from one another. For environmental legislation characterized by certain general provisions, signs, principles, specific legal concepts and indicating their ecological and legal terms, defining a special regime [13, p. 35-59].

Conclusions. Modern society is a complex multi-level social system, including the various spheres of public life. The problem of the typology of areas of public life (economic, social, political, spiritual, ecological) has not been developed, but most researchers in the basis of the formation of public areas see relevant human activities. Environmental sphere of society - a biosocial phenomenon subsystem of society, which includes elements such as environmental activism, environmental needs and abilities, ecological relations, ecological form of social consciousness, specialized administrative structures and material and technical base. The overall objectives of this sector is to restore, preserve and improve the natural and human protection against negative symptoms and the achievement of its state of the biosphere noosphere. Legal regulation is an essential objective of environmental performance, which is the core of modern ecological aspects of society. The transformation of the structure of social relations and relations between society and nature in the course of environmental activities are the main preconditions for the changing nature of the legal regulation of the environmental sectors of society.

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LEGAL PROTECTION OF MARINE ENVIRONMENT

Summary

The article focuses on defining the concept and problematic legal protection of the marine environment and systematization of knowledge about the conservation of marine biological resources. Analysis of key provisions of international law and national legislation of Ukraine is carried out in the article taking into account the theoretical positions of science of the environmental law. As a result, it proposes to investigate the legal protection of marine environment within the environmental law with regard to international marine law.

Key words: marine environment, marine resources, protection.

Formulation of the problem. Marine environment is an important subject in ensuring the right to environmental safety as defined by Articles 16, 50 of the Constitution of Ukraine [1] and Art. 9 of the Law of Ukraine "On Environmental Protection" [2]. It is connected with the realization of the right to life and the right to a dignified existence defined by international acts.

Oceans play an important role in the development of oxygen emphasized V.V. Petrov: "replenishes oxygen in the atmosphere from two sources - vegetation (approximately 40%) and oceans (60%). The oxygen produces in the oceans the smallest organisms - plankton" [3, p. 5]. Condition of the oceans affects the quantity and quality of oxygen. One of the biggest polluters of the oceans is shipping. ES Katz has defined the role of shipping in ensuring economic state, along with the environmental problems they create, "Ships are directly or indirectly associated with marine fisheries, an important part of the world merchant fleet, which performs extremely important for the entire community of nations function: carrying up to 90 % of total foreign trade goods of the world and millions of passengers; produces over 80% of fish consumed by mankind, marine animals and various seafood; carries in the depths of the

oceans oil, gas and other minerals; conducts important scientific research; carrying out protection of the marine environment, provides a number of other human activities in the ocean .... According to the IMO currently operates 56 800 large fishing vessels engaged in the extraction of water bioresources in all ocean areas. On ships at any given time tens of millions, transforming the oceans in the special sphere of human "[4, p. 3].

Given the fact that Ukraine is a coastal State on two seas, the matter requires investigation from its basin-projection on the regional plane. The primary problem protection and restoration of the natural environment of the Azov and Black Seas in Section 1 Concept of protection and restoration of the natural environment of the Azov and Black Seas, approved by the Cabinet of Ministers of Ukraine on July 10, 1998 № 1057, by "a high level of pollution of the seas, leading to eutrophication and negative functional and structural changes in marine ecosystems; threat of irreparable loss of biodiversity and biological resources of the seas; decline in the quality of marine recreational resources; rapid reduction in fishing and seafood harvesting; destruction of the sea coast and intensification of negative geological processes "[5]. Thus defined situation negatively affects the environment in Ukraine, the quality of biological and recreational resources and poses a threat to public health.

Analysis of recent research and publications. The theoretical basis of this study were experts from the scientific work of international maritime law and environmental law. In particular, work V.I. Andreytseva, G.I. Baluk, S.O. Bogolyubov, M.M. Brynchuka, M.I. Vasilyeva, I.V. Vitovsky, O.M. Vylyehzhanina, O.F. Vysotsky, Yu.O. Wovk, A.P. Getman, S.P. Holovaty, T.V. Grigorieva, O.L. Dubovik, M.I. Yerofeyeva, I.I. Karakash, E.S. Katz, O.S. Kolbasova, Yu.M. Kolosova, V.M. Koretsky, N.R. Malyshev, S.V. Molodtsova, V.L. Munteanu, V.V. Petrova, V.K. Popov, S. Tadahavy, O.V. Chornous, Yu.S. Shemshuchenko, M.V. Shulga and others. Along with this it should be noted that there is no systematization of knowledge in the field of protection of the marine environment, taking into account the provisions of both ecological and legal science and international maritime law.

The purpose of this article is the theoretical foundation of the legal protection of the marine environment, taking into account the provisions of international maritime law and environmental law and national legislation of Ukraine.

Presenting main material. In environmental law environmental protection define in broad and narrow sense. Thus, according to VL Munteanu, nature protection in the broadest sense is defined as "the protection of all natural complex, permanent and comprehensive efforts to protect all natural resources through their use of perspective through active intervention in natural processes and possible adjustment" [6, p. 14]. In a narrow sense defined conservation through preservation of natural objects [6, p. 17]. Thus, given the complexity of such a definition and the term "marine environment", it could be for the Protection of Black Sea and the preservation of individual water resources.

Protection of marine resources can be defined as the establishment of rules and norms for the management, conservation and restoration, and determining prohibitions and restrictions in the use of these resources. Art. 36 of the Law Ukraine "On Wildlife" provides clarification that: "Protection of wildlife provides an integrated approach to the study of the state, development and implementation of measures to protect and improve the ecological systems in which is and which is part of the animal world."

Protection of the marine environment is subject to legal regulation. One of the first successful and definitions of legal protection of nature in general was given N.D. Kazantsevym: "Legal protection of nature ... is a statutory system of measures aimed at organizing environmental protection and rational use, restoration and reproduction of its resources" [7, p. 4]. Legal protection of the marine environment can be defined as legislated system of measures aimed at preventing pollution and depletion of marine biological resources and the organization of their management. In a narrower sense, and considering the definition of water bioresources, provided in Art. 1 of the Law of Ukraine "On fisheries, commercial fisheries and protection of aquatic biological resources" can agree with the definition of the legal protection of water re-

sources, provided by T.S. Grigorieva as: "... a set of established state law and arising as a result of their implementation relations aimed at implementation of the system of legal, organizational, economic, logistical, educational and other measures to ensure the conservation, restoration and sustainable use of water resources" [8, p. 5]. Legal protection of marine resources includes a system of incentives and prosecution are prescribed by law and affect the behavior of subjects relevant relationships.

Marine environment is a complex natural object ecosystem is not possible to recreate a whole. Water bioresources are renewable resource in the implementation of compliance with legally defined conditions and order of their capture / extraction. In particular, the increase in stocks and reproduction of aquatic biological resources is done by limiting the number of fishing gear, boats and power boats, bans the use of certain types of fishing gear and termination of the special use [9, p. 19]. For example, para. 32 Mode of fisheries in the Black Sea in 2015, approved by Ministry of Agrarian Policy of Ukraine of December 30, 2014 number 509, provides that: "In case of deterioration of the ecological state of water bodies, the threat of death rate heightening events, etc. by the decision of the State Ecological Inspectorate North -West Black Sea region in agreement with the relevant bodies of fish protection measures can be implemented with regulating the amount of fishing gear used in the fishery and other measures provided by law to reduce fishing effort on aquatic biological resources "[10].

National legislation of Ukraine established standards, limits and quotas in environmental management and protection of the marine environment. The concept of protection and restoration of the natural environment of Azov and Black Seas on July 10, 1998 establishes the importance of proving the limits of the economic use of marine biological resources to ensure their level of play. The implementation of targeted sectoral programs such as "Sturgeon", "Pilenhas" and "Aquaculture" [11], should contribute to the reproduction of marine resources in the Black Sea. In general, such measures ensuring sustainable use of marine biological resources. Art. 11 of the Law of Ukraine "On fisheries, commercial fisheries and protection of aquatic bio-

logical resources" includes Section V «Protection of water biological resources and state control in the fishing industry." Statement of the main provisions of the legislation on protection and state control in one section is a logical view of the fact that protection can be seen as a function of the state, it is done in ecological relationship.

In part. 5, Art. 194 UN Convention on the Law of the Sea stipulates that measures necessary to prevent, reduce and control pollution of the preservation of the marine environment "... include the measures needed to protect and preserve rare or vulnerable systems, and environmental species of fish and other forms of Marine organisms reserves are depleted, threatened or exposed to danger". Chapter 1 st.194 UN Convention on the Law of the Sea stipulates that measures taken by States to prevent, reduce and control pollution of preserving the marine environment must be compatible with the provisions of the Convention. For this purpose the coastal State should adopt best practices used vehicles that are at their disposal [12].

The aim of measures to protect the environment of the Azov and Black seas is to reduce human impacts on marine ecosystems; termination degradation of marine ecosystems, creating conditions for the restoration of their ability to self-healing growth and resource potential; to balance the utilization and reproduction of marine natural resources; creating conditions for preserving rare and that endangered species of plants and animals, etc. [5].

Among the remedies Section 2 Concept of protection and restoration of the natural environment of the Azov and Black Seas on July 10, 1998 was supposed amendments and additions to the water legislation and legislation on nature conservation, development and adoption of laws on protection of waters Seas and Coastal Zone, etc. [5].

Among the financial resources set requirement for the implementation of Concept at the expense of enterprises, institutions and organizations that pollute the Azov and Black Sea State Budget of Ukraine (including real possibilities of the state), the republican budget of the Autonomous Republic of Crimea, of local budgets, foundations and other sources [5].

The classic definition of logistical activities was provided Petko Stein as "logistical activities of civil servants, members of relevant social organizations or individuals (hunters, fishermen, various collectors and fans), which aims to study and implement the protection of some natural about of objects that are at risk "[3, p. 25].

In a more narrow sense in national legislation of Ukraine belongs to the organizational means coordination of activities to implement the above Concept, which will be specially authorized bodies in the field of environmental protection and natural resources with other relevant central and local authorities [5].

Scientific and methodological tools characterized by conducting research on the possibility of reducing the level of pollution of Black Sea, its geological environment protection, preservation and reproduction of biological resources.

Information and educational tools aimed at improving environmental education and awareness of the Azov-Black Sea region on the ecological status of the Azov and Black seas [5].

Conclusions. The above shows that the legal protection of the marine environment is a theoretical concept that has daily practical importance at national and international levels. Given the environmental characteristics of the marine ecosystem, legal protection of the marine environment research needs within environmental law with regard to the rules of international maritime law. In particular, wrote M.I. Vasiliev: "... difficult to maintain the purity of legal rights in the field of environmental conventions boundaries between natural and unnatural environment" [13, p. 89]. Protection of the marine environment includes content protection to their marine waters and marine resources, are defined areas for further research. Overall, the health of the marine ecosystem helps to protect the economic interests of the coastal State by providing performance marine resources and combating committing environmental crimes such as illegal fishing and marine pollution from ships.

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FORMATION AND ESSENCE OF “PRIVACY” CONCEPT

Summary

The article focuses on the concept of "privacy" and its origin history, the essence and concept. The author makes proposals for further improvement of the current criminal legislation in this area.

Key words: private life, privacy, human right to privacy.

Formulation of the problem. The right to privacy is one of the fundamental rights of man and citizen, reflects the desire of everyone to have their personal world that is not subject to control by the state, society or others and is protected from outside intrusion. In the legal sense only if the person can feel the person when necessary can regulate the extent of his relationship with other individuals, society and the state. Therefore, the importance of the right to privacy rights is difficult to overestimate, and the possibility of its implementation is the measure of the rule of law and civil society.

Analysis of recent research and publications. The concept and content of "private life" examined L.I. Kotiyeva, O.P. Horpenyuk, S.Y. Lyhova, V.O. Seregin, R.O. Stefanchuk, A. Zamoshkin, V.P. Katsalov, V.P. Kashepov and other domestic and foreign scientists. But despite the urgency and numerous research concept of "private life" is not clearly formulated, which greatly complicates the guarantee of the right to immunity.

The purpose of the article. Investigate the concept of "private life", its content and development.

Presenting main material. The concept of private life from ancient to modern times took rather long way of formation. Since antiquity the question arises: what is meant by personal space, whether the person at all this space? Research ideas of Plato, Aristotle, Sophists grounded opinion that ancient society created certain preconditions for the formation of private life. With the advent of Christianity, which preached the uniqueness of each person's life, actions, thoughts, ancient ideas about public and private spheres of life acquire new meaning.

Clergy defends the view that the private can only be a righteous life, and in other cases, the church has the right to rule over thoughts and actions of man. These views vary somewhat with the spread of the Protestant movement, and the idea of personal salvation leads to the formation of the ideology of individualism, in which the first person is given an opportunity to arrange a personal life.

At the end of the XVII century. begins the gradual formation of the concept of human rights to privacy (both in theory and in practice), which includes the elimination of the Inquisition, the prohibition of torture, the independence of citizens from arbitrary rulers and more.

Progressive ideas educator England, France and Germany have been used and developed by American thinkers of the period of the liberation struggle for the independence of the colonies from the domination of the metropolis.

In the second half of the nineteenth century, formed thought the leading American lawyers about the need to develop legal mechanisms for judicial protection against unauthorized distribution of photos of individuals. Advocated the position that the protection of the person from the threat posed by new inventions and business methods, is to create a special concept of "privacy" (the meaning of which is protected from publicity, living on their own).

In the Soviet legal theory privacy actively denied and condemned as a manifestation of individualism was minor in nature and actively used. Only in the early 70's private life and his integrity are the object of research scientists, whose careful

attempts to justify the urgent need for the right to privacy eventually find support among jurists.

The most rapid development of the concept of privacy observed in the second half of the twentieth century. The idea of privacy imposed on international legal level and gets consolidation in a number of international instruments on human rights.

The legislation of modern democratic states the right to privacy is a must-legal status of man and citizen. Is no exception, and Ukraine. The sphere of privacy Constitution of Ukraine considers any confidential information about a person, that is, information which is not allowed to collect and disclose about a person without his consent, except as required by law.

In order to improve the national legal framework in the area of privacy is necessary to study the entire set of legal rules governing relations in this area on the national level.

Define the concept of privacy is difficult. Among scientists still no single point of view on the definition of privacy. So L.I. Kotiyeva believes that private life - a human capacity to communicate with others without the intervention of the state and society, to control information about oneself, to prevent the spread of intimate data [1, p. 18].

The sphere of privacy, according to O.P. Horpenyuk should be classified as personal diaries, the relationship between family members, procreation, nor adoptive family budget, religion and mystery of the confession, the secret telephone conversations and agreements notary, housing rights [2, 200].

In the sphere of private life has several aspects:

1) The confidentiality of the sphere of human existence - inviolability of the home ("my house - my fortress") or other property, workplace, certain branches of vehicle interior or other vehicle, privacy things that are in man;

2) The confidentiality of medical and biological conditions of human life - information on the health and physical development. For example, medical data analysis and medicinal recipes, information on research DNA for the presence of he-

reditary diseases, information on anatomical or physiological characteristics of man ("bodily privacy"). It should be seen as a human right to physical and mental integrity.

This concept is new to the integrity of national legislation, since it carries with the latest achievements in the fields of biology and medicine. Scientific discoveries in genetic engineering experiments on human cloning, manipulation, progress in transplantation of organs - all this led to the urgent need and appropriate regulation of certain relations. The natural (physical) provides privacy inadmissibility of any physical interference with the human body, which can lead to physical pain, physical injury, sterilization, damage to physical function or causing any harm to the body person. European Court of Human Rights but not limited to the physical integrity ban included physical violence, disciplinary corporal punishment, coercion donate blood or urine, etc. Moreover, the Court noted that even minimal interference with the physical integrity belongs regarded as a violation of Art. 8 of the European Convention on Human Rights if it is done against the will of the individual [3];

3) intimate privacy and family life - the sphere of love, emotions, intimate relationships, information, diaries, letters (not even saved or sent) are not intended for publication dedicated to the individual poems, information on sexual and other intimate life etc.

4) information and communication privacy - immunity as a direct personal contact with other people (talk face-to-face) and communication through the use of post and telegraph, telephone, computer and other technical communications inadmissibility of illegal collection, storage and use of any confidential information about a person without his consent. Informational privacy - human right to determine who, when, for what purpose and how information is to be collected, stored, distributed and used by others.

Other researchers, such as S. Lyhova define the concept of privacy, both in the broad sense - as a constitutional human right to inviolability of different secrets and personal data, and in the narrow sense - personal information excluding personal data permitting the identification of the person in society [4, p. 262].

The scope of private life, a set of different circumstances of human existence and the information about her, which she gives the status of confidentiality, closing it to outside supervision and intervention.

Life, according to jurist R.O. Stefanchuk, Yu.V. Nosik this person's behavior outside of work, study and social activities. Thus, if life is divided into two areas - the private life and public life [5, p. 163].

In determining the scope of privacy rights may be identified as an objective criterion - the circumstances in which interference by public authorities forcibly unacceptable (authorities and their officials can do only what is required by law, all the rest - is unacceptable) and subjective criterion that allows each person to detemine the very limits of confidentiality of information about themselves (one man categorically against her photographs in print media, the other, on the contrary, may agree to print erotic photos and more, making this a living).

Where there is objective or subjective symptoms confidentiality of private life, access to such information can take place only in two cases: with the permission of the person, forcibly, but only in cases determined by law and limits for the presence of reasons prescribed by law and reason, and only in certain form.

According to Art. 32 of the Constitution of Ukraine "No one shall be subjected to interference with his privacy, family, except the Constitution of Ukraine. The collection, storage, use and dissemination of confidential information about a person without his consent, except in cases specified by law, and only in the interests of national security, economic welfare and human rights" [6].

Collection and storage of confidential information about a person and his privacy be considered legally acceptable and perfect the following conditions:

1) competence subjects: collection and storage of the confidential information made appropriate authorized by the laws of (the inquiry, investigation, prosecution or trial under their jurisdiction). The activities in our country paparazzi, private detective agencies or "enterprising people," the law does not provide - and it very well;

2) objective correctness of the measures, operational-search activities related to the temporary restriction of human rights, according to ch. 14-15 century. 9 of the

Law of Ukraine "On operative-search activity" carried out in order to prevent serious crimes, their termination and disclosure; wanted persons who shy away from serving of punishment or missing; protection of life, health, housing and property court staff and law enforcement agencies and individuals involved in the criminal proceedings; termination intelligence and subversive activities against Ukraine. Visual observation can be conducted to establish the personal data and its communication in cases where there is evidence showing that it is prepared or committed a serious crime, for information that indicate the signs of such an offense. Collecting sensitive information about a person is inadmissible for other purposes [7];

3) compliance with the statutory management procedures regarding the collection, storage and use, compliance with the law on procedural form of the investigative or other proceedings.

Also, it should be emphasized that a significant impact in the regulation of privacy issues play Supreme Council of Ukraine ratified international instruments: the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the European Convention on Human Rights. It is in these instruments recognizes the right of everyone to respect for private and family life, prohibits not only arbitrary, but also illegal interference in private and family life.

But even the European Court of Justice has not yet given a clear definition of "private life". European Court quite deliberately avoids attempts of this kind and prefer (usually) concentrate on a particular issue. The number of cases related to the right to "private" life (or privacy as it is often called) is relatively small [3].

If we analyze the judicial precedents, we can see that the concept of "private" life belongs to the sphere of direct personal autonomy. These include aspects of physical and moral integrity. The concept goes beyond the narrow limits of guarantees life free from unwanted publicity. It provides field within which everyone can freely pursue the development of his personality. This includes the right to identity and the ability to develop relationships with other persons, including emotional and sexual.

This approach of the European Court suggests that the "private" life - not strictly delineated protected range, and a large area with a fairly vague boundaries.

Latest become more vague as how privacy approaches of social activities. Many state action directly or indirectly affect the fulfillment of human potential, but not all of them can be considered as interference in private life.

Conclusions. Installed in the Criminal Code of Ukraine and norms of international instruments show no systematic approach by the legislator to the legal definition of the category of private life. The problem is there are multiple approaches to the definition of the concept of "private life". Proposed the following definition: privacy is a measure of possible human behavior in private law field or in the field, which is not subject to direct regulation by the state and supported by government restrictions third parties to intervene in this area.

Domestic legislation will not allow clearly and fully identified privacy as a special legal category, which laid the basis for separate scope of regulation of social relations. Hence - imperfection of legal regulation of social relations in the area of privacy and inadequate level of protection.

To improve social relations in the field of privacy should review the relevant rules and direct legislative activity in their systematization and grouping within a specific structural element of the Criminal Code of Ukraine. In particular, this may be an expression of the components in the union of privacy in one article that disclose the nature of this category and establishes liability for violation of privacy if the person to unlawful attacks on his normal state of individual elements.

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GENERAL CHARACTERISTICS OF MEASURES OF CRIMINAL LAW INFLUENCE

Summary

Based on analysis of criminal law of Ukraine of different periods of development, and subject to scientific points of view expressed in the doctrine of criminal law, it is indicated that the domestic criminal law has no definition and clear system of measures of legal influence which complicates their application. The author's vision of the system of such measures is proposed here.

Key words: Criminal Code, measures of criminal law influence.

Formulation of the problem. Criminal law as public sector law designed to ensure the protection of the most valuable public relations, namely the rights and freedoms of man and citizen, property, public order and public safety, the environment, the constitutional system of Ukraine from criminal attacks, to ensure peace and security of mankind and to prevent crime. The implementation of these tasks by using a set of measures envisaged by the Criminal Code of Ukraine (hereinafter - the Criminal Code of Ukraine). But these measures have not yet systematized legislator, as enshrined in the X, XIV, XIV1 General section of the Criminal Code of Ukraine [1], hence the need for their systematization.

Analysis of recent research and publications. Research on various aspects of criminal law measures the impact of dedicated scientists work as domestic and foreign, namely E.M. Vecherova, I.M. Gorbachev, V.I. Borisov, V.K. Duyunova, A.E. Zhalynskoho, O.V. Kozachenko, K.M. Karpov, V.O. Tulyakov, M.I. Havronyuk, A.M. Yaschenko and others.

The purpose of the article. This publication is offered to trace the main stages in the development of measures of legal influence, and to provide general description of these measures taking into account the positions of national legislators and researchers.

Presenting main material. The first attempt to codify penal measures influence national legislator has been made in the Criminal Code of USSR 1922 and 1927 Thus, in Art. 46 of the Criminal Code in 1922, along with the term "penalty" term "social protection measures", which included: a) transfer to institutions for mentally or morally defective; b) compulsory treatment; c) prohibition to hold a certain position or occupation of certain fisheries; d) expulsion from a particular area; e) a minor impact on bail parents, relatives or other persons subject to a comprehensive review of conditions of court life and person surety [2]. That is, in this article traces union, even the identification of different actions aimed. The Criminal Code of the USSR from 1927 the term "penalty" is not used, and the first time an attempt to divide the measures applied to persons who committed crimes on: social protection measures forensic correctional nature, health, medical and pedagogical nature [3]. In the future, lawmakers returned to the use of the criminal law concept of "punishment", but attempts to codify penal measures influence in independent criminal law no longer made.

In this connection it should point to a clear position of the Belarusian legislature, which in Art. 46 of the Criminal Code has provided that criminal responsibility sentenced implemented in: 1) the use of sentence; 2) suspended sentence; 3) non-use of the conditional sentence; 4) without punishment; 5) using juvenile of compulsory educational measures [4]. But aside Belarusian lawmaker ostalasya subsystem measures of legal influence, which is not connected with the realization of

criminal liability applicable to persons who are not recognized entity crime, but committed socially dangerous act provided for in the Criminal Code of Ukraine as a crime.

We agree with V.K. Duyunovyy who writes that the punishment is no longer only, or even primarily, or best means of the criminal law effects. Penalties in criminal law is a measure necessary and important, but forced by extreme and, in many cases very expensive and can not effectively solve its tasks and therefore is not always feasible and desirable. Therefore, in modern terms of criminal law, it became apparent that the punishment should be used as a last resort if there are no legal grounds for the use of other measures of legal effect [5].

According to some scientists, along with punishment, should provide remedy and security. Thus, A.E. Zhalynskyy believes that if the "punishment" means the legal consequences of the perpetrator of criminal acts, the "remedy and security" are not associated with the fault, but only subject to social risk actions, and can be assigned without fault. What unites them with punishment is that they are a response to the State's wrongful act. Effectively the security measures, the concept and types of which the Criminal Code of Ukraine does not provide. Security measures in the criminal law is an alternative punitive measures of legal influence and apply to persons who committed socially dangerous acts as a crime under the Criminal Code that are not recognized as a criminal [6]. We agree with M.I. Havronyuk indicating that the developed countries are gradually moving away from the tenets of the neoclassical school of criminal law and based on the objective of re-socialization of wine, which is also enshrined in domestic penal law in its penal policy followed dualism of sentences and other measures of criminal law impact [7, 6-7].

Citing national criminal legislation with ratified international legal instruments, adopted the Law of Ukraine "On amendments to the Criminal and Criminal Procedural Codes of Ukraine regarding the implementation of the Action Plan to liberalize the EU visa regime for Ukraine" from 04.18.2013 № 222- 18 (hereinafter - the Law). The Law of Criminal Code of Ukraine introduced the concept - "other measures criminal law" (Section XIV of the General Part of the appropriately named). Law of

Ukraine "On Amendments to Certain Legislative Acts of Ukraine in the state anticorruption policy in connection with the Action Plan to liberalize the EU visa regime for Ukraine" from 05.13.2014 № 1261-VII General of the Criminal Code of Ukraine was supplemented with Section XIV1 "Activities criminal law for legal persons," but, as mentioned, a clear systematization of these measures are still missing. In this regard, there is a need in consideration of the main points of view that are expressed in the doctrine of criminal law in the classification of the measures of legal influence.

Speaking of these measures scientists use the following definition: "measures of legal influence", "measures criminal law", "forms of realization of criminal liability," "remedy and security", "other criminal activities", "other measures criminal law for legal persons "and others. Analyzing these scientists point of view it should be noted that a more generalized concept is presented with the term "measures of legal influence" and other concepts are part of some of these measures, which are provided for in the Criminal Code of Ukraine.

Criminal legal action, according to O.V. Kozachenko, - a system of the regulatory-defined and adapted to the peculiarities of national mentality sanctions, which depending on the species targeted for correction, correction, prevention, rehabilitation, medical care and treatment of persons criminal law restitution basis for the application of which is considered to commit person offense under the law as a crime and infringes on the system of social values, formed on the basis of undisputed character of the definition of natural rights and freedoms and the changing nature specified level of nation and culture. The system of criminal activities, according to scientists, determined by the characteristics of objects protection, cultural characteristics of the people [8, 205-207].

V.O. Tulyakov said that in addition to punishment in the current legislation de facto there are four groups of activities: safety, social security, compensation, forgiveness criminal law [9, 140].

According to A.M. Yaschenko all measures criminal law can be divided into punitive and non-punitive. By punitive measures include: 1) criminal penalties

(Articles 50, 51 of the Criminal Code of Ukraine); 2) penalties that are sold through its correction or encourage positive behavior of the person (ch. 3, Art. 74, p. 1, Art. 58, p. 1, Art. 62, p. 82, etc.). Non-punitive measures criminal law, writes scholar, include: 1) non-punitive measures implemented through criminal responsibility; 2) non-punitive measures implemented outside the criminal liability [10, 126].

I.M. Gorbacheva all criminal activities shared on penalties, compensation measures (restitution), social protection measures and precautions [11, 13].

E.M. Vecherova emphasizes that criminal law traditionally only determines the punishment, its purpose and species aside conceptual issues non-punitive responses to criminal behavior, and proposes that the «multi-gauge" of legal effect. She said that depending on how the exercise criminal legal effect may be two types: punitive and non-punitive. Punitive criminal legal effect is implemented using a single form - penalty. In turn, non-punitive criminal legal effect is in the form of exemption from criminal responsibility or in the form of exemption from punishment and serving it [12, 32-35].

Measures criminal law, according K.M. Karpov, is to attribute penalties and other measures, which he divides into three groups (classes): 1) security measures (compulsory medical measures, compulsory measures of educational nature); 2) incentives (promotion) post-criminal lawful behavior (probation, parole, criminal responsibility, delay punishment); 3) Measures recovery of material (economic) relations raised in the commission of a crime (confiscation of property) [13, 134-136].

In summary, the extent of criminal law, according to V.S. Egorov measures forming of responsibility; resocial - preventive agents, as well as measures to ensure [14, 135-136].

Legal analysis of the norms sections X ("Punishment and its types"), XIV ("Other measures of criminal law") and XIV1 ("Events criminal law for legal persons") General Part of the Criminal Code of Ukraine provides an opportunity to assert the existence not only punishment as measures of state coercion and other subsystems and consolidation measures criminal law measures and criminal law for legal

persons. It should be noted that according to ch. 3. 3 of the Criminal Code of Ukraine, a traditional punishment (the most stringent) criminal law measures, so scientists set him apart from the other measures of legal influence.

Conclusions. The study measures the legal nature of legal influence leads to the conclusion that most scientists divides them into certain groups by the nature or method of implementation of legal influence. Legal analysis of the common parts of the current Criminal Code of Ukraine allows the division to offer all measures of legal influence on the basis of the subject of criminal legal relations, and legal consequences of such use on criminal measures on individuals and activities criminal law on legal persons. Events criminal law on individuals, in our opinion, are divided into: 1) measures related to the implementation of criminal liability, criminal penalties - Art. Art. 51, 98 of the Criminal Code; release from punishment serving his or replacing the unserved part of a more lenient punishment - Articles 75, 79, 81, 82, 83, ch. 2, Art. 84, 104, 107; special confiscation - art. 961 of the Criminal Code of Ukraine; conviction - ch. 1, Art. 88; compulsory medical measures used instead of or along with criminal punishment - n. 2, p. 3. 93 of the Criminal Code of Ukraine; forced treatment - art. 96 of the Criminal Code of Ukraine; compulsory measures of educational nature, which are used instead of punishment - art. 105 of the Criminal Code of Ukraine; 2) measures of the criminal law that are not associated with the implementation of criminal liability, compulsory the medical measures applied instead of punishment to the insane - n. 1, Art. 93 of the Criminal Code of Ukraine; compulsory educational measures applicable to persons under the age of which can be criminal liability - ch. 1, Art. 97 of the Criminal Code of Ukraine. Measures criminal law legal persons include: fines, confiscation of property, liquidation - ch. 1, Art. 966 of the Criminal Code of Ukraine.

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WAYS OF LEGAL ENSHRINEMENT OF SOCIALLY DANGEROUS CONSEQUENCES IN THE LAW ON CRIMINAL LIABILITY

Summary

The article deals with different ways of legal enshrinement of socially dangerous consequences in the law on criminal liability, the article defines the advantages and disadvantages of each of the selected methods.

Key words: crime, socially dangerous consequences, criminal liability, evaluation concepts.

Formulation of the problem. Establishment of clear legislation on criminal responsibility - one of the areas of ensuring the effectiveness of legal regulation and law. This is because the language and terminology of the law are the external form of legal opinions. From language definition depends on the practical implementation of the idea of the legislator. Disadvantages legal techniques generate many problems in practice, hence the need to improve the rules, methods, means legal technique.

Methods legal technique most often used for legal provisions in the law on criminal liability of socially dangerous consequences. Thus, the use of such notions text of the law is just one of the ways of legal techniques. In this regard, of particular relevance today is the question of research methods legal provisions in the criminal law socially dangerous consequences, which will enable to identify deficiencies that exist in this area, and to propose solutions.

Analysis of recent research and publications. The question of legal provisions in the law on criminal liability dangerous consequences studied Y.M. Brainin, V.K. Grischuk, T.V. Kashanina O.V. Kobzeva, V.M. Kosovych, M.I. Panov,

M. J. Korzhanskyy, M.I. Mel”nik, V.O. Navrotskyi, M.I. Havronyuk, S.D. Shapchenko, M.D. Shargorodskiy and other domestic and foreign scientists. But the practice of criminal law shows that in this area there are many unresolved issues that affect the level of the rule of law in our country.

The purpose of writing is to analyze the main ways of the legal provisions in the law on the criminal liability of the socially dangerous consequences.

Presenting main material. For proper qualifications wrongful act important way of legal provisions in the legislation dangerous consequences of certain types of crimes. In the disposition article of the Criminal Code of Ukraine (the Criminal Code of Ukraine) contains legal provisions several ways to dangerous consequences.

First and the most prevalent way, when Ukraine of the Criminal Code directly specifying the nature and severity of the harm (eg, p. 1, Art. 176 and ch. 1, Art. 177 of the Criminal Code of Ukraine). In some cases, the notes to the article of the Criminal Code of Ukraine can be defined and minimum harm caused socially dangerous acts and which is the basis for training socially dangerous act for this item.

The second way legal provisions dangerous consequences lies in the fact that the legislation to determine the dangerous consequences uses concepts and terms used in the natural sciences, engineering, medicine and so on. Legislative technique requires that the terms used to refer to one and the same phenomenon in various areas of law were the same and that the term content with the substance of the phenomenon, which he designates [1, p. 75-77]. When such wrongful acts qualified to determine the nature of the damage to apply regulations to other areas of law, which describes these concepts and terms. For example, in Art. 277 of the Criminal Code of Ukraine assumed dangerous consequences "train wreck." The content of this term in criminal law is not disclosed. An offense skill to determine the nature of the consequences should apply to departmental regulations that establish the procedure and rules for registration of events, their concepts and classification. Similarly to disclose the concepts of "grievous bodily harm", "bodily injury of medium gravity" and "light bodily injury" under Articles 121, 122, 125 of the Criminal Code of Ukraine must apply the Rules forensic

determination of the severity of injuries, approved by the Ministry of Health number 6 from 17 January 1995 [2].

However, please note that in some cases such effects standards defined accurately and does not agree with the text of the law of another branch of law. For example, Art. 130 CC Ukraine provides for liability for knowingly putting another person at risk of infection with HIV or any other incurable contagious disease dangerous to life (ch. 1), and infection disease such other person (ch. 2, 3, 4). However, this rule does not agreed with the law in protecting people from infectious diseases, as this legislation does not share in infectious diseases are curable and incurable, and identifies dangerous and dangerous infectious diseases [3, p. 327]. It should be noted that the presence of Criminal Code of Ukraine such rules and their application in the investigative and judicial practice causes some problems. They are law-making, enforcement, organizational and other areas. The presence of these problems directly or indirectly adversely affect the efficacy of these rules [4, p. 241-243].

The third way legal provisions dangerous consequences is that the legislation socially dangerous consequences in some cases determined by the introduction of the criminal law of value concepts (attributes). For example, "large size", "grave consequences", "material damage", "significant damage" and so on. Because of the vagueness, inaccuracy of such notions and their legal assessment is always connected with the need to clarify the scope, content and attributes most of these concepts.

The use of the criminal law of the value concepts (signs) are independent reception legislative technique. In this way the socially dangerous consequences became their legal securing more than 50% of articles of the Criminal Code of Ukraine. It is associated with its implementation a lot of problems that arise both in practice and in the scientific areas of legal activity. Upholding such notions can not be evaluated unambiguously. On the one hand, they provide the flexibility of legal regulation, allowing appropriate use of criminal law to the specific conditions of time and place. That introduction to criminal law concepts evaluative nature in certain cases is positive, because it makes it possible to include within the scope of legal regulation sufficiently large number of different events that are penal value and describing how the

crime, the extent of the criminal activity, socially dangerous consequences, mental states and so on. The use of such concepts promotes expression of the principle of completeness criminal law [5, p. 88-90]. As the V.M. Kudryavtsev, "the existence of such notions in the law is inevitable. They are useful when installed on those occasions when you need it and when properly applied in practice" [6, p. 138].

On the other hand, the use of the criminal law of such notions, always leads to inconsistent interpretation and uniform application of the criminal law in practice. In addition, the use of value attributes can negatively affect the process of criminalization and qualification of the act as criminal-legal interpretation of such notions could make the limits of criminalization amorphous, vague, when the question of crime (not criminal) The act would actually be decided by the person applying criminal law [7, p. 3-5]. This view has recently become widespread [8, p. 24], but it is difficult to accept. In our opinion, the person applying criminal law, concretize and reveal these features only estimates based on the law and on the basis of content, pledged by the legislator on the basis of criteria that have been established in practice. In this regard, noteworthy scholars thought about the need to develop objective criteria that would allow precise evaluation concept [5, p. 88].

The most common classification of value attributes is their division into qualitative, quantitative and comprehensive. Qualitative evaluation characteristics are those of them whose outward expression takes the form of guidance on generalized characteristics that are not measurable, such as "improper performance" (Art. 367 of the Criminal Code of Ukraine). The quantitative are the evaluation features, the essence of which is expressed in the law by indications about calculated characteristics, such as "great harm" (p. 3 of Art. 206 of the Criminal Code of Ukraine), "mass disease" (ch. 2, Art. 239 of the Criminal Code of Ukraine) etc. . To aggregate related evaluation features that, with a complex internal structure, forcing law-applying function to both qualitative and the quantitative assessment criteria, such as "substantial damage" (Art. 231 of the Criminal Code of Ukraine), "other grave consequences" (p. 3 Art. 110 of the Criminal Code of Ukraine).

In our opinion, the legislator should use the concept of evaluation within reasonable limits, and only in cases where no such notions indispensable. In this regard, we propose, first, in each section of the Criminal Code Ukraine to provide independent article that would contain all estimated legal definition of concepts used in this section; secondly, to put these concepts independent evaluation content, which is due to the peculiarities of the object encroachment; thirdly, to identify common features of estimates used and understood the content of the same, no matter which section of the Criminal Code Ukraine secured.

The fourth way legal provisions dangerous consequences is that in the disposition of the article of the Criminal Code of Ukraine may be alternatively specified number of socially dangerous consequences, occurrence which gives grounds to qualify the acts by this article of the criminal law. For example, criminal liability under Art. 272 Criminal Code of Ukraine occurs if the violation of safety rules during works of increased danger posed a threat - death or other grave consequences, or caused harm to the victim, for qualification under the first paragraph of this article is sufficient to establish that a socially dangerous act caused One of these consequences. Qualification will not change in the event that collectively act caused all these consequences, but it has implications for other issues (such as designation type and amount of punishment, defining the boundaries of redress, etc.).

The fifth way legal provisions is dangerous consequences that the legislator uses in modeling article of the Criminal Code of Ukraine consequences in the form of a threat of causing real (actual) damage. For example, the threat to the life of people - ch. 1, Art. 276, p. 1, Art. 281 Criminal Code of Ukraine, the threat of air safety - Part. 1, Art. 282 of the Criminal Code of Ukraine, the threat of inflicting serious consequences - ch. 1, Art. 253, p. 1, Art. 258 Criminal Code of Ukraine and others.

Conclusions. Based on the analysis the following conclusions. Create clear provisions of the law - one of the areas of ensuring the effectiveness of legal regulation and law. This is because the language and terminology of the law are the external form of legal opinions. From language definition depends on the practical implementation of the idea of the legislator. Disadvantages generate legal technique, first,

unlawful behavior of legal relations, and secondly, to gross errors in the practice of law enforcement that directly implement criminal law. This necessitates improved methods of legal provisions dangerous consequences in the law on criminal responsibility.

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CERTAIN ASPECTS OF THE INTERROGATION TACTICS AT INVESTIGATION OF ILLEGAL MINING

Summary

The article focuses on the tactics of interrogation during the investigation of certain crimes against the environment, as prescribed by art. 240 of the Criminal Code of Ukraine (*Violation of Rules of Protection or Use of the Subsoil*). The interrogation as one of the most difficult investigation efforts requires the investigator's attentiveness, vigilance, and specific and forensic training. In this article we analyze the interrogation program, which should be made in preparing for this investigative action during the investigation of illegal mining.

Key words: interrogation, interrogated subject, crimes against the environment (environmental crimes), typical interrogation program, preparation for interrogation.

Formulation of the problem. The questioning in the investigation of the crimes - investigative action, the essence of which is being questioned by investigators receiving information about the crime under investigation and the circumstances of its members and other issues relevant to the case, this information is to be entered in the minutes of exact compliance with all established criminal procedural law rules.

Interrogation of the most common investigative action to collect evidence. It is through questioning almost every case received the largest amount of evidence that

can establish the truth. In this sense, the questioning can be considered the main, or main, source of evidence. That is why it is so important to master the pretrial interrogation skills [1, 5].

However, this important investigative action is also the most difficult in most cases in practice. Difficulty examination is interrogated that do not provide truthful information beforehand preparing evidence or refuse to provide them, give incomplete testimony hide the truth. It is therefore very difficult to fulfill the main task of questioning - get questioned on complete and reliable evidence. In the investigation of crimes against the environment complicated by the need to question the possession of special terminology, common understanding of specialists in ecology, the study of sectoral legislation. This must be considered when forensic and special preparation for questioning the subject of any investigation procedural status at a specified type of crime.

Analysis of recent research and publications. The development of problem use of interrogation tactics during the investigation of certain crimes were involved known legal scholars in Ukraine and abroad: O.M. Vasiliev, E.E. Demidova, Carneeva L.M., Konovalova V.E., Kuznetsova S.V., Pecherskiy V.V., Pitertsev S.K., Porubov M.I., Turovets Yu.M., Shepitko V.Yu., A.P. Sheremet and others. Only a few of them pay attention to the investigation in the investigation of environmental crimes in general and illegal mining in particular, and considered the issue without a detailed analysis of tactics that would facilitate interrogation from the perspective of the investigator. Therefore, the urgency of our articles bring immediate needs investigative practices have developed tactical recommendations for the effective and rapid training and direct interrogation subject of cognitive activity.

The article is to provide a list of typical approximate matters are the example of the plan on the eve of questioning in preparation for the investigation of the actions of the various categories questioned in the investigation of illegal mining.

Presenting main material. As the most common investigative action carried out for each criminal case, the questioning is not only productive means of obtaining new, but the quality check already existing evidence. Through questioning the

investigator determines the presence or absence of a socially dangerous act, and other circumstances to be proved in each criminal case [2, 133-134].

Giving testimony begins with a free narrative. The investigator should be able to listen questioned. We know that stimulates interest in listening to the narrator more specifically describe the event. During the inattentive, indifferent attitude of the investigator tries interrogate likely to present facts and not in full. The whole behavior investigator must show respect attentive attitude questioned [3, 273]. With this opinion agrees and A.R. Rossinska "questioned must constantly feel attention with which the investigator listens to his story, and interest in the testimony" [4, 211].

In theory forensic marked need for surveillance in the examination of the behavior of the suspect or witness and their psycho-physiological reactions. Set lie in indications such surveillance does not help, however, reveals the outward manifestations that reflect the dynamics of questioned during interrogation, different responses to an issue or evidence that is presented. These external manifestations have no evidentiary value [5, 194-195].

Considering the interrogation tactics, we consider it appropriate to propose indicative program interrogation of persons in the investigation of illegal mining operations, namely the list of issues that should be scheduled in advance, based on the subject of proof.

The combination of elements that are the subject of proof to investigate illegal mining, is the following:

1. The data describing the identity of the perpetrator (under 16 years of age, of sound mind, is an official, etc.).

2. The fact of the crime.

3. The form of guilt, purpose, motive of the crime.

4. The circumstances of the crime: the place, time and manner of hiding the fact of the crime, use of the results of criminal activity.

5. The subject of crime, its qualitative and quantitative characteristics.

6. The fact of environmental damage, state specific company, person.

7. Persons who committed a crime, their characteristics, roles in the commission of criminal activities.

8. The contents of all partners.

9. Aggravating circumstances.

10. The presence of aggravating or mitigating circumstances.

Definition of interrogation needs (to ensure comprehensiveness and completeness) study and analysis of the case, extract from them the circumstances on which the questioning will need to get information. Analysis of typical representations investigation of the concept of "subject-examination" shows that this concept is usually unreasonably limited circumstances specified in the first paragraph only list. For other reasons, some of them fall into the range of investigative extremely rare and mostly by accident. Therefore, a large pool of information useful for the purposes of investigation, remains unclaimed in practice [6, 27].

The specifics of questioning in the investigation of crimes of this category is defined by its diversity, awareness questioned in Geology, Surveying, as well as knowledge and skills in mining through appropriate technology. So in preparation for questioning the investigator should be given some attention to special training: to learn not only the materials of the proceedings, but also check special issues to facilitate proper evaluating the evidence.

During the criminal investigation of environmental crimes often have to question witnesses and suspects, and sometimes victims. This great circle constitute questioned witnesses. The examination of these persons is made under the general tactical rules for cases involving the improper performance of professional functions in the field of the safe use of technology [7, 771-772].

Given the situation, the investigation determined circle of persons who may be questioned as witnesses: 1) employees of environmental agencies; 2) witnesses pollution, destruction of natural objects, extraction of natural resources; 3) officials of enterprises, institutions and organizations where there has been a violation of environmental safety; 4) the person who can describe the suspect (accused) [8, 15]. According Turovtsya Yu.M., this classification witnesses of the crimes against the envi-

ronment are exaggerated expanded since the first group of these witnesses should provide the materials and information not as a witness, and to be involved in a professional capacity. There are systems tactic of questioning witnesses used on different situations and positions questioned [2, 143].

Indications environmental services staff carry information that contributes to confirmation of existing versions on illegal mining, or new nomination. In preparation for the examination of witnesses this category should schedule the formulation of questions:

- What are the different types and methods of illegal mining?

- Under what circumstances persons or undertakings given permission to extract minerals?

- Can you define standards technologies used by persons on the spot illegal mining?

- How would you describe the technical condition of individual units that were used at the scene?

- What kind of damage (impact on water, surface soil, etc.) due to the commission of the crime?

- As a result of air pollution occurred or body of water, the onset of serious consequences, death, mass human disease, etc?

- How do you calculated the amount of damage inflicted?

- What you intend to tune in persons illegally mined minerals?

- The extent to which the safety of the facility was provided material?

During the interrogation of eyewitnesses describe possible developments in terms of the following questions:

- When and under what circumstances (conditions) you watched mining?

- Can you remember how many people were at the scene?

- Can you recognize these people?

- Among them were people you know?

- Can you describe the technical means used by a person during the commission of mining, and to identify their presence and type?

- Did you know the illegality of the actions that were observed at the scene?

For the examination of witnesses, officials we propose to formulate the following questions:

- Can you give a general assessment of the level of technical equipment of persons engaged in mining?

- Was good technical equipment identified and removed from the scene?

- Can you describe the systematic use of this equipment?

- Which way mode of operation of this equipment (or use of stone-cutting machines, ripping open way, through wells, etc.)?

Witnesses who are familiar with the suspect can answer the following questions:

- What's your degree of familiarity with the person who engaged in mining?

- Are you financially or still somehow dependent on this person?

- Can you provide a description of the suspect as a man and worker?

- What life circumstances could lead him to commit a crime?

Plan questioning the victim may include the following questions:

- As you were at the scene?

- How long were you there that this do?

- When and under what circumstances you damage was caused?

- What is it detected?

- You asked for medical help, a diagnosis that you raised?

Program interrogation of a suspect in illegal mining is distinguished by its specificity, and looks like setting the following issues:

- How do you become aware of the location of minerals?

- How do you plan to dispose of minerals that are mined at the scene?

- Where and who exported minerals?

- Using technical means or mechanisms carried out the extraction and transportation of extracted minerals? To these hardware included?

- Are you aware of the fact criminality of their acts?

- What is the composition of criminal groups, describe the role of each member?

- Are all persons who mined minerals were aware of the illegality of this activity?

- How much time there is a criminal group that committed a specific crime of illegal mining?

- Who chose the place and time of the offense, has developed a plan for its implementation?

- What is consisted preparatory acts to commit a crime, specifically of the commission and concealment consequences?

- You predicted the dangerous consequences of their actions, including loss of life, the possibility of mass disease, etc?

More difficult may be questioning the suspect, who is set in advance for perjury, is hard to pin their actions and behavior and creating a conflict situation. During the interrogation in such circumstances, the following tactics (especially useful it can be in that situation when the suspect refuses to answer questions):

- Presentation of physical evidence;

- Announcement of testimony;

- Setting sudden questions and more.

Applications interviews will avoid mistakes or gaps. However, the list of issues in the programs is not exhaustive, each criminal case is an individual set of different circumstances, so the formation of the interrogation program for a particular proceeding, be sure to take into account its individual features, to place appropriate emphasis [9, 37].

Conclusions. First, we consider it necessary in preparation for the examination to make a plan of investigative actions for more efficient and effective investigation into illegal mining. Secondly, the investigator, investigating a criminal case on illegal mining, should conduct thorough preparation for each examination subject separately from the case, since the investigation of cases of this type certainly investigator faces special terminology and industry legislation. Third, are particularly important

forensic and special preparation for questioning in the investigation of illegal mining.

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PLACE, SCENERY, AND WAYS OF CRIMES USING THE DOMESTIC VIOLENCE

Summary

The article considers the question of investigating crimes using domestic violence where knowledge of the space, scenery, and way of preparing, committing and concealing this type of crime becomes important.

Key words: violent crimes, criminal responsibility, criminogenic conflicts, criminalization of family, household crime.

Formulation of the problem. One of the main trends in modern crime in the world is the high level of violent crime, including their most dangerous kind - serious crimes against the person. Among the most violent attacks killing, causing bodily injury, rape, bullying [1, p.287].

The aim of the research is in understanding the laws of objective reality, which define the content place conditions and methods of committing crimes with use of violence; determining the nature and significance of these signs of forensic crime.

Analysis of recent research and publications. The researching the methods devoted to crimes profound work of famous experts in the field of criminology and criminal proceedings, including R.S. Belkin, O.M. Vasiliev, A.I. Vinberha, O.H. Helmanova, G.R. Holsta, V.P. Gromov, V.F. Ermolovich, G.G. Zuykov, A.V. Naumov, M.K. Kaminsky, V.M. Karahodina, O.N. Kolesnichenko, V.P.

Kolmakov, V.M. Kudryavtsev, A.M. Kustova, V.P. Lavrov, I.M. Luzhina, S.V. Matusynskoho, G.M. Mudyuhina, A.A. Muzuka, M.I. Panova, V.O. Popelushko, S.Yu. Romanov, V.O. Saveliev, O.M. Savchenko, V.V. Churpity, M.P. Yablokov and others.

Presenting main material. Violence is widespread in the different sectors of human activity and was one of the more urgent problems. Every year increases the aggressiveness of violent crime increases the severity of their consequences. There is an active criminalization of social consciousness, and the native criminal traditions and stereotypes are our children [2, p.206]. Social violence comparable price.

Among the offenses in this direction is the most dangerous violent crimes, including increasing pace, the spread of violence in the family makes the problem from the category of private to the state level.

Particular concern are the extent of the violence that is used in every fourth family [3, p.15]. Thus, there is criminalization of family, formed a certain lifestyle, where violence is the norm of behavior, handed down from one generation to another.

In the process of investigating crimes using violence becomes important knowledge space, environment and way of preparing, committing and concealing this type of crime.

In our view, the most complete and accurate definition of the crime situation given M.P. Yablokov, who understands his system of interconnected and interacting objects, phenomena and processes that are characterized by conditions of time and place, material, climatic, industrial, domestic and other environmental conditions, the behavior of indirect participants and other unlawful acts the objective reality of the circumstances prevailing during the crime and its impact on the way and commit mechanism [4, p.112].

Regarding the study of crime with the use of violence in the family is of interest position O.F. Oblakov the need to take into account the administrative-territorial, geographical, economic situation of the region, the national structure of the population, its customs and way of life [5, p. 35]. It should be noted that to investigate this type of crime is important to consider not only the national structure, but also his-

torical way people living in a given territory. Thus, one of the specific features of crimes committed with the use of violence in the family is that unlike other types of criminal activity, violence in the family is more common in rural families.

Location of the criminals committing these attacks chosen so as to limit the possibility of visual observation and participation of outsiders, or limit them. Most witnesses of family violence is a person who at the time of the crime were in close relationship with the perpetrator or the victim.

The above explains to some extent the fact that the behavior of the witnesses on this category of cases is characterized by almost one-third of cases (30%) completely or partially false evidence. Witnesses, even their parents abused children often do not take action perpetrators of family violence as socially dangerous, or try to avoid publicity family problems.

Scientists also include forensic characterization of such a sign as a place of crime. Thus, O.V. Starkov considers that these crimes are committed "residence" [6, p.2]. Yet, the vast majority of these crimes (80%) were committed in apartments, private homes, backyards of private homes. Access the house served as a place of crime in 10.7% of cases. In the dormitories on the data obtained was 6.0% committed crimes and only in 3.2% of cases - on the streets, in the field, forest etc.

According to the research of archival criminal cases traced a direct relationship between the place of crime and the individual offender and the victim. Thus, 74.7% of the room where the crime to the property was committed by the guilty of 22.6% - owned by the victim, 2.7% of the cases belonged to third parties.

According to the study the factors that caused the conflict in the sphere of family and domestic relations are:

- The reluctance of the parties to the work (7%);
- Conflict-aggressive nature of the offender (90%);
- Conflict-aggressive people living with it before (9%);
- Drunkenness offender (80%);
- Drinking individuals living with the offender (10%);

- Non-family criminal family responsibilities (0.5%);
- The contradiction in the education of children (0.5%);
- Conflict with the use of the utility room (2.5%);
- Conflict with the use of the infield (3%).

As for forms of interpersonal conflicts, then you can select single (situational, short-term) and long-lasting conflicts, are those which are based on more or less stable hostility, hostile relations between members of family and domestic relations. Research criminologists and sociologists suggest that a single conflict often involved law-abiding citizens; subjects as long hostile relations are mainly individuals who later commit violent crimes against their loved ones. However, among participants abiding citizens share protracted conflicts also quite high.

When in the course of the study, all protracted conflicts were not divided into criminogenic before criminogenic (quarrels, scandals, etc.) And criminogenic (ie related to the use of mental or physical abuse), it became clear that future criminals involved in conflicts before criminogenic and criminogenic more often than other people. And the chance of involvement in criminal acts of a person depends on the frequency of participation, especially in conflicts criminogenic nature. Most conflicts occur between spouses or cohabitants. Conflicts with close relatives are less common. Often criminals conflict once with several family members.

Also established a link between the type of conflict and categories of individuals who make up the family and domestic environment. In particular, criminogenic conflicts often occur in relations between relatives who live separately.

Before criminogenic conflicts typical, especially for dysfunctional marriage. With regard to conflicts of criminal, most often they were recorded within the hostile relations between the former spouses or relatives of the spouse living with them in one housing area.

Conflict interactions also allow new forensic highlight some important aspects of the well-known phenomenon of migration. Micro-worker, his living conditions, the level of material support etc. - All different from the characteristics of the micro

residents, prevents the establishment of full social life, leading to protracted criminogenic interpersonal conflicts.

Particular attention should be paid to research forms of interpersonal conflict, depending of whether the participants use alcohol and drugs. The use of drugs and alcohol abuse is closely linked with the facts of committing a serious violent crime family. These phenomena are typical for the disadvantaged population, among whom most people (80.4%) who regularly drunk and committing crimes. It should be noted that alcohol abuse as guilty of a crime of domestic violence, and victims.

In legal literature are many options determine how the crime and the elements that it includes. The most complete definition of the crime given way to G.G. Zuykov that says that the way the crime is determined by environmental conditions and mental and physical qualities of individual system of interrelated activities (activity) preparation, commission and concealment of crimes involving the use of guns and drugs, conditions, place and time, Action boundaries correspond exerted [7, p.80].

Method of crimes with use of violence in the family, in our opinion, can be defined as a single system for the preparation of criminal acts, the commission and concealment of this type of crime involving the use of guns and drugs, conditions, time and place, and implemented concept for a single.

In the structure of the criminal activity criminologists shared actions to prepare, commit and conceal the crime [8, p. 227].

Research archives criminal cases showed that crimes with use of violence in the family is not prepared in advance for the most part. Thus, pre deliberate intent and preparatory actions were committed slightly more than 11.0% of family and domestic crimes. These include the crimes that were committed to order a third party. However, in most cases, the intent to commit a crime arose only in the course of family and community conflict.

The study and analysis of criminal cases showed that most instruments of these crimes were various items of economic life, which because of the situational nature of these crimes are not specifically prepared and used casually. Since than was

used in 50.3% of cases, firearms in 3.8% of cases, ax - 3.3%, hammer and various cords used in the strangulation victims under 1.3% of cases. It should be noted that a significant number of violent crimes took place by beating or strangulation victim's hands, that muscular strength offender.

It should be noted that the presence of some citizens of firearms is a condition that contributes to the crimes motivated by family and domestic relations. Often this is due to violations of the rules of its sale to the public and registration, lack of control over storage and use, illicit manufacturing homemade weapons at some companies, negligent preservation standard-issue weapons in some organizations, contributing to its theft, lack of attention to the internal affairs cases of illegal acquisition, production and preservation of weapons [9, p.30].

Conclusions. In conclusion, we can conclude that forensic characteristics of crimes committed with the use of violence in the family except for data on identity of the perpetrator and the victim are important items such as place, situation and how the crime.

The study makes it possible to assert that the manner and place of the crime and the person and his family the terrible sacrifices are interrelated.

In studying the situation of committing this type of crime must necessarily take into account the economic situation of the studied region, its social and cultural specificity.

Timely detection and prevention of criminal conflicts that arise on the basis of family and domestic relations Consideration of the main areas of human knowledge specific criminological specific objects, prevention of alcohol and drug use - all of which should prevent the negative changes in the characteristics of violent crime and prepare grounds to eradicate the very possibility of criminal attacks on the most important values in society: life, health and security of person.

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SECURITY: SOCIAL AND POLITICAL ESSENCE OF THE NOTION

Summary

The article studies the process of development and transformation of “security” notion in modern circumstances.

Key words: national security, insecurity, personality, state, public, protection, threat, interest.

Formulation of the problem. Ukrainian state in order to fulfill its social function carries out complex stabilization measures to ensure the security of citizens in general. It is no accident all documents dedicated security as a prerequisite for the implementation of planned activities is called to develop a system of legal framework [1].

The purpose of the article. In order to identify the nature of the concept and definition of measures that would allow most effectively protect the interests of individuals, society and the state, we must first of all determine the content of the concept of security.

The concept of "security" has expressed a biological category and in a sense can be interpreted by analogy with the instinct of self-preservation of man. According to the etymology of the word - "security" means "no threats, maintaining reliability" [2, p. 67], that the absence of any threat to the state, society and the individual. Thus, the term "reliable" - means "solid, stable" [2, p. 412].

This fact allows us to consider a category of security as a necessary condition

of life of the individual, stable existence and functioning of the state and society, the progressive development of human civilization.

Even in ancient understanding of human security not go beyond everyday perceptions and treated as her lack of danger or evil. In that everyday sense, the term "security" was used, for example, the ancient Greek philosopher Platon. At the same time in the Rober Ages, according to the Robert dictionary, under security are understood calm state of mind of a man who considered himself safe from any danger. However, in this sense, the term is not included in the established vocabulary of the people of Europe and the XVII century rarely used [3, p. 25].

Analysis of recent research and publications. Broad is common in scientific and political circles in Western countries the concept of "security" becomes philosophical concepts through Hobbes, John Locke, Jean-Jacques Rousseau, Spinoza and other thinkers XVII-XVIII centuries., Meaning the state of calm the situation, which appears as a result of the absence of real danger (both physical and moral). During this period the scientists made the first attempt to theoretical development of the concept. The most interesting is the version proposed by Zonnenfels, who believed that security - is a condition in which no nothing to fear. For the individual this situation meant private, personal safety, and the state of the state in which there is nothing to fear was public safety [3, p. 26].

Presenting main material. In Ukraine, the legislative definition of "security" was first formulated under the concept of "national security" in the Concept of National Security of Ukraine determines the national security of Ukraine as a state protection of vital interests individual, society and state from internal threats, which is necessary for the preservation and enhancement of spiritual and material values [4].

Subsequently, the said determination were further developed in the Law of Ukraine "On National Security", where the national security refers to the protection of vital interests of man and citizen, society and state, ensuring sustainable development of society, early detection, prevention and neutralization of real and potential threats to national interest [5].

With the proposed law in understanding the safety and scholars agree that appeal to the considered problem. For example, M. Kazakov defines security as "dynamically stable state with respect to adverse impacts and activities for protection against internal and external threats, to ensure these internal and external conditions of existence of the state, guaranteeing the possibility of a stable, all-round progress of society and its citizens" [6, p. 63]. This concept, in his remarks, has become a comprehensive and integrative, reflecting the vital interests of the individual, society and state.

Now the term "security" is widely used in the legal lexicon, despite the fact that scientific literature has not produced the same understanding of its essence.

In this connection V. Spiridonov noted that the term "security" in the scientific literature is still very meaningful Nor made clear and strict definition of the term. Sometimes security is seen as the goal, in other cases as a concept or as a research program or scientific discipline [7, p. 92]. Even still exists Nor integrated security concept, the concept of "personal security", "national security", "International Security" and "global security" deal with a completely different set of challenges and out of different historical and philosophical contexts.

In legal encyclopedia gives the following safety concept "Safety (Eng. Safety, security) state protection of vital interests of the individual, society and state from internal and external threats. The main objects of security: a man and a citizen - of their rights and freedoms; society - its material and spiritual values; State - its constitutional order, sovereignty and territorial integrity" [8, p. 47].

What shows that the concept of the security referred essentially coincides with what is enshrined in the current law "On National Security of Ukraine".

The analysis of scientific literature on security indicates that the scope of understanding is quite broad. Previously seen in relation to the security of the state and society, now it is considered against the trinity - the person, society, state. Earlier, security was associated mainly with subversive activities of internal and external enemies of the state, today the security of the state - is not only to minimize the threat of military attack, capture territory, the physical destruction of the population. In a

broad sense, the concept of "security" includes providing the citizens of a society the necessary conditions for the life, development and expression [9, p. 3].

Other scholars equate the concept of "safety" and "security" as a legal category, believing that security is a state security [10, p. 197].

In this sense, we can not agree with the judgment M. Arzamaskina and P. Matrosova that define security as a condition in which the external and internal threats do not reach a certain critical level, which suggests a major threat to the interests of the state, society, identity, and as far as environment protection, accommodation, honor, dignity, personal values, social groups, the state, society and civilization as a whole. Thus under national security researchers have in mind the level of protection of vital interests of the individual, society and state from internal and external threats. Therefore, some researchers propose to position the safety of individuals, society and the state only through security institutions of the state [11, p. 51].

V. Senchahov considers security as a state of the object in the system of relations in terms of survival and development in the context of internal and external threats and acts of the difficultly forecasted and unpredictable factors. In this case, albeit in abstract form, the threats are not excluded object, and the object studied from the viewpoint of its existence in conditions of imminent danger [12, p. 12].

Some security researchers often seen not as an object of protection and research, but as a property of the object. This theory logically leads to the conclusion that "there is no security, and objects that possess it [13, p. 7]." Under this circumstance should be noted that security can not be regarded as a phenomenon actually exists in objective reality. Meanwhile it is the denial of security as the objective nature of certain phenomena associated with a local interpretation of reality as a reflection of the material world and things are not phenomena that have no material form of expression. However, it should be noted that the objective reality "includes various material objects, their properties, space, time, movement, laws, different social phenomena - production ratio, power, culture and so on." In one case, a certain phenomenon because of the relationship and the diversity of reality may be the property of a phenome-

non or object, and another - as an object or phenomenon, which is characterized by its distinct properties. In this case most circumstances are depending on the definition of the object and research methods used at the same time. Yu.Demydov rightly notes that "the object of evaluation can be phenomena of objective reality, or their party or their reflection and evaluation" [14, p. 18]. Given this V.Tyhyy concludes, "reflecting in the form of subjective reality exists, the term" security "is the objective content" [13, p. 7]. Therefore, security as a phenomenon is as objective reality as any item that has physical form.

Another opinion on the understanding of security exists in L. Shersheneva. He believes that the basis of "security concept, its structures and mechanisms should be based noosphere new outlook, a new understanding of the goals and vital interests and core values of the state, its role and place in the world community." This key element noosphere way of life serving people [15, p. 75].

In terms of G. Sergeyev, security - a combination of current factors providing favorable conditions for development, sustainability of the state, preserving its fundamental values [16, p. 81].

S. Goncharov under state security aware "protected the quality of social relations, ensuring progressive development of society in specific historical and natural conditions, the danger, the source of which is the internal and external contradictions" [17, p. 65].

According to the views of other researchers, security - is a feature of the social system to evade harmful effects on stage calling or threats, and the ability to protect against sources of danger or destroy it at the initial stage of the impact [18, p. 6].

M. Leskov for understanding security offers [19, p. 66] approach. He sees security as a phenomenon identical homeostasis system, "by which is understood the type of dynamic equilibrium, characteristic of complex systems and self-regulatory states in support essential to the preservation of system parameters within acceptable limits" [20, p. 97].

This approach to the notion of M. Leskov Security allows you to better understand the nature of security, identify methodological bases of construction and

operation of its system, but it is too generic and does not contain any real idea of human security with its natural rights and freedoms under the Constitution of Ukraine (Art. 3) is the highest social value.

Conclusions. Therefore, security must be regarded as really existing phenomenon of objective reality, because the objective reality "includes various material objects, their properties, space, time, movement, laws, different social phenomena - industrial relations, state culture, etc." [21, p. 291]. Security phenomenon appears as the same objective reality, as any object (subject), which has a certain set of physical characteristics.

The analysis provides an estimate notion of security as a phenomenon that has multifunctional character, where security of society as a social value - the activities of a group of different entities, but as a social need - a purposeful outcome of such activities. And security is a necessary condition for the existence of the individual, society and state, which guarantees the possibility of further progressive development of these elements.

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INSURANCE SUPERVISION IN MARITIME SECTOR OF UKRAINE

Summary

The article focuses on the problem of regulation of insurance supervision in the maritime sector in Ukraine. It defines functions, types and forms of insurance supervision in Ukraine. Also, the article analyzes and studies the major goals and objectives of insurance supervision and highlights a number of provisions for further improving the regulation of insurance supervision in the maritime sector of Ukraine.

Key words: insurance supervision, regulation, maritime sector, improvement.

Formulation of the problem. Development of Ukraine as a social, legal state provides proper implementation of the constitutional Ukraine property rights and interests of citizens and other participants of economic relations. In modern terms a leading role among the remedies specified rights and interests play Insurance. In the presence of an effective system of legal regulation of this activity is able to ensure the stability and sustainable development of the national economy, its protection against various risks.

In terms of the independence of Ukraine a decentralized system of insurance relations, resulting in the adjustment of the main directions of insurance activity carried

out on the basis of private law. Under these conditions, the state reserves the role of the regulator of insurance relations.

One of the types of insurance that requires improve the legal framework for its implementation is marine insurance. The general trend today is abuse by insurance companies, insurance companies, which can cause significant losses to policyholders, as well as the state and its citizens. In addition, the high value of which is subject to insurance under imperfect legal regulation of these relations and relatively high risks inherent in shipping, causes relatively low attractiveness of marine insurance. Only 7% of insurance companies, members of the Marine Insurance Bureau, practically engaged in the marine insurance.

The existing system of insurance relations in general proved largely incapable of economic circulation. This points to the imperfection of the system of legal regulation of insurance relations in general and raises the question of increasing the share of public law regulation of insurance relations.

The purpose of the study is the fact that based on the analysis of current legislation and enforcement practice summarizing determine the theoretical principles of the regulation of insurance supervision in the maritime sector in Ukraine.

Presenting main material. State insurance supervision in the maritime domain can be defined as rendered by various methods and forms of activity of the authorized entity, aimed at realization of state policy in the field of marine insurance.

Thus, the insurance supervision in the maritime sphere in Ukraine - is carried out by insurers to comply with the legislation of Ukraine on insurance, effective development of insurance services aimed primarily at protecting the property interests of insurers related to its shipping activities.

Insurance supervision in the maritime domain can be defined as carried out using different methods and forms of activity authorized entity to achieve the public policy maritime insurance.

Such insurance supervision has the following features that are characteristic also for insurance supervision at all:

- Is state-imperious character (in the activity of insurance supervision body uses two main methods of influence and coercion -convictions;

- A legal nature;

- Apply to the insurance relations in the maritime sector;

- Is a continuous nature.

Insurance supervision in the maritime domain includes:

- Carrying out actions to establish legitimacy and reliability of services provided in the marine insurance;

- Carrying out actions to establish compliance by all subjects of insurance relationships in that area;

- Analysis of the insurance market in the maritime sector and development proposals to raise the importance of insurance.

The role of insurance supervision in the maritime domain is expressed through the implementation of functions:

1) licensing, including the licensing of insurers in the maritime domain, the registration of insurance brokers, etc. [3];

2) standard-setting - the edition subordinate legislation on maritime insurance, recording the activities of the insurers;

3) include direct supervisory control over the financial stability of marine insurers on the implementation of the requirements of regulations and their obligations under contracts of marine insurance.

Let's try to give a modern version of the classification of insurance supervision in the maritime field. Type - part of that "expresses the (partially) the content of the whole and at the same time different from other parts of specific carriers control functions (actors), the objects of surveillance, which in turn determines the differences in supervisory practices Action.

Based on this definition and the existing theoretical developments on the types of insurance supervision, can be identified, given the study area and include the grounds since the - previous, current and next. This vision is because it is on this basis, according to the above proposed definition of "species", there is full disclo-

sure of the object that is under supervision according to the characteristics of the base concept - "supervision".

Licensing, certification and maintenance of the register of marine insurers preliminary stage of insurance supervision is the basic foundation that provides normative functioning of the insurance market in the maritime sphere.

State insurance supervision in the maritime sector in Ukraine has 3 main types of supervision: previous, current and next.

Previous insurance supervision - occurs before the job is started to prevent abuse. For example, if the task is considered a contract of insurance, the previous supervision occurs in assessing the object of insurance. The purpose of the previous surveillance is to identify conditions that may impede the performance, as well as prevention, prevention of unwanted deviations. In our example, the appraisal of insurance, to the conclusion of an insurance contract intended to give an objective assessment of the object and thereby minimize insurance risks inherent property insurance. It is also used in the development and adoption of new regulations with the regulation of insurance activity in the marine insurance (transfer from mandatory to voluntary type of insurance, or vice versa, as well as preparation procedure rules of shipowner liability insurance - a model contract forms, sum insured, the maximum insurance rate), conducted at the selection and authorization to engage in the maintenance of insurance and consent to submit statements and information concerning the activities of the competent authority.

Consequently, this activity applies a qualified expert assessment and prevention of offenses. This control limits the action of executives, reductions in their responsibility not only of legality but also expediency objectives and actions that are planned.

Current insurance supervision - is a check to ensure financial stability and solvency of the insurance company Member of Marine Insurance Bureau through inspections of all necessary documentation and reporting, including on the ground. The effectiveness of this oversight is that it allows to adjust the received operational evidence both of Ukrainian insurance company, specialized in maritime transport of

goods, and regarding accuracy, authenticity "of" the current legal framework, to watch the emergence of the intended effect.

The following insurance supervision - is a software eliminate shortcomings and application of appropriate sanctions, including the termination of supervision of insurance organizations in the study area. The effectiveness of this type of surveillance comparison with previous new data that existed prior to the adoption of a new regulation (such as the Law of Ukraine "On insurance") concluded contract of marine insurance (for example, losses from spoiled cargo).

Thus, the insurance supervision in the maritime domain designed to ensure, on the one hand, fair competition in the insurance market, on the other - the availability of insurance services of appropriate quality at the right price.

The purpose of insurance supervision in the maritime sphere in Ukraine – is compliance with insurance companies - members of SMEs in making their insurance legislation of Ukraine, to ensure sufficient protection of property interests of policyholders that are linked to the activity of shipping and provide assurance that future liabilities of the insurance company can be made at any time [2].

Also, the purpose of insurance supervision in the study area are:

- Ensuring a common approach to the supervision of the maritime insurance services;

- Realization of strategy of development of the insurance market, including in the maritime sector;

- Implementation of the insurance supervision over the provision of related services in the field of legislation and compliance with it;

- Protection of the consumers of insurance services;

- Development of the proposals for improving insurance market in the maritime sector;

- Introduction of the internationally recognized rules of the insurance market in the relevant field;

- Promoting the integration in European and world markets marine insurance.

Conclusions. Since, in its activities insurance companies allow numerous violations of legislation in the field of marine insurance, and, according to experts in the near future do not have to expect a decrease in the number of offenses. Increase of the authorized capital according to the required law of Ukraine "On insurance" can lead to the spread of the number of offenses in medium and small insurance companies. For example, to operate without a license, illegal transfer and transfer of funds into the shadow economy and so on.

In the future, offered ways to improve on the regulation of insurance supervision in the maritime sector in Ukraine.

1. The creation of the primary conditions for effective insurance supervision: the development and adoption of measures to ensure the stability of the financial market;

2. The development and adoption of measures to improve the efficiency of private insurance supervision body;

3. The adequacy of technical conditions (amount of money must always be sufficient so that the company could fulfill any of its obligations under insurance contracts);

4. The assets must meet the risks that insurer covers them: they have to be reliable liquid, profitable, diversified and appropriate (in foreign currency terms);

5. The presence and the company's compliance with prudential principles of doing business (rules of accounting, financial reporting, risk management, internal controls, etc.);

6. The management of the company, the auditors and the rest of senior officials should have appropriate qualifications and experience of the limits of liability and goals must be clearly defined.

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INTERNATIONAL LEGAL PRINCIPLE OF NON-USE OF FORCE OR THREAT OF FORCE IN CONTEXT OF ACTIONS OF THE RUSSIAN FEDERATION AGAINST UKRAINE

Summary

The history of formation and normative content of the principle of non-use of force and threat of force is analyzed. Moreover, the article stresses the importance of this principle in the context of actions of Russian Federation against Ukraine.

Key words: use of force, aggression, international world and security.

Formulation of the problem. Russian aggression against Ukraine became a threat throughout the existing world order, which is largely based on international law principle of non-use of force or threat of force. Disclaimer nuclear power, one of the most powerful in military terms, member of the UN Security Council on this principle puts the world community, perhaps the most serious challenges since the end of World War II.

These challenges are primarily related to the potential devaluation of the principle of non-use or threat of force in which the actions of the Russian Federation will be the benchmark for the other states that may well be referring to this example, to carry out acts of aggression, relying only on their own idea of what they must belong to one or other area of some sovereign states. The consequences can be numerous interna-

tional armed conflict and the destruction of the entire system of international security.

Analysis of recent research and publications. The science of international law found itself unprepared for theoretical and practical analysis of the problem of the use of force in relations between the two countries in the CIS. Despite the warning, aired on the role of in Trasnistriyi (Transnistria) and Georgia as a whole science of international law, including Ukrainian - in the works Vasilenko V.A., Denisova V.R., Yevintova V.I., Timchenko L.D. and other authors analyzed the problem theoretically use of force and somewhat abstract. The events of 2014-2015 years, particularly aggression of Russia against Ukraine, and raised the question before the science and practice of international law as soon as possible as to find effective methods of combating the aggressor. Go to the primacy of force in international relations will inevitably lead to withdrawal restrictions imposed by international law, to regulate the behavior of its subjects, with all its consequences.

Especially dangerous is issued breach Budapest Memorandum on Security Assurances in connection with Ukraine's accession to the Treaty on the Non-Proliferation of Nuclear Weapons in 1994, because according to its provisions is the Russian Federation is one of the guarantors of security and territorial integrity of our country. Other guarantors, despite their efforts, were unable to achieve or refusal of Russia from occupation and annexation of the Crimean peninsula or from further military operations in eastern Ukraine. It actually makes little sense process of nuclear disarmament, in fact - encourage some states to implement nuclear programs, and a number of others - to the beginning of their development; there is a real danger of a new arms race.

Today's event is perhaps the biggest challenge for the international community since the founding of the United Nations in terms of capacity to defend the basic principles of international law (central among which include the principle of non-use of force and threat of force), thus maintaining a world order that emerged after the World War II on the basis of these principles.

The purpose of the article. The above actualizes the need for international legal studies, the principle of non-use of force and threat of force and the rules of international law related to the legitimate use of force. It is important to review these matters in the context of actions of the Russian Federation against Ukraine.

Presenting main material. The principle of non-use of force and threat of force applies to the central problem of any legal system - the ratio of forces and law. In the absence of an international system of supranational power, power is available to most subjects [1, p. 9], making extremely important to prevent and impede its uncontrolled use. Only proper observance of the principle of non-use or threat of force can achieve these goals, vital to all humanity in the modern period of active development of weapons.

Throughout the history of the sovereign right of States considered the right to war (jus ad bellum) [2, p. 110]. As a result, continuous wars killed at least 3.5 billion. People [3, p. 12]. Naturally, at different stages of development of international law attempts were made to limit the use of force in relations between its subjects. Development in the field of justice contributed ideas Jiri Podebrady (making plan "approval of the Treaty of Peace between Christians"), Henry IV and M. Syulli (draft Pan-European Union Christian monarchs), F. de Vitoria, B. Ayala, F. Suarez, G. Grotius (ideas on the peaceful settlement of disputes, limiting grounds for waging war) and several others.

Yet the establishment of non-use of force and threat of force as a principle of international law should be associated with the concluded multilateral international legal acts, which these ideas were realized at the level of specific norms. The first of these acts was the Hague Convention for the peaceful settlement of international clashes in 1899, signed and ratified by 26 states. Convention was codified law and practice regarding good offices, mediation and arbitration, provided for the establishment of a special institutional mechanism - the Permanent Arbitration Court, established in 1900 [4].

The next important step was the Second Hague Peace Conference in 1907, which was revised Convention 1899, adopted the Convention on the restriction of the use of force in compensation for contractual debt obligations (under its provisions the force could be used only in case of failure to submit the case to arbitration) [5, p.10], a number of Conventions on warfare, improved regulation between the Permanent Arbitration Court. Under the influence of decisions made by this body, in the following years was concluded more than 100 multilateral (regional) and bilateral agreements, which reflected new approaches to dispute resolution and the use of force [6, p. 63-73].

The adoption of the Charter of the League of Nations in 1920 marked a new phase of development of the principle of non-use of force. Already in its preamble it was stated the importance of "take some commitment not to resort to war" for cooperation between nations and to guarantee peace and security. Statute of limitation provided weapons states to a minimum compatible with national security and fulfillment of international obligations (Art. 8), the obligation to respect and preserve the territorial integrity and existing political independence of all League members against any external intrusion (Art. 10), stipulates that any war or threat of war, regardless of whether it affects it directly or not, any of the members of the League, are interested in the League as a whole and that the latter must take measures that can protect peace (Art. 11).

Standards century. 12 prohibition enshrined resort to war if not used peaceful means of dispute resolution - diplomatic negotiations, arbitration, review by the Council of the League of Nations [7].

The Treaty on Mutual Assistance in 1923, concluded under the auspices of the League of Nations Assembly, it was clearly stated that aggressive war is an international crime and provided that the parties undertake not to perform it. Although the said treaty never took effect, it was also important for the formation of the international law principle of non-use of force or threat of force [8, p. 295]. Similar situation was reflected in the Declaration of the Assembly of the League of Nations in 1927, which declared aggressive war criminal and incompatible with international law:

"Any aggressive war is and remains forbidden" and "constitutes an international crime" [9, p. 22].

Treaty of Paris in 1928 (Pact Briand-Kellogg) was the first step towards a collective security system in Europe: the parties expressed conviction recourse to war to resolve international disputes and the denial of their relations of war as an instrument of national policy (art. 1) and also recognized that the settlement or solution of all disputes or conflicts that may arise between them, whatever nature or of whatever origin they may be, should always be only peaceful means (art. 2) [10]. After the Second World War Pact Briand-Kellogg was one of the legal grounds for the Nuremberg trials, where the leaders of Nazi Germany were charged with violation of the Covenant [11, p.78].

Changes in the content and validity of these acts indicate the establishment of the principle of non-use of force as customary rules of general international law. However, they did not contain definitions of "aggression" and "aggressive war", which reduced the effectiveness of the Charter of the League of Nations, the Kellogg-Briand Pact and created favorable conditions for a possible aggressor [12].

After the Second World War was based on the United Nations, designed to be the foundation of a new world order based on the replacement policy of the expansion and armed conflict to which it leads to political dialogue and cooperation. The main goal of the United Nations, under its Charter, is "the maintenance of international peace and security". These are also ways to achieve this goal - "to take effective collective measures for the prevention and removal of threats to peace and suppress acts of aggression or other breaches of the peace" and "to exercise peaceful means, in accordance with the principles of justice and international law, settlement or settlement of international disputes or situations that could lead to a breach of peace "(n. 1, Art. 1) [13].

The said purposes subject to all the basic principles of international law embodied in the Charter of the United Nations (use of force or threat of force, peaceful settlement of international disputes, non-interference, cooperation, equality and self-determination, sovereign equality of States, good faith obligations under inter-

national law) and in the CSCE Helsinki Final Act of 1975 (linked to the above principles of respect for human rights, territorial integrity, inviolability of borders) [14].

Formal hierarchy of the principles does not exist, but their real value is different. Obviously, the central place belongs to the principle of non-use of force or threat of force: it is from its observance depends the effectiveness of all other principles.

The UN Charter said principle is formulated as follows (p. 4 of Art. 2): "All UN member states refrain in their international relations from the threat or use of force against the territorial integrity or political independence, or in any other manner inconsistent with the UN objectives" [15]. This rule is a peremptory norm of jus cogens, that is the norm, accepted and recognized by the international community of States as a whole as a norm from which deviations unacceptable, and which can only be changed following a norm of general international law that would bore the same character [16].

According to the UN Charter armed forces can not be used except in the public interest. Prohibited use not only armed force but also force all. Moreover, the threat of force is prohibited in any manner inconsistent with the purposes of the UN. The Charter sets in a row and the threat of its use. It follows that the threat would be illegal in those cases, that its application. This position was confirmed by the UN International Court of Justice [17, p. 89].

The practice of this principle in the period after the adoption of the UN Charter proved its central place among the basic principles of international law. Events related to Iraq's aggression against Kuwait in 1990-1991 [18, p. 217-218] confirmed that regards the State which violated the principle of non-use of force may be terminated other principles, including the principle of good faith implementation of international obligations related [19, p.87].

The normative content of the principle of non-use of force or threat of force disclosed in the Declaration on Principles of International Law, adopted resolution 2625 (XXV) of the General Assembly on 24.10. 1970. Determined that the use of force or threat of force is a violation of international law and the UN Charter; these ac-

tions in no way should be carried out as a means of settling international problems. Indicated that aggressive war is a crime against the peace, for which responsibility is assumed under international law. In accordance with the purposes and principles of the State's duty to refrain from propaganda of aggressive wars.

The Declaration on Principles of International Law specified actions on which states are obliged to abstain:

- Firstly, from the threat or use of force to violate the existing international boundaries of another State or as a means of settling international disputes, including territorial and issues related to state borders;

- Secondly, from the threat or use of force to violate international lines of demarcation, such as armistice lines installed or relevant international agreement to which this state is or which the state is obliged to follow any other reason ;

- Thirdly, from acts of reprisals (in the modern sense - countermeasures or sanctions) associated with the use of force;

- Fourth, against any violence, which deprives peoples referred to in the principle of equal rights and self-determination, their right to self-determination, freedom and independence;

- Fifth, from organizing or encouraging the organization of irregular forces or armed bands, including mercenaries, for incursion into the territory of another State;

- Sixth, from organizing, instigating, assisting or participating in acts of civil war or terrorist acts in another State or condoning organized activities within its territory directed towards the commission of such acts, when they are connected the threat or use of force;

- Seventh, the military occupation of the territory of that is the result of the use of force in violation of the UN Charter;

- Eighth, the acquisition of territory of as a result of the threat or use of force (stressed that no territorial acquisition resulting from the threat or use of force should not be recognized as legitimate)

- Ninth, from the propaganda war of aggression [20].

Most of the Declaration contained in the CSCE Helsinki Final Act of 1975 [21].

The list of responsibilities of States in respect of the principle of non-use or threat of force specified in the Declaration on strengthening the effectiveness of the principle of refraining from the threat or use of force in international relations, UN General Assembly approved Resolution № 42 / 22 of 11.18.1987.

Besides obligations stipulated in the Declaration in 1970, it contains the following: abstain from armed intervention and all other forms of interference or attempted threats against the personality of the State or against its political, economic and cultural foundations; not to use or encourage the use of economic, political or any other measures to achieve the subjugation of another State in the exercise of its sovereign rights and obtain from it any advantage; keeping to the basic principles of international law that promote the effective implementation of the principle of non-use or threat of force (the principle of peaceful settlement of disputes, the principle of cooperation, the principle of respect for human rights and fundamental freedoms); cooperate in strengthening the system of international security and the fight against terrorism; enhance the role of the Security Council for the maintenance of international peace and security, peaceful settlement of disputes in accordance with the Charter of (underlined special responsibilities of the permanent members of the UN Security Council) [22].

Duties of States related to the principle of non-use or threat of force, law corresponds community of nations and states - the victims of aggression (in the sense adopted at the 29th session of the UN General Assembly 1974 resolution "Definition of aggression") [23]. Among them - the right to individual and collective self-defense, the use of tangible and intangible sanctions (countermeasures), the criminal prosecution of perpetrators in the planning, financing solutions, committing aggression.

Conclusions. The most important practical issues in the analysis of contemporary international legal methods of combating aggression of the Russian Federation to Ukraine, is in fact the official recognition of the state, unfortunately, at the moment - Ukraine - a victim of aggression, since it at his disposal is given more legal tools to protect their sovereignty and territorial integrity. This issue is very important in

the context of Russian aggression against Ukraine because every state should be confident that in case of violation of her rights, she can protect yourself, and get adequate support from the international community.

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NATIONAL SELF-DETERMINATION AS OBJECT OT GLOBAL RIGHTS IN INTERNATIONAL LAW

Summary

The article deals with theoretical principles of national self-determination as the object of global rights in international law. The status of national self-determination is substantiated in the practice of international law and in Ukraine

Key words: global rights, collective rights, international law, national self-determination.

Formulation of the problem. Modern humanitarian, social and legal sciences, considering the problem of the self-concept and structure of this phenomenon, taking into account the self-determination of man and citizen, identifying people and nation. The role, place, contents of the law in the international politics and international relations at the United Nations, the right to self-determination today finally confirmed as a principle of international law. The action of this principle is seen in legal acts and doctrinal sources, but neither the UN Charter nor the Declaration on principles International Law 1970 or the Final Act of the Conference on Security and Cooperation in Europe of 1 August 1975, or in other documents that define the right to self-determination, does not reveal the concept of "people" for whom and fixed it right.

The problem of determining the nature of the right to self-determination of the people associated with the collective rights and the criticism of the global rights that are designed to clearly define the scope of rights of peoples and offer mechanisms to improve the recognition of States in international law and world politics. However, the doctrine of global rights are not formed either in international law or in national law. **Analysis of recent research and publications**. Despite the fact that the problems of self-

determination are widely disclosed in scientific papers and publications of some jurists (B.V. Babin, M.O. Baymuratov, M.O. Kuczynski, S.V. Sokolovsky, S.N. Haryuchy, A.H. Abashidze and F.R. Ananidze, B.J. Singer, Fedosenko N.O.) and in leading specialized international organizations. Views on the right of peoples to self-determination, expressed not only lawyers, but also ethnologists, philosophers and political scientists.

Among lawyers there is no unity in the thought that the idea of the status of self-determination in the modern international law. Some believe that the right of peoples to self-determination is higher peremptory norm of international law jus cogens (R.Tuzmuhamedov, H. Gros Espiell, K.Rupesinghe), others believe that the right of peoples to self-determination be recognized only under certain conditions and in conjunction other legal provisions (J.Crawford, A.Cassese). The conventional wisdom is that self-determination is not legal, but political or moral principle. Many believe that the idea of self-determination not only fit into the legal framework of the uncertainty related definitions (especially such thing as a "people"), but also triggers destructive and not subject to regulation processes, such as separatism and ethnic conflicts, thereby entering into conflict with the objectives of the U.N. Charter (J.Verzijl, R. Emerson, N. Glazer, C. Eagleton, A. Etzioni). **The purpose of the article.** The article reveals and justifies the theoretical principles of self-determination of the people as the object of global rights in international law.

Presenting main material. The principle of territorial integrity is one of the key foundations of any sovereign state. Generally, it is defined in the Constitution. In Art. 2 of the Constitution of Ukraine says that the sovereignty of Ukraine extends throughout its territory. The territory of Ukraine within its present border is indivisible and inviolable. Art. 132 of the Constitution of Ukraine declares that Ukraine territorial system is based on the principles of unity and integrity of the national territory. The Declaration on Principles of International Law in 1970 given the interpretation of this principle and, in particular, states: "Through the principle of the equal rights and self-determination of peoples enshrined in the Charter, all peoples have the right

freely to determine, without external interference, their political status and to pursue their economic, social and cultural development, and every State has the duty to respect this right in accordance with the Charter". The appearance of the thesis of "the right of people to self-determination" associated with the name of US President Woodrow Wilson. However, in his understanding, this idea did not have ethnic aspects, and discussed the right of peoples to determine the form and nature of government for themselves, most likely - the "right to democracy" [1]. It is necessary to note that the concept of nation (nation) in English means the population of the state and the state itself. In this sense the word "nation" is used in the names of international organizations (League of Nations, UN). This is due to the peculiarities of creating nations (countries) in the Americas, where the ethnic component had significant value. In Europe, the formation of national states on the ruins of the great empires was based on nationalist ideologies, the idea of the existence of a community, nation - Czechs, Poles, French. The problem of interpretation of the principle of "the right of nations to self-determination" regained importance after World War II, and especially with the intensification of anti-colonial movement. Since the principle of "the right of nations to self-determination" moves to the field of international law, first in the resolutions of the UN General Assembly in 1960 and 1962 years later, in 1976, the Covenant on Civil and Political Rights and the Covenant on Economic, Social and Cultural Rights, which is fixed is "the right of peoples to self-determination." And international lawyers confirmed opinion on the legality of the use of the said principle only in the case of decolonization, otherwise it contradicts the principle of territorial integrity. Thus, V. Tishkov said: scientists, advocates failed to understand that the principle of self-determination applies to colonial countries and does not allow for ethnic self-interpretation of the subject - people who, of course, primarily a territorial community [2].

Without going into detail on the evolution of views on the principle of self-determination can be stated that its contents, judging from the analysis of documents and doctrine, by the end of the 70s included the following elements:

- all peoples and nations have the right to self-determination;

- all participants in the international dialogue must respect this right;

- it is implemented by the free will of a people or nation;

- its implementation eliminates any pressure, coercion or interference;

- it means a choice between the state branch of a people or nation and entering his (her) on certain conditions in another state, free choice of political status;

- it also means the choice of state forms (forms of government, government, political regime);

- it finally means a choice of socio-economic system and way of development.

The principle of self-determination of nations has emerged as a political and legal principle in which the emphasis has shifted toward political expediency under observance and realization of human rights - a "Declaration of Independence", adopted on 4 July 1776, which stated on the sacred right given by the Creator people , modify, or reject the form of government, trampled human rights inalienable. These provisions were enshrined in the "Bill of Rights", adopted on 17 September 1787 and entered as the first ten amendments to the US Constitution. At the founding conference of the United Nations, members of the coalition, in San Francisco in February 1945 the Soviet Union in the approaching end of World War II and the political need to establish a new world order, proposed that the Charter of the United Nations created the principle of the right of nations to self-determination. This idea was supported by the leading world powers - the anti-Hitler coalition - Britain, the US and China. Consequently, the principle of recognition of the right of nations to self-declared politically became a principle of international law [3].

As a variant form of the right of peoples to self-determination by experts in international law have already been mentioned three models. The first - the people creating their own state - at the turn of XX-XXI centuries this right was implemented a number of nations now existing countries.

A.V. Marhiyev believes that, from the point of view of constitutional law, the question of secession can be treated in two cases: first, when this right is provided for in the constitution or other legislation; Secondly, if the people (nation) federat-

ed entities subject to the principle of equal rights and self-determination of peoples (nations). However, according to A.V. Marhiyeva, the right to self-determination in the form of secession can occur only if the interference and the lack of pressure from other countries. Note that the late XX - early XXI centuries the question invariably linked to human rights by the central government in respect to all people that are citizens of the country. The second model - providing state of the people, part of it, the right to create autonomous public education appropriate representation in specified proportions in all levels of government institutions and management, for example - a republic, autonomous region in the Russian Federation, Greenland consisting of Denmark, autonomous regions in Spain. The third model - the formation of national-cultural autonomy [4].

Any public education under the UN Charter and other international legal acts must respect the right of nations to self-determination and to provide guarantees this right. However, the right to self-determination should not be confused with the right to sovereignty. You can not equate the right of peoples to self-determination and the right to self-determination, on entry into the varying state and secession from the state. National sovereignty necessarily implies sovereignty. Self may have other forms, such as national-territorial or national-cultural autonomy.

Globalization involves unification under common standards, in this case affirms the existence of peoples identity, but because of the identity of being a nation greater geopolitical civilizational spaces are destructuring. In international law firm entered this category, in fact, with the UN Charter in 1945, but by studying the international documents confronted with such a situation. Hence the need to consider the global rights which include the right of people to self-determination.

It should again be noted that in the acts of UN proclaimed the right of peoples and nations to self-determination does not, unlike the Bolshevik documents. This is done in order not to complicate the implementation of this law for the multiethnic people. Therefore, in the preamble to the Constitution of Ukraine - multinational states - states that the country's Basic Law adopted on the basis of realization of Ukrainian nation, all the Ukrainian people the right to self-determination. If we

look at the history of Ukrainian constitutions of the Soviet Union, the first Constitution, 1924, 1936 years, neither of which self we do not go, this principle was laid down after the adoption of the relevant international instruments only in the Constitution of 1977, but it the right of nations. Nation provides national state. But the emergence of the nation state, in fact, locked in that relevant national community, the political community is not formed.

The doctrine and practice of international law has not yet given a clear answer to the question - how to ensure the harmonious unity of the implementation of the principle of self-determination of peoples and the principle of territorial integrity of states. However, this ground having sharp conflicts, such as the Kurdish and Chechen peoples. In their decision the parties to the conflict must show goodwill, mutual respect of interests and willingness to find compromises on the basis of international law.

Conclusions. The contemporary international community is trying to balance between the two trends. Or extend the line to the sovereignty of individual nations (and then potentially looming and independence of a number of Indian states, and the transition to the collapse of the USSR disintegration of the Russian Federation, and the collapse of the UK in Scotland, England and Wales, and separatism in Spain, Belgium, Italy and France, and etc.). Or focus on the integration of independent states in association with some inevitable restriction of their independence (example - the European Community).

The question of the right of nations (peoples) to self-determination should bring in a wide field of interdisciplinary, integrated research. Lighting and address this issue only in the context of international law will inevitably wear abstract, divorced from life in nature. When thinking in purely theoretical legal terms, it is probably equally well and can insist on effectiveness of the "right to self-determination", and its limitations, and its accessories ethnically mixed population of a territory legitimately expressing their will.

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OFF-CATEGORY

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PHENOMENON OF PROFESSIONAL DEFORMATION OF TEACHER'S PERSONALITY: CAUSES, WAYS TO PREVENT AND COMBAT

Summary

The article presents a theoretical analysis of the destructive impact of vocational and educational activities on the personality of the teacher, which manifests itself in the professional deformation. Analysis of these problems has identified and justified essential and structural content characteristics of professional deformation of teachers; the necessity of scientific development and implementation of prevention of professional deformation of educators has been substantiated; a set of conditions of efficiency of prevention of professional deformation of educators, as well as its elimination and prevention has been defined.

Key words: pedagogical activity, professional deformation, professional burnout, occupational risk factors, professional competences of teachers, prevention, vocational rehabilitation.

Formulation of the problem. Every profession is a system that historically evolving, transformed according to the cultural and historical changes; the scope of self-identity; a reality which formed the subject of creative work. It gives people a certain social status, needs special training, continuous training, training. Such activity is the teacher.

Mastering the teaching profession is not only the development of the individual teacher, his abilities and skills to help successfully carry out professional activities, but with adverse effects such as deformation system of the interpersonal relationships, reducing the effectiveness of professional activity, the development of negative attitudes towards colleagues and students, deteriorating mental and physical health and more. In addition, the current stage of modernization of education in Ukraine is

characterized, on the one hand, the increased requirements for teachers, on the other hand, the difficult socio-economic conditions of work and life of the bulk of domestic teachers. All this leads to the fact that teachers occupy one of the first places at risk professional and personal strain.

Professional deformation, breaking the integrity of the individual, reducing its adaptability and resilience that means negatively on the performance of changing professional behavior of the teacher, greatly complicates the social and professional adaptation specialist in pedagogical environment.

Thus, in the present state of the question had the contradiction: between the need to overcome and prevent deformation in the professional activity of teachers, on the one hand, and on the other -undeveloped conditions conducive to the effective prevention of occupational strain teacher.

The article is to analyze the individual teacher professional deformation, determination of measures and means comprehensive prevention and overcoming its consequences.

Analysis of recent research and publications. The problem of studying the impact on the personality of the teacher profession recurrent focus of domestic and foreign scientists, but is still relevant and sufficient research. In domestic and foreign psycho-pedagogical literature widely presented scientific papers that reveal the positive impact of educational and professional activity in identity formation. The problem of the relationship and personality reflected in the works of outstanding teachers and psychologists such as B.G. Ananiev, O.G. Asmolov, O.O. Bodalev, A.O. Derkach, V.P. Zinchenko, N.V. Kuzmina, O.M. Leontiev, S.L. Rubinstein, I.M. Slobodchikov, G.V. Sukhodolskiy, V.D. Shadrikov and others.

Some aspects of teacher professional deformation highlighted in the work of E.F. Zeer, L.N. Korneyevoyi, A.K. Markova, N.B. Moskvinoy, V.P. Podvoyskoho, S. Sidnevoy, D.G. Trunova, I.V. Holodnovoy, E.V. Yurchenko and others.

Presenting main material. In the scientific literature, and no single approach to the definition of what constitutes "professional deformation". The difficulties caused by the disclosure of its nature, especially the structure and complexity

diversity of links between manifestations of deformation in the professional activities and their personal nature.

Considering the professional deformation in general terms, E.F. Zeer said: "... Long-term performance of the same professional activity leads to the professional fatigue, depletion repertoire of ways to perform activities, loss of skills, reduced efficiency ...

Professional deformation - a gradual accumulation of change of the existing structure and the individual that adversely affect productivity and interaction with other actors, as well as the development of the personality" [5, 149].

Under the terms of S.G. Hellershteyna, "any change that occurs in the body such that becomes sustainable, is a professional deformation, if this change is due to professional work." Thus, the breadth of this definition involves spreading it in all directions of physical and mental organization man changing under the influence of the profession, and the effect has a pronounced negative [4].

The definition of professional deformation as a negative impact on the individual professions inclined and E.I. Rogov. "The development of the personality of the profession - writes the author - inevitably accompanied by changes in its structure, where, on the one hand, there is a strengthening and intensive development of qualities, but on the other - change, suppression or even destruction of structures that are not involved in this process. If these changes are regarded as professional negative, that violate the integrity of the individual, reducing its adaptability and resilience, they should be regarded as professional deformation". The author points out that professional deformation - is always included in the life of a specific form of activity of the individual, within which the formation and implementation of subject [9, 224].

L.N. Korneeva also highlights the negative impact of various occupations identity, defining professional deformation as a sharp aggravation, coarsening and carrying out of professional habits, thinking and communication style and personality characteristics that complicate human interaction with other people, their behavior often making inadequate setting [8, p. 65].

The extreme form of professional deformation O.G. Bondarchuk degradation professional believes the person associated with the speculation of authority, deviant behavior which may be carried in the out of office space [2].

Analysis of psychological and educational literature to study the problems of professional deformation showed that the diversity of factors that determine the professional deformation, can be divided into three groups:

- Objective related to social and professional environment, socio-economic situation, image and nature of the profession, professional spatial environment;

- Subjective, due to the peculiarities of personality and character of professional relationships;

- Objective and subjective, generated by the system and organization of professional process, quality control, professional managers.

Under the concept of E.O. Klimova, the teaching profession can be attributed to socio-professional groups (group accelerated social contacts) of the "Spider-Man". This group of occupations characterized by specific features: First, the work turns out always new, a number of points available surveillance and recording, secondly, the properties of "product" pedagogical work determined by the nature and properties of the artist, as well as the presence of "vocation", in Third, there is a need for special training by continuously develop mental and physiological abilities (otherwise there is a "violence to the psyche" and as a result is depression, irritability); Fourth, the feature of this work is often physiological effects such as fatigue because of constant voltage strong-willed, active mind, and strength [7].

In addition, the specific features educational activities include: variety of communication links, a variety of contacts in communication and interaction, the constant need to make decisions, to find constructive solutions to the conflict need to address multidimensionality of the professional activity, resulting in a combined problems of training, education , development and so on.

It should be emphasized that the main factor in the development of professional deformation is precisely the professional activity. Thus, in the implementation

of educational activities for employees of the educational sector has a number of professional risk factors affecting the deterioration of their mental and physical health. Among the leading risk factors affecting health educators called: the high emotional stress; significant voice load by professional duties; dominance in the workplace static load with little overall muscular and motor load; a large amount of intense visual work; high density contacts epidemic; lack of stable work and rest.

Each of these risk factors make the pedagogical work contribute to this professional group of chronic diseases of the nervous, cardiovascular, digestive system and immune system, respiratory and so on.

Manifestation of professional deformation is determined by age, individual psychological characteristics of the individual teacher, work experience, content and features educational activities.

Analysis of research reveals the following types of professional deformation of the individual teacher:

- Of general strain, characterized by similar changes in identity of all persons involved in teaching. Years due performance of professional activities. Manifested in edification, inflated self-esteem, self-confidence in excess, dogmatic opinion, the lack of the flexibility.

- Specific individual teacher deformation due to specific subjects. The reasons are: division of labor, specialization, the limited resources of individual business activities. Educators development of the individual is limited to teaching the subject.

- Professional typological deformation caused by the imposition of individual psychological characteristics of personality: temperament, abilities, character - the psychological structure of activity. As a result, composed of professional and personal complexes due to: professional orientation personality deformation (distortion of motivation, alteration values, pessimism, skepticism about the newcomers and innovation); strain, based on developing teaching skills and functions: organizational, communication, intellectual and other. (complex benefits hypertrophied level of claims,

inflated self-esteem, etc.); deformation due traits (role expansion, vlastolyubiye, dominance, indifference, etc.).

- Personalized deformation due to personal orientation and apparently not related to the process of educational activities (increased anxiety level, the individual character accentuation (labor fanaticism, enthusiasm and professional etc.).

For teachers as a professional group characteristic of the so-called syndrome of "burnout", which is a state of pronounced emotional and mental exhaustion. Professional burnout leads to various types of negative psychological manifestations, destructive impact on the performance of professional duties.

So, N.E. Vodopyanova, O.S. Starchenkova in the book "burnout syndrome: diagnosis and prevention" wrote that "According to the American scientist Maslach and Jackson (1974) consider burnout as a three-component structure, including emotional exhaustion, depersonalization and reduction personal achievements. In later studies, was found a wide range of negative consequences of burnout. Yes, interpersonal consequences are social (community), family relationships, as well as working in conflict or destructive tension when communicating with colleagues, business partners, customers, etc. «Burning down" at work, people often come home emotionally exhausted and irritable. They are completely absorbed by work problems, which will not be freed, even with family or friends.

Constituent consequences of burnout lies in the development of negative attitudes towards clients, work, or the organization itself, the alienation from work and, consequently, to reduce the attractiveness of and loyalty to the organization.

Behavioral consequences are at the level of the individual worker and at the level of the organization. "Burned" workers have resorted to the unconstructive or inefficient behavior, the actual increase feelings of distress and increase the tension around them, which affects the quality of work and reducing communications.

Psychophysiological effects appear in psychosomatic disorders such as insomnia, headaches and others. Burnout syndrome is one of the phenomena of personality deformation" [3, p. 7-8].

Professional teacher burnout is caused by several factors, research on the causes and prevention where necessary to preserve the health of not only teachers but also students, as it inevitably affects the state of relations with schoolchildren and students. Thus, Ilyin E.P. represents a ternary structure burnout syndrome in teachers, which includes: emotional exhaustion manifests itself in symptoms such as reduced emotional tone, devastation and fatigue, loss of interest in environmental, emotional satiety (right to work), depression, aggressive reaction; depersonalization characterized by depersonalization relationships with the people, increased dependence on others or, negativism, cynical perception of others behavior with the student as an object; reduction of personal achievements manifested itself in a negative evaluation, experience failure and incompetence of its activities, the significance of the fall of their own achievements, reducing professional motivation, facilitation of their professional duties repertoire of techniques used, limiting their opportunities [6, p. 367-384].

In the absence of competent state aid to overcome the chronic stress in professional work of teachers in forming a stable complex negative feelings that threaten his personal health and for the team as a whole. In this regard, the experience of many European countries regularly need to diagnose emotional state teachers, implement a system of prevention and care. The participation of teachers in the balintov-groups (named from the group debatable educational seminars for physicians M. Balint) is currently considered the most effective method of not only prevention of occupational combustion, but also the most successful method of promoting professional growth, formation of professional self-concept of teachers. The complex nature of burnout, inevitable manifestations in people communication professions make necessary study this condition among teachers in each school.

The specificity of the psychological problems of teacher labor determined by the characteristics of the overall political, socio-economic and cultural situation in the country, the region, specific locality. Among the causes of social discomfort representatives of the professional group called quality of life dissatisfaction, wages, low social guarantees, and decline in the prestige and social importance of the

teaching profession. These causes intrapersonal contradiction aggravate, adversely affect the motivation of professional activity, changing values, lead to frustration in the profession.

Professional uncertainty of recent decades due to the constant changes in education. Reforms in education, participation in the Bologna process, depreciation funds, aging staff, adequate and inadequate growth demands put forward, and low psychological culture, insufficient development of appropriate current level of communication skills and the self-regulation skills, enhances the psycho-emotional stress teachers.

The whole complex of the above negative factors vocational and educational causes the appearance of many psychological phenomena, in particular, creates psychological discomfort, provokes exclusion, leads to negativity, skepticism and apathy that marked personality and professional deformation deteriorating health professional teacher.

Professional deformation inevitable, but using different personality oriented technology of prevention and correction of possible prevention and overcoming.

The need for teacher professional deformation prevention is dictated by the fact that the stability teacher to professional deformation is directly related to the formation of his professional competence. Teacher competence and professional deformation interconnected and interdependent as follows: on the one hand, the development of professional deformation reduces the level of professional competence, on the other - a high level of competence facilitates correction of professional deformation.

Among the possible ways of vocational rehabilitation and ways to overcome the strain in the first call following: improving social and psychological competence and auto-competence; diagnosis and development of the professional deformation of the individual strategies to overcome them; passing the training program of personal and professional growth; biographies of professional reflection and development of alternative scenarios for further personal and professional development; prevention of occupational maladjustment professional novice; mastering the methods, methods of

self-emotional and volitional and self-correction of professional deformation; training or transition to a new position.

As you can see, preventive factors prevent professional deformation can be divided into two groups - the personal and psychological, which depends on the teacher and role - depending on the managerial and methodical management team.

The third, equally important group, include social group factors determined attitude to the development of the education sector at the level of authorities, because in their hands - funding the educational sector, providing financial support and valuable activity of educational institutions in local community. These measures, in our opinion, should include: ensuring economic and social guarantees of the teaching, research and teaching and other education system employees, enhancing their social status, prestige of the teaching profession, creating conditions for professional development and creativity; creating a modern material and technical basis for the educational system; develop an effective mechanism to ensure financial and economic education, adequate remuneration pedagogical and teaching staff; the development and introduction of incentives quality pedagogical work based on an objective assessment of the requirements of the qualification characteristics of teachers and teaching staff; development of new public health standards and rules for keeping schools and organization of the educational process; creating conditions for full rehabilitation teaching staff; provision of advanced training of pedagogical character, scientific and pedagogical cadres meet the needs of educational reform, the challenges of contemporary social development.

An important component of the system of preventive measures to detect and prevent deformation of professional educators should be a periodic medical examinations of workers in this professional group, with the obligatory passage examination of the psychiatrist. However, current orders of the Ministry of Health of Ukraine is not provided. Moreover, the list of professions, industries and organizations whose employees are subject to mandatory preventive medical examinations approved by the Cabinet of Ministers of Ukraine on May 23, 2001 № 559, employees of higher educational institutions III-IV accreditation levels, absent [1].

Conclusions. The theoretical analysis of the destructive impact of vocational and educational activities on the personality of the teacher, which manifests itself in a professional deformation, allowed to formulate general conclusions:

The leading factor of personality is acting teacher professional activity.

Complex negative factors vocational and educational causes the appearance of many psychological phenomena, in particular, creates psychological discomfort, provokes exclusion, leads to negativity, skepticism and apathy that marked personality and professional deformation deteriorating health professional teacher.

The concept of "teacher professional deformation" sufficiently specified it reflects the essence of the phenomenon. In determining this phenomenon, one could argue that it is modified such that deviates from the moral and professional standards personal path of development that destroys the integrity and stability of personality, formation of professional qualities, which reduces the level of adaptation and effectiveness of professional operation influenced the content of teaching activities and individual psychological characteristics of the individual teacher.

Summary Prevention of professional deformation includes a set of measures aimed at restoring optimal physiological and psychological state of the teacher, his positive relationships with students, colleagues, increased self-actualization, prevention of professional destruction, promote personal and professional growth of teachers, increased capacity for self-development, the formation of stress skills and self-regulation, as well as diagnostic tools, able to ensure control over the development of the process for its correction.

Search for identifying effective methods of professional deformation, the disclosure conditions of its development, and especially the prevention and correction of this process in many respects should cause a formation of professional competence of the teacher.

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MERCENARISM: MODERN LEGAL ASPECTS OF THE ISSUE

Summary

The article focuses on mercenarism as the legal action. Mercenarism is a crime, threat to the peace and international security. The timely international legal expanded specialization of this phenomenon and efficient battle with it are required.

Key words: military mercenarism, legal regulation, private military company, international cooperation.

Problem formulation. Social phenomenon mercenary military has a long historical and legal trends. Military mercenaries and mercenary as a phenomenon existing in the world for thousands of years.

The urgency of this problem is becoming more common in this social phenomenon on an international scale, in the absence of a modern legal classification mercenary detailed, as well as the absence of an effective international legal mechanism to deal with it.

The purpose of the article. Scientific analysis of the existing international and national laws and post-Soviet countries of Ukraine for the legal classification of the act as a war mercenary.

Statement of the basic material. The first evidence of the military mercenary were discovered in Mesopotamia in the 3rd millennium BC. When the king Sumerian city of Ur used hired soldiers. In ancient Greece, individual nations and states, even specialized in the provision of services in this area. Mercenaries used by Alexander the Great in the conquest of the Persian Empire in the 4th century BC.

This type of service used by monarchs in the Middle Ages. From the 13th century began the history of the Swiss mercenary soldiers. Several centuries Swiss mercenaries supplied many European sovereigns. Mercenaries have traditionally made up the elite troops in the various states. Natives of Scandinavia and Kievan Rus

to ensure the safety of the Byzantine emperors. Scots ensure the safety of the French kings. Swiss Guards traditionally guarded by Pope.

Mercenary requirements have changed significantly in the 18th and 19th centuries with the advent of mass armies. When the service in the army ceased to be a thing of the aristocracy and was considered by many peoples manifestation of patriotism. Mercenaries that historic period became involved as a foreign military experts with specialized military-technical, engineering knowledge and skills.

This form mercenary improved and became more complicated in the 20th century with the development of military equipment, weapons and combat use. The development of civilization has demanded legal settlement of this social phenomenon, which has both positive and negative sides. Gradually formed an international legal mechanism of regulation of relations in this sphere. The government intended to resolve the contradiction between the need for order in society and a variety of social interests, which are the conflicts.

Problems of public authorities and wars as the original right of states to coercion and violence, considered in his writings T. Hobbes, K. Clausewitz, K. Marx, F. Engels, Vladimir Lenin, L. Trotsky, and other theoreticians who have become classics in the area.

The military objective of the state tend to favor the private element of the overall political goals and is only a methodical way of achieving the desired political result.

Military mercenary, to a certain extent, is an instrument of implementation of military objectives. And given contradictory coordinate policy guidance, modern mercenary increasingly a criminal method of implementation of the policy.

Analysis of recent research and publications. Legal aspects of military mercenary in varying degrees considered modern authors: G.N. Andronov, V.F. Antipenko, Bordovskiy N.P., Gogniev A.V., Gurov N.P., Kondrashov F.T., Koretsky D.A., Kulik O.S., Lipcan O. Omelchenko G.V., Rogozin D.O., Smirnov M.V., Soyarko V.I., Yu.A. Karmazin, Yusinsky G.O., Yarmolaev G.S. and others.

After the end of the Cold War, international relations into practice firmly established the new concept of "private military company" (PMCs). Private military

companies commissioned by the State provide a wide range of military-technical, organizational services, as well as military operations. These businesses are earning a lot of money on specific orders directly connected with the conduct of hostilities. Thus, the shifting of the military functions of state and government to private firms - this is a brand new modern phenomenon.

In connection with the development of international cooperation "classic" mercenaries began to enjoy less demand, and their life became fraught with greater risk. Adopted in 1949, the Geneva Convention, set out mercenary law [1]. The laws of many countries prohibit their nationals to take part in the fighting on the other side of the state. Thus, the "soldiers of fortune" threatens not only real opponent in the "hot spots", but also law enforcement agencies of their respective countries.

International law recognizes a mercenary person involved in an armed conflict or military operations in order to obtain material compensation, are not, as a rule, a citizen of the State participating in the conflict, or the ongoing fighting. This person does not reside permanently in its territory, and is not directed to the country on official duty [1].

Article 47 of Additional Protocol №1 to the Geneva Conventions of 1949 determined that the assassin - a person who is specially recruited locally or abroad to fight in an armed conflict, and in fact, take a direct part in the hostilities essentially by the desire for private gain ... material compensation substantially in excess of that paid to combatants /military official/ the same rank among the personnel of the armed forces of that party [1, Article 47].

In 1989, the UN adopted the Convention on the Prohibition of the recruitment, use, financing and training of mercenaries [8]. It is essential to position the additional protocol №1 from 1977 to the Geneva Conventions of 1949. This protocol refers to the category of mercenaries, not only those directly involved in the armed conflict, but also those recruited to participate in a pre-planned acts of violence aimed at overthrowing the government of any state, undermining its constitutional order or the violation of its territorial integrity and immunity [1].

UN resolutions and decisions of various international conferences strongly condemn the practice of using mercenaries. So in the UN General Assembly resolution on 14 December 1979 it noted that, "... mercenary - is a threat to international peace and security and, like murder, piracy and genocide is a crime against humanity everywhere" [1]. Article 47 of the 1977 Additional Protocols to the Geneva Conventions for the Protection of War Victims /1949/ determined that mercenaries are not entitled to prisoner of war status or combatants [1, Article 47].

Legal laws of most post-Soviet states generally contains relatively identical criminal law definition of " mercenary" Available in them differ substantially, this concept is not changing. So in the legislation of Azerbaijan, Moldova, Kazakhstan, Kyrgyzstan, Russia mercenary characterized, as a rule, such actions as the participation of a mercenary in combat operations, recruitment, training or financing or other material support of a mercenary, as well as its use in armed conflict or hostilities [9].

According to Art. 359 of the Criminal Code of the Russian Federation acts mercenary punishable if it is paid to participate in armed conflicts or military actions as part of foreign armed units, having a membership in the States parties to the military confrontation, if that person is not a citizen of the country, and not permanently live in it territory and not a person directed to perform official duties [3, p. 359]. Qualified compositions mercenary in Russia are expressed in acts of recruitment, training, financing or other material support of a mercenary, as well as their use in armed conflict. From the analysis of the content of st.359 Criminal Code of the Russian Federation, it can be concluded that the Russian mercenary shall not be criminally liable even if he serves in the armed unit of the foreign state, intended for combat use in actual hostilities / or armed conflict / but in fact, he did not take part in combat operations [3, p. 359].

Statutory Instruments criminal-law fight against mercenary in Ukraine, recorded in art. 447 of the Criminal Code of Ukraine [4, st. 447]. So, in addition to the above common actions, constitute the objective side mercenary in Art. 447 of the Criminal Code of Ukraine fixed the goal of any criminal action on the formation of mercenary units - the use of a mercenary in armed conflicts of other States or act of vio-

lence aimed at overthrowing the state power or violation of the territorial integrity of another State [4, p. 447].

The criminal legislation of other CIS states the goal of qualification mercenary logically assumes, however this standard is not fixed [9].

Taking into account the fact that the functional purpose of the combat employment inherent in any army units, regardless of their actual combat activities, it allows us to conclude that a broader interpretation of the Ukrainian version of the legal determination of the composition mercenary as acts of recruitment, financing, material support and training mercenaries associated with its spread to cases of formation of mercenary units in the States actually involved in armed conflicts and military operations [4, p. 447].

It is noteworthy that in the Criminal Code of Georgia non-existent rule criminalizes mercenary. This fact is especially strange, given its fierce confrontation with Abkhazia and South Ossetia [2].

Many of the discrepancies in the definition and legal regulation of combating mercenary in different countries could be overcome through the implementation of universally recognized priority rules of international law over national law. It acts interstate multilateral rulemaking originally designed to unify the legal framework and to develop common approaches in their respective spheres of legal regulation. Modern distribution and diversity of this phenomenon as a war mercenary demand from national and international legislative bodies of more advanced and detailed legal classification of the act in order to effectively deal with it.

The development of modern developments in the eastern regions of Ukraine requires a clear new additions to the Criminal Code of Ukraine in the art. 477 "Mercenary". In fact, the territory of the sovereign state of Ukraine in the conditions of an undeclared war, act of entire military units of the Russian Federation, the fighting on the side of the separatist anti-Ukrainian illegal armed groups. In a statement, the Russian TV channel "Russia 24" the leader of the Donetsk separatists Zakharchenko said in January 2015 that under his war 3 4000 Russian military. And this is without taking into account other armed units from the "classic mercenary": Russian Cossacks

and Chechen, Russian and foreign "volunteers". In order to legalize these actions on its part, in October 2014 the Russian State Duma deputy from the "Fair Russia" introduced a bill to permit the establishment of private military companies, which can provide their services / mercenary military / third parties, as well as protection of national interests Abroad /"On the private military and security companies"/ [5].

Ukraine is experiencing a serious challenge in its recent history - the armed struggle for the state and territorial integrity. The ongoing military operations experts have called a new type of war - "hybrid war". It is characterized by such features as:

- No formal declaration of war;
- Do not apply international law of war;
- The absence of the mutual obligations of the parties to the conflict;
- Not have the status of prisoners of war;
- Extensive use of the aggressor and separatist mercenaries single and the whole wage units;
- Active participation on the side of the aggressor political parties, businesses and criminals;
- Use of a powerful media management public opinion;
- Active use of analysts, military, political scientists, psychologists, Sociologists for the development and application of social subversion technologies and methods of war propaganda.

The perceived shortcomings in the national public opinion and political circles that the problem is not military mercenary for Ukraine to date has led to the actual legal and legal gaps in the Ukrainian legislation concerning the specific measures to effectively combat mercenary.

Law of Ukraine "On Combating Terrorism" from 20.03.2003, the regulating mechanisms for combating contains only certain types of crime [6].

Conclusions. Mercenary always and in all of its socially dangerous manifestations of an international crime, it is widely cultivated variety of professional crime of a violent nature. Military mercenary knows no territorial boundaries and difficult

uncontrollable spatial displacement. It is usually accompanied by manifestations of political instability, it is a transnational phenomenon, prejudicial to national and international relations, undermining international stability and security.

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