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General theoretical construction of the mechanism for implementing the defence function of the state: Methodological characteristics

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■ **Abstract**. The relevance of the subject under study is conditioned upon the scientific originality and practical significance of the implementation of the defence function of the state in the context of drastic changes in the forms and methods of conducting combat operations in modern wars. At the general theoretical level, the structure of the mechanism for implementing the defence function of the state was analysed and methodological aspects of the correlation of its main elements were highlighted. The purpose of this study was to highlight the methodological characteristics of the concept, essence, and content of the mechanism for implementing the defence function of the state, to determine its place and role in protecting state sovereignty, territorial integrity, and other national interests during the full-scale aggression of the russian federation against Ukraine. The methodological toolkit of this study includes a set of research approaches, philosophical, general scientific, and concrete scientific methods that provided substantiated study results regarding the mechanism of implementing the defence function of the state. The theoretical design of this mechanism was analysed, as well as certain aspects of interaction and complementarity of its structural elements were considered. It was found that the model of this mechanism comprises legal (regulatory), institutional (organizational), and functional components. The regulatory element of the mechanism for implementing the defence function of the state covers the principles and norms that ensure the regulation of legal relations in the field of preparation for armed defence and protection in the event of an armed conflict (aggression). It was established that special subjects serve as the basis of the institutional (organizational) element of this mechanism, which, within the limits of their powers, carry out defence activities aimed at preparing for armed defence and protection in the event of an armed conflict (aggression). It was noted that defence activity is a functional component of the mechanism for implementing the defence function, which is implemented by authorized entities in appropriate forms, methods, and makes provision for preparation for armed defence in the event of armed aggression (conflict). The practical value of this study lies is that based on a methodological analysis of the legal literature and regulations of Ukraine on certain aspects of the implementation of the defence function of the state, proposals were formulated to create a realistic strategy for countering the aggressor state, aimed at improving the current legislation in the fields of national security and defence

■ **Keywords**: aggressor state; national security; defence; self-defence; sovereignty; territorial integrity

■ **Suggested Citation:**
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Introduction

In the modern world, new challenges arise in the environmental, energy, information, food, raw materials, financial and other security spheres of the population's life. The danger from the uncontrolled spread of nuclear weapons, cyber threats, interstate armed conflicts, international terrorism, illegal migration, piracy, transnational organized crime can lead to the death of a considerable number of people, cause unjustified damage to their lives and health, damage the state functioning of economic and social systems, as well as worsen the state of the natural environment. The 21st century is characterized by a negative tendency to change the territorial borders of the state in violation of the principles and norms of modern international law, as well as the impossibility of resolving international legal conflicts through diplomatic instruments. In the current conditions, the safety of the population, as well as its effective defence, is a priority task for the activities of state institutions (armed forces and law enforcement agencies), which must adequately respond to the challenges that exist at the regional and interstate levels.

These theses are confirmed by the present-day events of the military, economic, energy, and political confrontation that have been transpiring in Ukraine in recent years with the participation of the russian federation. The full-scale invasion of the russian army on February 24, 2022 began the next stage of the russian-Ukrainian armed conflict, which has been going on since 2014. In this struggle, Ukraine defends its civilizational choice, pertinence to European civilization, and the priority of human rights and freedoms, which are the basis of the civilized world.

Considering the challenges and threats that exist in the world, there is a need to form a new (effective) system of national security of Ukraine and create favourable conditions for its effective defence. Methodological analysis of the legal literature suggests that most publications on implementation of the defence function of the state are interdisciplinary and are investigated by specialists in military affairs, security studies, political science, etc.

Therewith, in the context of the establishment and development of Ukraine as an independent and sovereign subject of international law, there is a need for a theoretical legal analysis of the mechanism of implementing the defence function of the state in the realities of modern challenges (Evenko, 2013).

Having systematized and summarized certain aspects of the state's defence function, it is worth stating that the term "state defence" must be interpreted as a complex of military, ecological, economic, political, social, and legal measures for the implementation of activities aimed at ensuring the independence and territorial integrity of Ukraine (Harashchuk, 2006). According to V.B. Aver'yanov, the term "defence of Ukraine" should be understood as the integrity of the relations formed during the state's activities regarding the guarantee of its security with the use of the Armed Forces to protect its interests (Aver'yanov, 2005). V.V. Sokurenko (2017) believes that defence occupies a special place in the system of ensuring the sovereignty of the state and covers a wide scope of economic, scientific, technical, organizational, legal, and social measures. V.P. Shkidchenko and V.D. Kokhno (2000) define defence as a component of military security aimed at countering external aggression through the use of military forces. O.I. Pohibko (2015) holds another opinion, believing that the sphere of national security and defence is a single whole, and is aimed at ensuring permanent peace and tranquillity in the state.

Summarizing doctrinal opinions, it can be argued that these studies are intersectoral and are united around the defence function of the state, which is the sphere of activity of state bodies. However, there is a question about supplementing the content of term "state defence" with a unified system of special entities endowed with certain powers, as well as the specifics of the forms, means, and methods of implementing defence activities in modern conditions.

The purpose of this study was to perform a methodological characterization of the structural elements of the mechanism of the defence function of the state in the conditions of its protection from real challenges and potential threats in the conditions of Ukraine's confrontation with the russian federation.

Materials and Methods

The methodological toolkit of this study includes a set of research (methodological) approaches, general philosophical, general scientific, and concrete scientific methods, the use of which made it possible to obtain reliable and substantiated results of studying the mechanism of implementing the defence function of the state.

Research (methodological) approaches are a component (level) of the methodology of researching the theoretical legal foundations of the defence function and are considered as a system of interdependent scientific methods that mutually complement each other. The research (methodological) approach consists of methods, among which one or more are the main ones, while others perform a secondary (auxiliary) role.

A prominent place in the study of the mechanism of defence function is played by the activity approach, which has a universal nature and allows using the structure of activity for methodological analysis of social phenomena related to human behaviour as a subject of legal relations. This approach allows considering an activity as a theoretical model comprising structural elements: subjects and objects; forms and methods; purpose and result; means and methods; legal basis, etc. All these elements are embodied

in the theoretical construction of the mechanism for implementing the defence function of the state, where the basis is defence activity in interaction with other legal phenomena. It is also worth highlighting a systematic approach that created conditions for a comprehensive study of the mechanism of the defence function of the state as a set of elements that constantly interact and complement each other.

The next component of the methodology of working out the mechanism of implementation of the defence function of the state is the methods of investigating the subject of scientific research.

– general methods of cognition – analysis, modelling, comparison, synthesis, generalization, etc.; the methods of analysis and synthesis allowed analysing the main properties of the defence function of the state. The modelling method helped outline prospects for improving the legislation of Ukraine in the field of implementing the defence function of the state. The comparison method was used to identify general and special properties of the defence function of the state, the object and subject of defence activity, to compare different opinions of scientists regarding the interpretation of the essence and purpose of the functions of the modern state. The method of generalization was used to identify social legal phenomena that were investigated in connection with understanding the implementation of the defence function of the state;

– philosophical methods (axiological, anthropological, hermeneutical, dialectical). The axiological method helped identify certain aspects of public utility and the necessity of the defence function during the full-scale invasion of the russian federation troops on the territory of Ukraine. The anthropological method was aimed at considering the defence function to ensure fundamental human needs and interests, as well as determining the relationship of national policy in the context of the implementation of civil rights and freedoms. The hermeneutical method allowed interpreting the current regulations considering economic, ideological, historical, psychological, and sociological circumstances regarding their implementation and application in national security and defence. The dialectical method contributed to the consideration of the defence function as a corresponding activity, the basis of which is the interaction, interdependence, and mutual influence of its structural elements;

– general scientific methods (synergetic, structural). The synergetic method was aimed at determining the organizational nature of the defence function of the state, the structural method was aimed at identifying the components of the mechanism for implementing the defence function of the state and establishing connections between them;

– specifically scientific methods. Psychological methods were used to investigate the psychological characteristics of subjects of defence activities, statistical methods were used to analyse the real state of war crimes committed in Ukraine, etc.

Results and Discussion

Investigating the features of the defence function as a sphere of state activity, it is necessary to refer to the regulatory definition of this term. Article 1 of the Law of Ukraine "On the Defence of Ukraine"[1] states that the defence of Ukraine is a set of certain legal, economic, and military measures of the state regarding its readiness for armed defence.

Using the activity approach as a methodological basis for the model of state activity, the authors of this study believe that the interpretation of the term "state defence" should be expanded and supplemented, considering the organizational structure of the state mechanism (state authorities, state enterprises, and state institutions). This would expand not only the subject component, but also determine the main tasks of the defence function as a state activity, compare it with other related phenomena of legal reality. To implement the defence function as a vital area of state activity, special entities have been created that must interact with each other on an ongoing basis to ensure reliable protection of the country's sovereignty and territorial integrity from potential threats.

An effective result in the context of the implementation of state functions depends on many factors and conditions, the main ones being the ability to determine the relevant goals, as well as the means and methods that need to be implemented in the field of national policy, sufficiency, and availability of material (financial) resources and a set of managerial powers of the relevant subjects (officials) of the state (Mashkov, 2015).

To determine the effectiveness of the defence function of the state, it is necessary to refer to the category of the mechanism for implementing the defence function of the state, which allows conducting a structural and comparative characterization of its elements, determining aspects of their interaction and correlation. Thus, the term "legal mechanism" should be interpreted as a set of certain factors and elements that create the necessary conditions for ensuring human rights and freedoms in modern conditions, consisting of interdependent elements that mutually complement each other (Orzykh, 2001). O.V. Nehodchenko (2005) identifies the structure of this mechanism as a set of certain elements (legal means, measures, forms, methods, etc.), which in a certain interaction should create appropriate conditions for the implementation of human rights and

[1]Law of Ukraine No. 1932-XII "On the Defence of Ukraine". (1991, December). Retrieved from https://zakon.rada.gov.ua/laws/show/1932-12#Text.

freedoms in the context of the development of civil society and the rule of law.

Thus, the mechanism of implementation of the defence function should be understood as the unity of authorized entities (state bodies), whose activities are governed by the current legislation, as well as the existence of certain conditions and legal grounds aimed at preparing for armed defence and protecting the state in the event of armed aggression (conflict). This definition creates prerequisites for a full understanding of the purpose of the mechanism for implementing the defence function of the state as a structural and functional system aimed at implementing security policy.

The theoretical design of the defence function implementation mechanism consists of legal (regulatory), institutional (organizational), and functional components. The system of regulations governs public relations and outlines the scope of powers of defence entities, and therefore, when determining the elements in the structure of the relevant mechanism, special attention should be paid to the regulatory component.

The regulatory element of the mechanism for implementing the defence function of the state comprises principles and norms that ensure the regulation of legal relations in the field of preparation for armed defence and protection in the event of an armed conflict (aggression).

The current legislation of Ukraine in the defence sector is divided into groups according to certain criteria. The first group includes regulations that establish and define the legal foundations for the implementation of defence activities (the Constitution of Ukraine[1], Laws of Ukraine: "On the State Border of Ukraine"[2], "On State Secrets"[3], "On Counterintelligence Activities"[4], "On Mobilization Training and Mobilization"[5], "On the Defence of Ukraine"[6], "On the Organization of Defence Planning"[7], "On the Foundations of National Resistance"[8], "On the National Security of Ukraine"[9], "On the Legal Regime of Martial Law"[10], etc.).

The second group includes regulations that establish a system of state bodies that consolidate their legal position (status) when performing a defence function: (laws of Ukraine: "On Alternative (Non-Military) Service"[11], "On the State Border Service of Ukraine"[12], "On the Armed Forces of Ukraine"[13], "On General Military Duty and Military Service"[14], "On the National Guard of Ukraine"[15], "On the Security Service of Ukraine"[16], "On Social Legal Protection of Servicemen and their Family Members"[17], "On the Status of War Veterans, Guarantees of their Social Protection"[18], "On the Status of Military Service Veterans, Veterans of Internal Affairs Bodies, Veterans of the National Police and Some Other Persons and their Social Protection"[19], etc.).

[1]Constitution of Ukraine: Law of Ukraine No. 254k/96-BP. (1996, June). Retrieved from http://zakon5.rada.gov.ua/laws/show/254к/96-вр.
[2]Law of Ukraine No. 1777-XII "On the State Border of Ukraine". (1991, October). Retrieved from https://zakon.rada.gov.ua/laws/show/1777-12#Text.
[3]Law of Ukraine No. 3855-XII "On State Secrets". (1994, January). Retrieved from https://zakon.rada.gov.ua/laws/show/3855-12#Text.
[4]Law of Ukraine No. 374-IV "On Counterintelligence Activities". (2022, December). Retrieved from https://zakon.rada.gov.ua/laws/show/374-15#Text.
[5]Law of Ukraine No. 3453-XII "On Mobilization Training and Mobilization". (1993, October). Retrieved from https://zakon.rada.gov.ua/laws/show/3543-12#Text.
[6]Law of Ukraine No. 1932-XII "On the Defence of Ukraine". (1991, December). Retrieved from https://zakon.rada.gov.ua/laws/show/1932-12#Text.
[7]Law of Ukraine No. 2198-IV "On the Organization of Defence Planning". (2004, October). Retrieved from https://zakon.rada.gov.ua/laws/show/2198-15#Text.
[8]Law of Ukraine No. 1702-IX "On the Foundations of National Resistance". (2021, July). Retrieved from https://zakon.rada.gov.ua/laws/show/1702-20#Text.
[9]Law of Ukraine No. 2469-VIII "On the National Security of Ukraine". (2018, June). Retrieved from https://zakon.rada.gov.ua/laws/show/2469-19#Text.
[10]Law of Ukraine No. 389-VIII "On the Legal Regime of Martial Law". (2015, May). Retrieved from https://zakon.rada.gov.ua/laws/show/389-19#Text.
[11]Law of Ukraine No. 1975-XII "On Alternative (Non-Military) Service". (1991, December). Retrieved from https://zakon.rada.gov.ua/laws/show/1975-12#Text.
[12]Law of Ukraine No. 661-IV "On the State Border Service of Ukraine". (2003, April). Retrieved from https://zakon.rada.gov.ua/laws/show/661-15#Text.
[13]Law of Ukraine No. 1934-XII "On the Armed Forces of Ukraine". (1991, December). Retrieved from https://zakon.rada.gov.ua/laws/show/1934-12#Text.
[14]Law of Ukraine No. 2232-XI "On General Military Duty and Military Service". (1992, March). Retrieved from https://zakon.rada.gov.ua/laws/show/2232-12#Text.
[15]Law of Ukraine No. 876-VII "On the National Guard of Ukraine". (2014, March). Retrieved from https://zakon.rada.gov.ua/laws/show/876-18#Text.
[16]Law of Ukraine No. 2229-XII "On the Security Service of Ukraine". (1992, March). Retrieved from https://zakon.rada.gov.ua/laws/show/2229-12#Text.
[17]Law of Ukraine No. 2011-XII "On Social Legal Protection of Military Personnel and their Family Members". (1991, December). Retrieved from https://zakon.rada.gov.ua/laws/show/2011-12#Text.
[18]Law of Ukraine No. 3551-XII "On the Status of War Veterans, Guarantees of their Social Protection". (1993, October). Retrieved from https://zakon.rada.gov.ua/laws/show/3551-12#Text.
[19]Law of Ukraine No. 203/98-VR "On the Status of Military Service Veterans, Veterans of Internal Affairs Bodies, Veterans of the National Police and Some Other Persons and their Social Protection". (1998, March). Retrieved from https://zakon.rada.gov.ua/laws/show/203/98-%D0%B2%D1%80#Text.

The institutional (organizational) element of the mechanism for implementing the defence function of the state includes special entities (the Armed Forces of Ukraine, the Security Service of Ukraine, the National Guard of Ukraine, the State Border Service of Ukraine, law enforcement and intelligence agencies) that are authorized to implement defence activities aimed at preparing for armed defence and protection in the event of an armed conflict (aggression). To unify all subjects of defence activities, the term "security and defence sector" was introduced. Thus, Item 16 of Article 1 of the Law of Ukraine "On the National Security of Ukraine"[1] states that the security and defence sector is a system of state authorities, the Armed Forces of Ukraine, law enforcement and intelligence agencies, state bodies of special purpose with law enforcement functions, which must provide reliable protection against potential dangers and real threats to the territorial integrity of the state.

The structure of the security and defence sector includes components that are distributed according to functional powers and legal status, namely: 1) security and defence forces; 2) defence-industrial complex; 3) public associations that take part on a voluntary basis in ensuring national security and order. According to the structural and functional criterion of activity, the security and defence sector can be attributed both to the system of state bodies and to civil society institutions (Aleksandrov, 2020). Thus, the principal place in the structure of the institutional (organizational) element of the mechanism for implementing the defence function of the state belongs to the security and defence sector.

Special entities (state bodies) authorized to implement the defence function according to the legislation are endowed with specific powers in this area. Thus, the Security Service of Ukraine (SSU) as a state body of special purpose with law enforcement functions, is entrusted with the task of reliable and effective protection of state sovereignty, constitutional order, and territorial integrity of Ukraine[2].

The National Guard of Ukraine (NGU) is a military formation with a special status and is assigned to perform tasks related to the security and protection of human and civil rights and freedoms, as well as in cooperation with the Armed Forces of Ukraine, it carries out joint measures for the defence of the state border[3].

Within the framework of the implementation of the defence function, a special place belongs to the State Border Service of Ukraine (SBSU), which, according to Article 1 of the Law of Ukraine "On the State Border Service of Ukraine"[4] carries out the task of ensuring the inviolability of the state border and protection of the sovereign rights of Ukraine in its adjacent zone and exclusive (maritime) economic zone. In addition, the SBSU performs the tasks of anticipating and preventing manifestations of illegal border crossing by neighbouring states (Sakovski, 2021).

Notably, the citizens of Ukraine and their associations, which form the basis of the security and defence sector, actively take part in the implementation of the defence function. Thus, Item 8 of Article 1 of the Law of Ukraine "On the Fundamentals of National Resistance"[5] consolidates the term "national resistance", which should be understood as the activity of citizens within the legal field, aimed at countering armed aggression against the Ukrainian people.

Thus, as an institutional element of the mechanism for implementing the defence function, the security and defence sector of Ukraine is aimed at ensuring national security in the state. The key tasks of ensuring the implementation of the defence function of the state belong to the Armed Forces of Ukraine, the SSU, the NGU, and the SBSU, which are subordinate to various ministries and authorities. Such a distribution may adversely affect the aspects of interaction between these institutions when performing tasks related to the state's defence capability. The authors of this study believe that to resolve such a situation, it is necessary to develop and adopt a unified regulation that should clearly consolidate the powers of military institutions and law enforcement agencies when performing tasks for the armed protection of the territorial integrity of Ukraine in the face of real threats.

A functional element of the mechanism for implementing the defence function of the state is defence activities carried out by specially authorized entities to prepare for armed defence and defence in case of armed aggression (conflict). Defence activity consists of elements (means, purpose, motive, object, result, method, subject, form, etc.), which allows them to be used as criteria in the study of the effectiveness of the implementation of the defence function of the state, which is determined by its structure (Bilozorov, 2021).

Thus, the structure of the mechanism for implementing the defence function of the state is covered through a set of interrelated elements that create potential and real opportunities for effective protection of the state in case of armed aggression (conflict).

[1]Law of Ukraine No. 2469-VIII "On the National Security of Ukraine". (2018, June). Retrieved from https://zakon.rada.gov.ua/laws/show/2469-19#Text.
[2]Law of Ukraine No. 2229-XII "On the Security Service of Ukraine". (1992, March). Retrieved from https://zakon.rada.gov.ua/laws/show/2229-12#Text.
[3]Law of Ukraine No. 876-VII "On the National Guard of Ukraine". (2014, March). Retrieved from https://zakon.rada.gov.ua/laws/show/876-18#Text.
[4]Law of Ukraine No. 661-IV "On the State Border Service of Ukraine". (2003, April). Retrieved from https://zakon.rada.gov.ua/laws/show/661-15#Text.
[5]Law of Ukraine No. 1702-IX "On the Foundations of National Resistance". (2021, July). Retrieved from https://zakon.rada.gov.ua/laws/show/1702-20#Text.

In the mechanism of implementing the defence function of the state, it is necessary to distinguish two levels – internal (state) and external (international). The internal (state) level includes the activities of the state, which are carried out in the spheres of national security and defence and are aimed at protecting the rights and freedoms of people and citizens; preservation of social democratic values; creation of appropriate conditions for the protection of the state territory, guarantee of sovereignty and constitutional order[1].

At the external (international) level, defence activity is embodied in a certain form of its implementation – self-defence of the state, which is aimed at ensuring effective protection of the territory of the state and preserving its integrity and independence from armed aggression. The Charter of the United Nations (the UN Charter) defines two types of state self-defence – individual and collective. Article 51 of the Charter of the United Nations (Charter of the United…, 1945) states that in the event of an armed attack (aggression) against a member of the United Nations, the state has an inalienable right to individual or collective self-defence with the possibility of using the armed forces as special subjects for the implementation of the state's defence function (Bondarchuk, Chupira, 2021).

The strategic concept of defence and security of the members of the North Atlantic Treaty Organization, adopted by the heads of states and governments in Lisbon on November 19, 2010[2], established an analogous provision regarding the state's ability to exercise self-defence as a means of countering armed aggression. The modern security environment of the NATO member countries is aimed at performing the following tasks: ensuring collective security and implementing crisis management. The document also establishes the responsibility of the alliance in the context of collective protection and defence of the territory of NATO member countries and their population from armed conflict (aggression).

Considering the legal guarantees of international security and modern threats and challenges, the irreversibility and irrevocability of the state's strategic course to acquire full membership in the European Union and the North Atlantic Treaty Organization was determined in Ukraine, which was consolidated in the Law of Ukraine "On Amendments to the Constitution of Ukraine (regarding the strategic course of the state to acquire full membership of Ukraine in the European Union and in the North Atlantic Treaty Organization)"[3]. Full membership in the North Atlantic Treaty Organization will help Ukraine obtain international security guarantees aimed at exercising the right to self-defence (individual or collective) in the event of an armed attack, as well as allow it to carry out such actions as is considered necessary, including the use of armed force to restore and preserve peace and world order.

The theoretical and practical significance of investigating the defence function of the state in the context of modern challenges and threats requires its methodological understanding. Defence as a phenomenon of modern reality is the subject of research of various sciences – military, natural, social, and humanitarian, technical, etc., which distinguish its individual properties and methodological approaches, terminology, theoretical and philosophical foundations that are inherent in a particular field of scientific knowledge. Therefore, the multifaceted approaches to defence as a phenomenon of reality in the conditions of modern challenges and threats give rise to the pluralism of its scientific interpretations, among which there are common, special, and original ones.

The scientific literature presents several methodological systematizations of the interpretation of the term "defence" in various areas of scientific research. Thus, S. Yaniuk (2018) considers defence as a real state of protection of the interests of society and the state, which contributes to the preservation and successful functioning of critical infrastructure objects in the presence of potential threats, and also singles it out as a specific activity aimed at identifying and neutralizing threats.

Of interest is the position of V.M. Telelym, V.I. Yefimenko and P.A. Minieiev (2021) regarding the interpretation of the term "defence", which is the result of the application of an anthropological approach, since the defence function of the state is associated with a certain practice of ensuring normal conditions for human life and is interpreted as the absence of dangers; a certain activity to ensure or prevent any dangers, threats associated with the relevant historical stage of society's development.

O.O. Surkov (2021) offered his solution to this issue. Surkov argued for a pluralistic interpretation of the term "defence" and singled out the principal methodological approaches to its interpretation: defence – protection of the subject's interests from threats and potential dangers; defence – preservation of the integrity, fortitude, stability, and normal

[1]Law of Ukraine No. 2469-VIII "On the National Security of Ukraine". (2018, June). Retrieved from https://zakon.rada.gov.ua/laws/show/2469-19#Text.
[2]Law of Ukraine No. 9 "On Strategic Concept of Defence and Security of the Members of the North Atlantic Treaty Organization". (2010, November). Retrieved from https://zakon.rada.gov.ua/laws/show/1932-12#Text.
[3]Law of Ukraine No. 2680-VIII "On Amendments to the Constitution of Ukraine". (2019, February). Retrieved from https://zakon.rada.gov.ua/laws/show/2680-19#Text.

functioning of the social system in the event of destructive actions on it; defence – protection of material and spiritual values of the subject (country, state, society, individual, etc.) from potential dangers.

To ensure an increase in the level of the state's defence capability and the application of a systemic approach, R.I. Tymoshenko, A.K. Pavlikovskyi and M.M. Lobko (2021) propose their model of the defence system of Ukraine with the corresponding structural elements. Researchers claim that the effectiveness of the defence system depends on the effective protection of the state in the event of armed aggression (armed conflict) and active interaction between its structural elements during the performance of tasks and functions assigned to it.

One of the most common methodological areas of understanding the defence function of the state is the axiological approach, which is aimed not only at understanding defence as a value, but also at determining certain aspects of its implementation in the context of real threats and dangers to society and the country. According to T.A. Podkovenko (2021), defence includes certain measures aimed at protecting people, society, and the state, their benefits, and the natural environment from threats and potential dangers.

Thus, the given methodological approaches to the systematization of scientific interpretations of defence do not exhaust all the options presented in the scientific literature, but they allow stating the existence of various interpretations regarding the definition of this term, which are difficult to classify according to a certain criterion, but each of them allows investigating certain inherent features of defence activity, which in their totality make up a comprehensive understanding of the term "defence function of the state".

Conclusions

In the conditions of a long war organized by russia against Ukraine, aimed at destroying statehood and destroying it as a sovereign, independent state, there are all the necessary grounds for creating a realistic strategy to counter the aggressor state. It should reflect not only ways to build effective defence, but also the concept of symmetrical responses to the enemy, which should make provision for the creation of its own military potential to obtain the necessary effect on deterring the aggressor.

According to the authors, a separate role in the formation of such a concept should belong to the mechanism of the implementation of the defence function of the state as a set of authorized subjects (state bodies), whose activities are regulated by the current legislation, as well as the presence of certain conditions and legal grounds aimed at preparing for armed defence and defence of the state in case of armed aggression (conflict).

The theoretical design of this mechanism consists of legal (regulatory), institutional (organizational), and functional components. The regulatory element of the mechanism for implementing the defence function of the state comprises principles and norms that ensure the regulation of legal relations in the field of preparation for armed defence and protection in the event of an armed conflict (aggression). Special entities (the Armed Forces of Ukraine, the Security Service of Ukraine, the National Guard of Ukraine, the State Border Service of Ukraine, law enforcement and intelligence agencies) form the basis of the institutional (organizational) element of this mechanism, which, within the limits of their powers, carry out defence activities aimed at preparing for armed defence and defence in case of armed conflict (aggression). Defence activity is a functional component of the mechanism for exercising the defence function, which is implemented by authorized entities in appropriate forms and methods and is aimed at preparing for armed defence and defence in the event of armed aggression (conflict).

The investigation and application of such a model of the defence function mechanism helps identify promising areas of research on the means, forms, and methods of defence activity of Ukrainian society in the context of resistance to the enemy on the territory of Ukraine.

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Загальнотеоретична конструкція механізму здійснення оборонної функції держави: методологічна характеристика

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■ **Анотація**. Актуальність теми дослідження зумовлена науковою новизною та практичною значущістю реалізації оборонної функції держави в умовах кардинальних змін форм і методів ведення бойових дій у сучасних війнах. На загальнотеоретичному рівні проаналізовано структуру механізму здійснення оборонної функції держави та виокремлено методологічні аспекти співвідношення його основних елементів. Мета статті – висвітлити методологічну характеристику поняття, сутності та змісту механізму здійснення оборонної функції держави, визначити його місце й роль щодо захисту державного суверенітету, територіальної цілісності та інших національних інтересів під час повномасштабної агресії рф проти України. Методологічний інструментарій наукової праці охоплює сукупність дослідницьких підходів, філософських, загальнонаукових і конкретно-наукових методів, які забезпечили отримання обґрунтованих результатів дослідження щодо механізму здійснення оборонної функції держави. Проаналізовано теоретичну конструкцію цього механізму, а також розглянуто окремі аспекти взаємодії та взаємодоповнення його структурних елементів. Визначено, що модель вказаного механізму складається з правової (нормативної), інституційної (організаційної) та функціональної складових. Нормативно-правовий елемент механізму здійснення оборонної функції держави охоплює принципи й норми, що забезпечують регулювання правових відносин у сфері підготовки до збройного захисту та захисту в разі збройного конфлікту (агресії). Встановлено, що спеціальні суб'єкти слугують основою інституційного (організаційного) елемента цього механізму, які в межах повноважень здійснюють оборонну діяльність, спрямовану на підготовку до збройного захисту та захисту в разі збройного конфлікту (агресії). Зауважено, що оборонна діяльність є функціональною складовою механізму здійснення оборонної функції, яка реалізовується уповноваженими суб'єктами у відповідних формах, методах та передбачає підготовку до збройного захисту й захисту в разі збройної агресії (конфлікту). Практична цінність дослідження полягає в тому, що на основі методологічного аналізу юридичної літератури та нормативно-правових актів України щодо окремих аспектів здійснення оборонної функції держави сформульовано пропозиції стосовно створення реалістичної стратегії протидії державі-агресору, спрямовані на вдосконалення чинного законодавства у сферах національної безпеки й оборони

■ **Ключові слова**: держава-агресор; національна безпека; оборона; самооборона; суверенітет; територіальна цілісність

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Criminal offences that infringe on the procedure for the execution of court decisions under the legislation of the Republic of Azerbaijan and Ukraine: Issues of legislative regulation

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■ **Abstract**. The relevance of this study is justified by the need to carry out a comparative legal study of the norms that ensure the protection of the interests of justice in the Republic of Azerbaijan and Ukraine in the field of implementation of judicial prescriptions as an important stage of the justice process as a whole. The purpose of this study was to implement a general description of criminal offences that encroach on the procedure for the execution of court decisions, according to the legislation of the Republic of Azerbaijan and Ukraine, as well as characteristics of those features that allow distinguishing the corresponding encroachments from other offences against justice and combining them into one category. This study employed a set of scientific methods: terminological, system-structural, formal logical, comparative legal. Based on the results of this study, it was established that the formalization of criminal offences, which encroach on the implementation of the principle of inevitability of legal responsibility, and the criminal law enforcement of court decisions in the Republic of Azerbaijan and Ukraine is an ongoing process. The conclusion was substantiated that the criminalization of a fairly wide scope of socially dangerous acts of this category implemented in the current criminal legislation of each of the States is conditioned upon the social need to ensure human rights and public interests in the field of implementing the tasks of justice. The provisions formulated in this paper will contribute to the search for more effective means of criminal law in the law-making and law enforcement of both the Republic of Azerbaijan and Ukraine

■ **Keywords**: criminal liability; object of crime; classification of crimes; criminal offences against justice; decisions

■ Introduction

Criminal law protection of public relations in modern society is determined by the nature, degree of public danger of social phenomena occurring in it, and the prevalence of such phenomena in a particular historical period of the life of the state and citizens.

Presently, the problems of defence and resistance to foreign military aggression have become especially relevant for the Ukrainian state. The issue of combating corruption phenomena, especially dangerous in the areas of strengthening Ukraine's defence capabilities, in the sphere of the functioning of the state apparatus, self-governing bodies, ensuring the vital activities of society in conditions of martial law, does not lose its urgency (Batyrgareieva, Babenko, & Kaija, 2019; Vasylevych *et al.*, 2021; Vozniuk *et al.*, 2021). The need to protect the values of society and the individual from dangerous offences, including those committed by organized criminal organizations, definitely does not disappear over time (Golovkin, & Marysyuk, 2019; Vozniuk, 2022).

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The European vector of development, the further development of the institutions of Ukraine as a rule of law, puts the task of executing court decisions at the level of national policy. The implementation of these areas of activity of state bodies and structures is based on the constitutional principle of mandatory execution of court decisions in the administration of justice (Item 9 of Part 3 of Article 129 of the Constitution of Ukraine[1]). In its legal doctrine, Ukraine consistently implements pan-European principles of the administration of justice. One of the steps towards this was the ratification of the Association Agreement between Ukraine and the European Union on September 16, 2014 by the Verkhovna Rada of Ukraine[2]. State institutions, civil society, the scientific community and law enforcement agencies are currently working to achieve the tasks of cooperation set out in the text of the Agreement, including in the field of justice.

The law-making and law-enforcement activities of the legal scientists of the Republic of Azerbaijan and Ukraine are consistent with such areas of implementation of the criminal policy. One of these areas is reflected in the norms of the criminal legislation of each of the two states, which make provision for liability for crimes (according to the criminal legislation of Ukraine – criminal offences[3]) against justice.

Despite a considerable number of studies covering the aspects of legal responsibility for criminal offences against justice, which, admittedly, are of scientific and practical importance, today there are many questions on certain categories of criminal offences of this group, which are still understudied.

Specifically, such issues can be called criminal liability for socially dangerous acts committed when implementing court orders. Legislation of both the Republic of Azerbaijan and Ukraine prescribes responsibility for committing criminal offences of this category.

The problems of justice protection based on comparative studies are investigated by a cohort of researchers who pay attention to the study of normative provisions on exemption from criminal liability based on an agreement between the accused and the prosecutor (Kamenskyi, 2020), the characteristics of the elements and signs of the composition of the evasion of court decisions (Nalutsyshyn, 2018), description of criminal law norms that make provision for responsibility for obstruction of justice and obstruction of sentencing (Yusubov, 2020), analysis and systematization of crimes and misdemeanours against administration of justice (Shepitko, 2017), etc. The range of issues that have been investigated by researchers, the published results indicate a considerable theoretical and practical significance of the scientific provisions formulated by these legal scientists.

The issue of criminal liability for offences against justice in the Republic of Azerbaijan and Ukraine, specifically for actions committed during the execution of court decisions, was considered by one of the authors of this paper using the comparative legal method rather fragmentarily (Ahmedov, 2018; 2019).

The problem under study continues to be socially important and requires further investigation. It is quite logical to say that such a search has both scientific and practical significance when forming the legislative provisions of each of the states.

All of the above proves the need to investigate this category of criminal offences under the legislation of the Republic of Azerbaijan and Ukraine.

The scientific originality of this paper lies in the fact that it describes the signs of some criminal offences committed in the plane of enforcement of court decisions, according to the legislation of the Republic of Azerbaijan and Ukraine, draws attention to the need to improve the criminal law norms regulating liability for criminal offences of the category under study, to increase their effectiveness in law enforcement. *The purpose of this study* was to analyse the problematic issues of criminal liability for crimes (criminal offences) that encroach on the procedure for execution of court decisions, according to the legislation of the Republic of Azerbaijan and Ukraine, and to form theoretically substantiated generalizations and recommendations on the improvement of the current criminal legislation of each of the states based on the conducted scientific research.

Materials and Methods

This study employed such scientific methods as terminological, system-structural, formal-logical, and comparative legal methods. The *terminological method* helped investigate the term "justice", "the original and immediate object of criminal offences against justice". *The system-structural method* was used for a comprehensive scientific analysis of the elements and signs of the composition of criminal offences against the procedure for execution of court decisions under the legislation of Ukraine and Azerbaijan and for further systematization of such offences. *The formal-logical method* was used to analyse the trends in the formation of criminal law norms regulating criminal

[1]Constitution of Ukraine: Law of Ukraine No. 254k/96-BP. (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80.

[2]Association Agreement between the European Union and the European Atomic Energy Community and their member states, of the one part, and Ukraine, of the other part. (2014, May). Retrieved from https://zakon.rada.gov.ua/laws/card/984_011.

[3]Law of Ukraine No. 2617-VIII "On Amendments to Some Legislative Acts of Ukraine Regarding the Simplification of Pre-Trial Investigation of Certain Categories of Criminal Offences". (2018, November). Retrieved from https://zakon.rada.gov.ua/laws/show/2617-19?lang=en#Text.

responsibility for the named offences in the legislation of each state.

The comparative legal method became the principal one in formulating the definitions of criminal offences against justice that harm the interests of justice at the stage of execution of court decisions, during their systematization and grouping, provided an insight into the features of criminal law protection at the stage of execution of court orders in the delivery of justice in the Republic of Azerbaijan and Ukraine, as well as the expediency of implementing the practices of the Republic of Azerbaijan and Ukraine into the criminal legislation of each of the states.

The theoretical framework of this study included the papers of Ukrainian and Azerbaijani scientists. This study used the provisions of legislative acts – criminal law norms that stipulate responsibility for criminal offences against justice in the Criminal Code of the Republic of Azerbaijan[1] and the Criminal Code of Ukraine[2], the Law of Ukraine "On the Judicial System and the Status of Judges"[3], the Law of the Republic of Azerbaijan "On Courts and Judges"[4].

Results

Criminal law norms that prescribe liability for criminal offences against justice form an independent institution of criminal law. Criminal liability for offences of this category is prescribed by Chapter XVIII of the Special Part of the Criminal Code of Ukraine[5] and Chapter 32 of the Special Part of the Criminal Code of the Republic of Azerbaijan[6].

In the legislation of Ukraine and the Republic of Azerbaijan, justice is interpreted as the activity of the court. The delegation of court functions, as well as the appropriation of these functions by other bodies or officials, is prohibited (Article 5 of the Law of Ukraine "On the Judicial System and the Status of Judges"[7]). The activity of the courts of the Republic of Azerbaijan is aimed exclusively at the delivery of justice. Entrusting the courts with other duties is inadmissible (Article 3 of the Law of the Republic of Azerbaijan "On Courts and Judges"[8]).

It is quite natural that the special public need to protect justice from illegal encroachments, to ensure an effective mechanism for legal counteraction to such manifestations of antisocial behaviour, also causes the constant attention of scientists, including Ukrainian and Azerbaijani legal scientists, to these adverse social phenomena.

As the authors noted above, Ukrainian researchers pay considerable attention to the characteristics of criminal offences against justice, specifically, those acts that encroach on ensuring the procedure for implementing court orders, based on the principles of comparative studies.

Thus, K.V. Yusubov (2020) considered the issue of criminal liability for non-compliance with court decisions under the laws of foreign countries; V.V. Nalutsyshyn (2018) investigated the signs that qualify non-execution of a court decision under the legislation of Ukraine and EU states; V.V. Shablystyi & O.V. Chorna (2020) describe foreign practices regarding the regulation of criminal responsibility for certain criminal offences that encroach on the order of execution of a guilty verdict.

Among Azerbaijani scientists, A.H. Rustamzadeh (2016) investigated the legal foundations of the functioning and activities of the supreme courts of the Republic of Azerbaijan and Ukraine, the analysis of problematic aspects in this area. In his study, Rustamzadeh concludes that the legislation governing the activity of the judicial system of the two states, namely the laws "On the Judicial System and the Status of Judges"[12] and "On Courts and Judges"[9], have their qualitative specifics that correspond to the national legal traditions of both the Republic of Azerbaijan and Ukraine (Rustamzade, 2016). The authors of this paper can fully agree with this opinion. Admittedly, it is necessary to discuss such specifics and features regarding a considerable number of legislative regulations in the field of application of both criminal and criminal procedural law of each of them.

Furthermore, the content of the term "justice" is also revealed in the definition of the generic object

[1]Criminal Code of the Republic of Azerbaijan. (1999, December). Retrieved from https://continent-online.com/Document/?doc_id=30420353.
[2]Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text 2341-III.
[6]Law of Ukraine No. 1402-VIII "On the Judiciary and the Status of Judges". (2016, June). Retrieved from https://zakon.rada.gov.ua/laws/show/1402-19#Text.
[3]Law of the Republic of Azerbaijan No. 310-1 "On Courts and Judges". (1997, June). Retrieved from https://www.legal-tools.org/doc/e1ab39/pdf/.
[4]Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text 2341-III.
[5]Criminal Code of the Republic of Azerbaijan. (1999, December). Retrieved from https://continent-online.com/Document/?doc_id=30420353.
[6]Law of Ukraine No. 1402-VIII "On the Judiciary and the Status of Judges". (2016, June). Retrieved from https://zakon.rada.gov.ua/laws/show/1402-19#Text.
[7]Law of the Republic of Azerbaijan No. 310-1 "On Courts and Judges". (1997, June). Retrieved from https://www.legal-tools.org/doc/e1ab39/pdf/.
[8]Law of Ukraine No. 1402-VIII "On the Judiciary and the Status of Judges". (2016, June). Retrieved from https://zakon.rada.gov.ua/laws/show/1402-19#Text.
[9]Law of the Republic of Azerbaijan No. 310-1 "On Courts and Judges". (1997, June). Retrieved from https://www.legal-tools.org/doc/e1ab39/pdf/.

of a separate category of criminal offences. Such socially dangerous actions destroy the legally regulated delivery of justice in each of its aspects, hinder the activity of state bodies and structures involved in this area, and obstruct the protection of public interests in the enforcement of justice.

In the context of understanding justice as a generic object of criminal offences, proceeding from the title of Chapter XVIII of the Special Part of the Criminal Code of Ukraine[1], the authors of this paper support the opinion and consider it justified to cover the content of justice through a certain set of social relations that arise in the sphere of the exercise of judicial power (Vakulyk, 2018), as well as relations concerning the performance of functions by officials of law enforcement agencies and other categories of individuals as participants in judicial activities.

Considering the characteristics of certain types of criminal offences, and using the example of offences against justice, which include a sufficiently wide range of socially dangerous offences, and which have their characteristics, specific features of the composition of each of the offences, it is proposed to follow the prospective directions of the development of the criminal legislation of Ukraine as a whole (Shepitko, 2017). According to the characteristics of the generic object of these offences, the specific features and content of the direct objects of their composition, legal scientists offer their categorizations of the entire set of criminal offences, including those that can be committed in relation to any decisions taken by the court, with the imposition on a person of the obligation to perform them. There is also a variety of opinions regarding the name and grouping of this category of offences against justice.

Thus, along with other offences against justice, such types of them are distinguished as socially dangerous acts that encroach on social relations: from the implementation of the principle of inevitability of legal responsibility (Ahmedov, 2018); which ensure the proper execution of judicial acts and measures of a criminal-legal nature assigned by them (Baulin *et al.*, 2015; Miroshnychenko, 2012; Nalutsyshyn, 2018). It is already becoming a trend, as scientists note, to identify criminal offences against justice, which are aimed at ensuring the activities of the International Criminal Court (Shepitko, 2020), the European Court of Human Rights (Horbachova, 2017). The authors fully agree that the norms of the legislation of Ukraine, which determine the limits of responsibility for offences against justice, should develop towards coordination with international legal acts, with the practice of the European Court of Human Rights (Paliukh, 2020).

At the same time, other criteria are also used to classify offences against justice of the type under study. Thus, according to the characteristics that characterize the subject of an offence, acts committed by convicted individuals and individuals in custody, as well as individuals who are not participants in criminal proceedings, are distinguished (Dudorov & Khavroniuk, 2014).

It is also worth supporting the opinion that the criminal law norms, which establish measures of responsibility for socially dangerous acts against justice, perform the protective function of both the entire judicial sphere, and have the task of ensuring the implementation of court orders in terms of the execution of court decisions, resolutions, and verdicts (this refers to criminal liability for acts prescribed by Articles 388, 393 of the Criminal Code of Ukraine)[2]. The content of such norms allows classifying the considered set of criminal offences according to the mechanism of causing damage to the object of the offence (Paliukh, 2019).

According to the Criminal Code of the Republic of Azerbaijan[3] (CC RA), the offences stipulated by Articles 303, 304, 305, and 306 of the CC RA are included in the list of crimes, the object of which are social relations, which regulate the procedure for the implementation of the decisions adopted and passed by the courts of the Republic of Azerbaijan. Having included the mentioned articles in one section of the CC RA, the legislator of the Republic of Azerbaijan at the same time classifies another criminal act, which consists in the violation of the normal activity of institutions for the execution of criminal punishments or institutions for the implementation of preventive measures (specifically, pre-trial detention centres), as encroachments on the administrative order and prescribes criminal liability for its commission under Article 317 in Chapter 34 of the CC RA "Crimes against the administrative order"[4]. According to the authors of this study, in this way, the relations that regulate the procedure for execution of court decisions in terms of serving the prescribed punishment are recognized as an additional, and not the main object of the composition of this crime.

The characterization of criminal offences against justice, manifested at the stage of the implementation of court decisions during their execution, according to the nature and content of the social danger of criminalized acts, as well as the content and characteristics of the features of the composition of

[1]Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text 2341-III.
[2]Ibidem, 2001.
[3]Criminal Code of the Republic of Azerbaijan. (1999, December). Retrieved from https://continent-online.com/Document/?doc_id=30420353.
[4]Ibidem, 1999.

each criminal offence, allow proposing the grouping of this category of their totality.

In particular, the authors propose to distinguish the compositions of criminal offences as follows: criminal offences where the content of the act lies in failure to comply with court acts as a whole; offences that make it impossible to implement the tasks of criminal repression, create obstacles and complicate the functioning of the penitentiary service, as well as the service of executive proceedings.

The specific features of public relations protected by the law on criminal liability in the sphere of ensuring the procedure for execution of court decisions determine the content of the direct object of each of the criminal offences of this category.

Thus, the main direct object of intentional non-performance of an agreement on reconciliation or admission of guilt can be called legal relations in the sphere of justice regarding ensuring the proper execution of court decisions ruled by the courts of Ukraine in a special procedure for criminal proceedings based on agreements; the normal operation of the penitentiary system bodies entrusted with the duty of enforcing the court sentence and serving the sentence imposed on the convicted individuals by such court ruling, is the main object of malicious disobedience to the requirements of the administration of the penal institution (Article 391 of the CCU[1]). Public safety acts as an additional object.

Deliberate failure of a convicted person to perform a reconciliation agreement or plea of guilt is recognized as a criminal offence in the disposition of Article 389-1 of the CCU[2]. This disposition can be considered a blanket one, since the description of the content and establishment of the signs of the composition of this offence is determined by the legal prescriptions of the norm of the criminal procedural legislation, prescribed in Part 5 of Article 476 of the CPC of Ukraine[3]. Deliberate avoidance of the execution of an agreement approved by the court without valid reasons for this, ignoring such an agreement forms the content of an illegal act and is the legal basis for recognizing the offence committed and bringing the guilty person to the responsibility defined by the legislation.

According to the nature of public danger, the content of public and personal values and goods protected by the law on criminal liability, as well as the content and characteristics of the elements of each criminal offence, which hinder justice in ensuring the implementation of court decisions, their totality can be divided into certain types.

According to the characteristics of the subject, these criminal offences prescribed by various articles of the Criminal Code[4], which are committed during execution of court decisions, form the following subcategories:

1) Criminal offences committed by officials of state and non-state bodies and legal entities (Parts 2 and 3 of Article 382 of the CCU)[5];

2) Criminal offences committed by individuals charged with the obligation to execute a court decision (Article 388 of the CCU)[6];

3) Criminal offences committed by individuals who are participants in proceedings with a special legal status during the implementation of judicial proceedings and who are obliged to execute a personalized court decision (Articles 389, 389-1, 389-2, 390 of the CC[7], and others).

At the same time, the authors note that the very definition of the category of those persons who are subjects of criminal liability in case of non-performance of personalized court decisions is a task with an ambiguous decision.

Thus, when considering issues regarding the subject of criminal offences prescribed in Articles 389 and 390 of the CCU[8], researchers consider it appropriate to recognize as such only a person sentenced to criminal punishments not related to deprivation of liberty (in the form of restriction of liberty in Article 389 of the CCU[9] or deprivation of liberty in Article 390 of the CCU[10]; Article 305 of the CC RA[11]). As noted, one cannot be the subject of the crimes prescribed in Articles 389 and 390 of the CCU[12], an individual for whom the types of punishment specified in these articles of the Criminal Code have been replaced based on other court decisions (Zahinei, 2018), (e.g., by a court decision to replace the unserved part of the punishment in the form of deprivation of liberty with another type of punishment). L. Ostapchuk is convinced that the subject of evasion from serving a sentence not related to deprivation of liberty can only be an individual who possesses a set of characteristics of a special subject, i.e., an individual

[1]Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text 2341-III.
[2]Ibidem, 2001.
[3]Ibidem, 2001.
[4]Ibidem, 2001.
[5]Ibidem, 2001.
[6]Ibidem, 2001.
[7]Ibidem, 2001.
[8]Ibidem, 2001.
[9]Ibidem, 2001.
[10]Ibidem, 2001.
[11]Criminal Code of the Republic of Azerbaijan. (1999, December). Retrieved from https://continent-online.com/Document/?doc_id=30420353.
[12]Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text 2341-II.

against whom a guilty verdict (decision) of the court was issued (Ostapchuk, 2019).

And this position, according to the authors, is well-reasoned. After all, the unambiguous interpretation of any legal terms, the accuracy in covering the content of the signs of all the elements of any criminal offence ensures the effectiveness of the implementation of criminal law norms and the implementation of the principles of legality and justice in law enforcement practice.

Depending on *the category of a court decision* in a certain area of justice, criminal offences that encroach on the procedure for execution of court decisions may be committed regarding the following types:

1) verdict, decision, resolution, court ruling that has entered into legal force in criminal, administrative, economic, civil proceedings (Article 306 of the CC RA[1]; Article 382 of the CCU[2]). That is, the subject of an act, the responsibility for the commission of which is prescribed in these articles, can be court decisions of any kind of all courts of both Ukraine and the Republic of Azerbaijan;

2) the decision of the European Court of Human Rights, the decision of the Constitutional Court of Ukraine and the opinion of the Constitutional Court of Ukraine (Part 3 of Article 382 of the CCU[3]);

3) decision, ruling, court order on the seizure of property, on confiscation of property (Article 303 of the CC RA[4]; Article 388 of the CCU[5]);

4) agreement on reconciliation or plea of guilt (Article 389-1 of the CCU[6]);

5) verdict, court ruling on the appointment and further serving of a sentence (Articles 304, 305, and 317 of the CC RA[7]; Articles 389, 390-393 of the CCU[8]);

6) resolution of the district, district in the city, city, or municipal court (judge) on the imposition of an administrative fine in the form of community service (Article 389-2 of the CCU[9]);

7) restrictive measures prescribed by Article 91-1 of the CCU, restrictive orders, programs for offenders applied by the court (Article 390-1 of the CCU[10]);

8) court ruling on choosing a preventive measure – custody (Article 393 of the CCU[11]);

9) court ruling on transfer to a specialized medical institution (Article 394 of the CCU[12]);

10) court ruling on the establishment of administrative supervision (Article 395 of the CCU[13]).

There is a general mandatory condition as a basis for bringing a particular subject to criminal responsibility for non-compliance with each of the listed types of court decisions. The decision should contain a specified obligation to perform certain actions (serving a certain type of criminal sentence, staying in a specialized medical institution, etc.), a ban on performing the actions specified in the court decision (a ban on alienation of property that has been seized or is subject to confiscation, etc.).

The requirement specified in the court decision concerns an individually defined person who is required by the relevant court decision to act in a certain way.

Depending on the content of the obligations formulated by the court, an illegal act of the subject in non-compliance with court decisions can be formed either by inaction (failure to implement the measures prescribed by law and defined in the court decision, necessary for the implementation of such decisions, which the person was obliged to implement), or by committing actions prohibited in the court decision itself or follow from the content of such prohibitions.

Thus, non-performance of a court sentence in terms of serving the sentence imposed by the court is the commission of actions that constitute evasion of certain types of punishments, namely: not related to deprivation of liberty (Article 389 of the CCU[14]), in the form of restriction of liberty and deprivation of liberty (Article 390 of the CCU[15] and Article 305 of the CC RA[16]), as well as escape from a place of deprivation

[1]Criminal Code of the Republic of Azerbaijan. (1999, December). Retrieved from https://continent-online.com/Document/?doc_id=30420353.
[2]Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text 2341-III.
[3]Ibidem, 2001.
[4]Criminal Code of the Republic of Azerbaijan. (1999, December). Retrieved from https://continent-online.com/Document/?doc_id=30420353.
[5]Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text 2341-III.
[6]Ibidem, 2001.
[7]Criminal Code of the Republic of Azerbaijan. (1999, December). Retrieved from https://continent-online.com/Document/?doc_id=30420353.
[8]Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text 2341-III.
[9]Ibidem, 2001.
[10]Ibidem, 2001.
[11]Ibidem, 2001.
[12]Ibidem, 2001.
[13]Ibidem, 2001.
[14]Ibidem, 2001.
[15]Ibidem, 2001.
[16]Criminal Code of the Republic of Azerbaijan. (1999, December). Retrieved from https://continent-online.com/Document/?doc_id=30420353.

of liberty or from custody (Article 393 of the CCU[1] and Article 304 of the CC RA[2]) and some other acts.

A common feature of each of the criminal offences that violate the procedure for implementing the tasks of justice in the field of implementing decisions, sentences, rulings, court decisions, and implementing a court decision on serving a sentence is a conscientious deliberate refusal to execute a court decision by an individual who is obliged to comply with the rules of certain behaviour or abstinence from them, or authorized to perform certain actions to ensure its implementation.

At the same time, it is necessary to pay attention that the content of the criminal act prescribed in Article 382 of the CCU[3] and Article 306 of the CC RA[4], may be represented by the non-performance of the above-mentioned court decision, as well as by the obstruction of such execution by the person obliged to this judicial step.

Discussion

The process of law-making is constant and continuous. Changes in social life raise questions about the level of efficiency and assessment of the effectiveness of legislative norms, and the legislators of both the Republic of Azerbaijan and Ukraine always pursue the goal of maintaining such a content of the normative base of the current legislation that would be able to ensure the implementation of the tasks of justice. At the same time, two areas of legislative activity can be observed: criminalization of socially dangerous acts and decriminalization of those social phenomena that have lost their danger as criminally punishable acts.

Carrying out a comparative legal analysis of the current Criminal Codes, the authors state that the legislation of Ukraine, compared to the legislation of the Republic of Azerbaijan, in the norms of the Criminal Code[5] criminalizes a wider range of socially dangerous acts in the field of judicial activity, committed at the stage of implementation of court decisions in all forms of administration of justice.

Consolidating in the criminal law regulations certain components of criminal offences prescribed, in particular, by Articles 389-1, 391, 392, and 395 of the CCU[6], as well as several others, corresponds to the principles of legal criminalization of widespread socially dangerous acts, and aims to ensure effective protection of justice by influencing the criminal law content in general, and effective enforcement of court decisions in particular.

The criminal legislation of the Republic of Azerbaijan does not criminalize such actions as evasion of a punishment not related to deprivation of liberty (Article 389 of the CCU[7]), and the above-mentioned intentional non-performance of an agreement on reconciliation or on the admission of guilt; malicious disobedience to the requirements of the administration of the correctional institution; actions that disorganize the work of correctional institutions; escape from a medical institution and violation of the rules of administrative supervision.

It is generally recognized that criminalization is a complex law-making process of implementing criminal repression of the state, conditioned upon a considerable number of socio-economic, legal, and other factors. And such a process reflects the needs of society in the means of criminal legal protection of social and personal values. However, protection can be implemented by measures of state coercion that differ in the degree and nature of repression. The necessity and conditioning of criminalization is also related to the intensity of the manifestation of certain socially dangerous acts in a particular historical period, the degree, and nature of their social danger.

According to the authors, the above-mentioned actions, for which there is no responsibility in the criminal legislation of the Republic of Azerbaijan, contain signs of the formal composition of the offence, while creating a potential danger of the possibility of harming justice at the stage of applying for the execution of certain types of court decisions. It is the assessment of the level of such danger, inevitability, or probability of causing danger, together with these factors, which give grounds to raise the question of the need for their criminalization by the legislators of a particular state.

Therewith, the authors agree that when investigating certain issues of the necessity, validity, and possibly compulsion of criminalization, it is appropriate to discuss the morality of the criminalization procedure itself as a legal phenomenon (Cornford, 2017). The criterion of morality has a completely evaluative content. It is present in the description of certain criminal law phenomena, first of all, it is deservedly used in characterizing the features of certain concepts, definitions related to the legal term

[1]Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text 2341-III.
[2]Criminal Code of the Republic of Azerbaijan. (1999, December). Retrieved from https://continent-online.com/Document/?doc_id=30420353.
[3]Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text 2341-III.
[4]Criminal Code of the Republic of Azerbaijan. (1999, December). Retrieved from https://continent-online.com/Document/?doc_id=30420353.
[5]Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text 2341-III.
[6]Ibidem, 2001.
[7]Ibidem, 2001.

"composition of a crime (composition of a criminal offence)", to the description of a considerable number of criminological terms. At the same time, the use of the moral criterion in the study of factors and grounds for criminalizing manifestations of socially dangerous behaviour of a person is quite unusual.

Morality, according to the authors, being realized in a humane attitude, including towards convicted individuals, can also be introduced by penalization – wide inclusion of the maximum list of different types of punishments in a considerable number of sanctions. This will help convicts not to become a subject of evasion of those punishments that an individual cannot serve for various reasons. For instance, as L. Ostapchuk points out, a fine can achieve the purpose of its appointment only if its severity is combined with the real possibility of execution (Ostapchuk, 2018).

In addition, the authors would like to draw the attention of lawyers to the fact that the criminal procedural legislation of the Republic of Azerbaijan[1] does not contain rules regarding the procedure for concluding an agreement on reconciliation or on the admission of guilt by the convicted. Clearly, under these conditions, the criminalization of such an act, as implemented by the legislator of Ukraine, is impossible.

Importantly, there is no consensus in the scientific community regarding the validity and expediency of such criminalization. Thus, V. Navrotskyi (Navrotskyi, 2016), as well as V. Kuznetsov and M. Seyploki (2011), believe that the establishment of criminal liability for entering into plea agreements harms certain principles of criminal legal qualification, such as accuracy, completeness, and legality and some others, is a manifestation of false criminalization, and therefore should be excluded.

D.V. Kamenskyi (Kamenskyi, 2020) has a slightly different argument, but in support of the position regarding the decriminalization of the said act. The legal scientist is convinced that the failure of the convicted individual to comply with the agreement on reconciliation or confession of guilt does not require the application of criminal liability measures. In the scientist's opinion, it will be sufficient to refer to the provisions of Part 3 of Article 476 of the Criminal Procedural Code of Ukraine[2] prescribing the procedure for criminal procedural response to non-performance of an agreement. Having cancelled the concluded agreement, the court may return to the consideration of the case at the trial stage or send it for pre-trial investigation. And the passing of a guilty verdict with the appointment of punishment, as a legal response to non-compliance with the reconciliation agreement, will sufficiently ensure the implementation of the principles of criminal repression in such conditions (Kamenskyi, 2020).

The above argument is somewhat convincing. However, the authors note that the legal norm that criminalizes deliberate non-performance of the agreement on reconciliation or confession of guilt was included in the Criminal Code of Ukraine as a legal implementation of obligations that Ukraine must implement on the way to reforming the criminal and criminal procedural legislation of Ukraine based on pan-European principles for the implementation of criminal repression.

The reform is aimed at the effective implementation of restorative justice as a way to ensure human rights without the use of criminal repression. First of all, the implementation of restorative justice programs is an effective step in implementing criminal liability against

And the authors of this study are convinced that the criminalization of deliberate non-performance of a reconciliation agreement by a convicted individual or a plea of guilt is a positive step in ensuring effective counteraction to evasion from the execution of a court decision in such its manifestations.

Another issue that the authors would like to address, and which requires a broader investigation, is the proposal to decriminalize malicious disobedience to the requirements of the administration of the penitentiary institution (Article 391 of the CCU)[3]. Among human rights defenders and lawyers, there is a discussion concerning the expediency of maintaining criminal liability for the said act, which is also reflected in law-making (Puzyrov, Sokorynskyi, & Bodnar, 2019). Thus, the Verkhovna Rada of Ukraine registered a draft law on the decriminalization of the offence prescribed in Article 391 of the CCU[4] (Draft Law No. 9228 dated October 19, 2018). There is no such criminal law prohibition in the criminal legislation of the Republic of Azerbaijan.

The authors of this study consider it necessary to note that the public danger of the crime prescribed in Article 391 of the CCU[5], lies in the content of the committed acts, in causing damage to relations protected by the law on criminal liability in the field of execution of court decisions, obstructing the execution of the sentence, thereby preventing the achievement of the goals of punishment. Malicious disobedience violates the normal activities of penitentiary institutions, which deprives these institutions of the

[1]Criminal Code of the Republic of Azerbaijan. (1999, December). Retrieved from https://continent-online.com/Document/?doc_id=30420353.
[2]Criminal Procedural Code of Ukraine. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.
[3]ICriminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text 2341-III.
[4]Ibidem, 2001.
[5]Ibidem, 2001.

opportunity to ensure the execution of a court decision, which leads to the impossibility of ensuring the principle of inevitability of criminal liability and punishment. Therefore, today there is no reason to agree with such decriminalization.

Conclusions

The performed comparative analysis of individual components of criminal offences gave the authors the opportunity to characterize the features of the generic object of criminal offences that encroach on the order of execution of court decisions, to group this category of actions according to certain characteristics of the composition of the offence and thus to claim that the purpose of this study has been fulfilled. At the same time, the results of this study suggest that the criminal legislation of Ukraine and the Republic of Azerbaijan, which prescribes liability for criminal offences against justice, contains both common and distinctive features, which are reflected in the approaches of the legislators of each of the countries to criminalize individual manifestations of antisocial behaviour, in the construction of particular criminal law norms. The recorded features are explained by the specifics of the historical stages of development of the Ukrainian and Azerbaijani peoples, the specific features of the political, economic, and social structure of each of the states.

The authors of this paper stated that among criminal offences against justice, it is advisable and logical to distinguish separate categories of acts, namely those that encroach on public relations for the implementation of the principle of inevitability of criminal repression, cause harm to relations that ensure the implementation of a judicial act; proper execution of decisions, sentences, rulings, court decisions in the implementation of all types of legal proceedings (constitutional, criminal, civil, economic, administrative), the activities of bodies and structures for the implementation of enforcement proceedings, including the implementation of decisions of the European Court of Human Rights, as well as the enforcement of court decisions on the imposed punishment.

A comparison of the legislation of Ukraine and the Republic of Azerbaijan regarding the effective criminal legal protection of judicial activity in the field of proper execution of any court decisions proves that the criminal legislation of Ukraine includes a larger list of criminal offences of this category compared to the legislation of the Republic of Azerbaijan.

The authors believe that further scientific search in the field of determining the factors of possible criminalization of actual socially dangerous phenomena caused by the processes of public life in both states should not stop.

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Кримінальні правопорушення, які посягають на порядок виконання судових рішень, за законодавством Азербайджанської Республіки та України: питання законодавчої регламентації

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■ **Анотація**. Актуальність статті обґрунтована необхідністю здійснення порівняльно-правового дослідження норм, які забезпечують охорону інтересів правосуддя в Азербайджанській Республіці та Україні у сфері впровадження в життя судових приписів як важливого етапу процесу правосуддя загалом. Метою статті є здійснення загальної характеристики кримінальних правопорушень, які посягають на порядок виконання судових рішень, за законодавством Азербайджанської Республіки та України, а також характеристика тих ознак, які дозволяють виокремити відповідні посягання серед інших правопорушень проти правосуддя та об'єднати їх в одну категорію. У статті використано комплекс наукових методів, а саме: термінологічний, системно-структурний, формально-логічний, компаративістський. За результатами здійсненого дослідження констатовано, що формалізація складів кримінальних правопорушень, які посягають на реалізацію принципу невідворотності юридичної відповідальності, та кримінально-правове забезпечення обов'язковості судових рішень у Республіці Азербайджан та Україні є процесом, що триває. Обґрунтовано висновок про те, що здійснена в чинному кримінальному законодавстві кожної з держав криміналізація достатньо широкого кола суспільно небезпечних діянь цієї категорії обумовлена соціальною необхідністю забезпечення прав людини та суспільних інтересів у царині реалізації завдань правосуддя. Сформульовані в статті положення сприятимуть пошуку більш ефективних засобів кримінально-правового характеру в законотворенні та правозастосуванні як Республіки Азербайджан, так й України

■ **Ключові слова**: кримінальна відповідальність; об'єкт злочину; класифікація злочинів; кримінальні правопорушення проти правосуддя; ухвали

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Corruption as a threat to human rights and freedoms

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■ **Abstract**. This paper considered the essence of corruption, its main manifestations in the modern globalized world and its impact on human rights and freedoms. The article stated the relationship and interdependence between the scale of corruption and the possibility of exercising human rights and freedoms. It was noted that corruption hinders the economic development of Ukraine, adversely affects all spheres of public life, and poses a real threat to the state, society, and every person. Presently, under martial law, corruption is just as dangerous as looting. By stealing budget funds, selling spare parts for military equipment to the aggressor country, and even selling humanitarian aid, corrupt officials actually work for the aggressor, which poses a serious threat to life, health, and other human rights and freedoms. This confirms the relevance of this study. The purpose of this study was to establish and characterize the interdependence of corruption and human rights and freedoms, to determine the consequences of the transformation of human rights and freedoms under corruption manifestations and the possibility of their prevention. The methodological framework of this study included dialectical, phenomenological, and synergetic approaches, as well as formal-dogmatic, formal logical, formal legal, systemic, and structural-functional methods. The conclusions state that there is an inversely proportional relationship between corruption and human rights and freedoms: the greater the scale of corruption, the less the ability to realize human rights and freedoms becomes. Violation of rights and freedoms is often a consequence of the activities of corrupt officials. Corruption undermines the credibility of state institutions, seriously obstructs the delivery of justice, the achievement of the rule of law, legal equality, and social justice. The duty to prevent corruption and any other illegal encroachments, and therefore to ensure the possibility of exercising rights and freedoms, is assigned to the state and civil society. The results of the study should contribute not only to curbing corruption, but also to creating conditions for real human and citizen security, which confirms the practical value of this study

■ **Keywords**: bribery; felony; responsibility; right; warning

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Introduction

In the modern, globalized world, corruption has ceased to be a problem of individual states and has become a global issue that the international community must solve. Transnational corruption is not limited to the borders of one state, corrupt officials extend their influence to other countries. It can be said that in the globalized world, corruption acquires new features that allow it to be classified as global corruption (Teleshun, 2020). At the same time, corruption leads to poverty in the world's poorest countries, unemployment, hunger, weak state institutions, and lack of proper enforcement (Bahoo, 2020). It also adversely affects investment, competition, and government efficiency (Dung *et al.*, 2021).

People belonging to marginalized and disadvantaged groups, such as national minorities, people with disabilities, refugees, migrants, and prisoners, are most affected by corruption. Corruption greatly affects women, children, and impoverished people, specifically by restricting their access to basic social goods such as health, housing, and education. From a global standpoint, it is alarming that hundreds of billions of euros are paid in bribes every year. This would be enough to raise the standard of living above the poverty line for the 1.4 billion people who live on less than $1.25 a day and maintain it for at least six years (Mijatović, 2021).

The problem of corruption attracted the attention of the international community in the late 1990s, as a result of which several documents were adopted at the level of the United Nations and the Council of Europe. In particular, on January 27, 1999, the Council of Europe Convention on Criminal Liability for Corruption[1] was adopted, which emphasizes that corruption threatens the following values: the rule of law; democracy; human rights; undermines the principles of good governance, equality and social justice; hinders competition; complicates economic development; threatens the stability of democratic institutions and the moral foundations of society. United Nations Convention Against Corruption[2] adopted on 31 October 2003, it stated its aim as follows: "(a) to promote and strengthen measures aimed at more effective and effective prevention and control of corruption; (b) to promote, facilitate and support international cooperation and technical assistance in preventing and combating corruption, including the adoption of asset recovery measures; (C) to promote integrity, accountability, and proper management of Public Affairs and public property". This convention makes provision for preventive measures, criminalization and law enforcement, international cooperation, asset recovery, technical support, and information exchange between countries. Furthermore, the purpose of sustainable development is to substantially reduce corruption and bribery in all their forms. Today, the convention is the main comprehensive international legal act regulating anti-corruption issues in the member states of the United Nations.

Human rights and freedoms are threatened not only by corruption. In the 21st century, the entire world faced an unprecedented combination of transnational threats, armed conflicts and instability that engulfed the entire globe. Human rights violations such as mass murder, genocide, slavery, mass rape and others, along with other similar phenomena around the world, are a global threat to modern times. The level and extent of violations of human rights and freedoms is usually proportional to the emergence of threats to global security, which creates conditions for new threats and challenges (Ruzmetov, 2021). These threats can create conditions for corruption and its self-reproduction.

In Ukraine, corruption has affected all spheres of public life, it poses a real threat to the rights and freedoms of every person, their security, and therefore corruption must be fought. Accordingly, the subject of this study is relevant.

The purpose of this study was to investigate the impact of corruption on human rights and freedoms, to characterize the threats to rights and freedoms associated with corruption, and to determine the possibility of preventing these threats. Scientific originality lies in substantiating the direct connection and interdependence between corruption and the danger that a person feels in the modern world.

Literature Review

Theoretical and applied problems of preventing and countering corruption in Ukraine were investigated by V.M. Trepak (2020), who substantiated the opinion that corruption is a way of converting public-authority powers and opportunities into illegitimate profit, and the defining feature of corruption in Ukraine is its mass nature, which is associated with the long-term institutional weakness of the state, the inefficiency of the legal system and low level of legal awareness of the population. O.V. Petryshyn & O.S. Hyliaka (2021) analysed the main threats and challenges facing human rights and freedoms in the context of digitalization, while offering areas for protection against such threats. These scientists focused

[1]Criminal Law Convention on Corruption. (1999, January). Retrieved from http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=173&CM=8&DF=&CL=ENG.

[2]United Nations Convention against Corruption. (2003, October). Resolution 58/4 at the 51st plenary meeting of the 58th session of the UN General Assembly. Retrieved from https://www.un.org/ru/documents/decl_conv/conventions/corruption.html.

their attention on the study of new rights, such as the right to be forgotten, the right to personal data protection, the right to anonymity, etc. N.I. Karpachova (2021) substantiated the opinion that the causes of human rights violations lie not only in the problems of Ukraine, but also in the consequences of global processes, including poverty, which is constantly worsening. I.I. Voitovych (2020) considered the criminological principles of combating corruption in the field of military security. Voitovych identified socio-economic, political, cultural-psychological, legal and organizational-management factors of corruption crime in the specified area. O. Busol, O. Kostenko & B. Romanyk (2022) proved that corruption in Ukraine today is not an isolated phenomenon, but an organic consequence and symptom of a fundamental social crisis in the country. This refers to "crisis-type" corruption, which is caused by a social crisis, which itself deepens it. Citizens' assessment of security issues was investigated by L.G. Valia (2022). Aissauy & F. Fabian (2022) investigated the impact of corruption on the economic development of states and found that economic growth is necessarily accompanied by increased integration, and the relationship between globalization and development depends on the appropriate institutional context. S. Reznyk & Hwang-Bom Lee (2021) considered the perception of corruption by citizens of Ukraine as determinants of trust in local self-government. It was found that young people are more inclined to trust government institutions than representatives of the older generation, substantiated the opinion that citizens should have a sanctioning mechanism to hold the government accountable, that reforms aimed at increasing the transparency of government activities should be carried out in parallel with measures aimed at strengthening people's ability to act on the information they receive.

The studies of these authors are a considerable contribution to the study of the phenomenon of corruption and the substantiation of measures to prevent it. However, the authors ignored the problem of threats to human rights, freedoms, and personal security in connection with corruption in the modern globalized world, i.e., the study of these problems in interrelation and interdependence. This can be useful for both legal science and political and legal practices. The authors of this paper consider such a study as their own task.

Materials and Methods

The methodology of this paper is based on a dialectical approach, which allowed investigating various aspects of understanding corruption, considering it in the context of multilateral relations with other social phenomena, and tracing the impact on human rights and freedoms. Thanks to the dialectical approach, the causes and consequences of processes that contribute to the violation of human rights and freedoms were determined, the place of corruption among these factors was specified, the harm of this phenomenon was understood, specifically its adverse impact on the life of society and the functioning of the state.

The phenomenological approach helped investigate the theoretical legal foundations of human rights and freedoms through the perception of the subject whose rights were violated, to determine their subjective attitude towards corruption and its consequences. Phenomenology was used to evaluate the purpose of corruption acts and their consequences for a particular subject and society as a whole.

A synergistic approach was also used to investigate previously unknown trends in the evolution of the phenomenon of corruption in a globalized world. Random factors that can influence the transformation of corruption and its perception by the population were identified. The synergistic approach provided insight into the complexity of legal phenomena and stimulated the search for guidelines for understanding these phenomena as a functional subsystem of a complex system of social relations. The impact of corruption among other threats affecting personal security was highlighted.

Using the formal dogmatic method, the definitions of the terms "corruption", "bribery", "nepotism", and several other terms were formulated.

The formal-logical method allowed investigating corruption as a factor that threatens rights and freedoms, specifically from the perspective of their structure. The following techniques of the formal logical method were used: analysis and synthesis, induction and deduction, analogy, comparison. As a result, logical contradictions in the structure of certain judgments were established. Thanks to this, it was possible to avoid errors in the formulation of conclusions.

The formal legal method was also used to investigate the legal categories of political and legal reality. It is known that this method is used within the law based on formal logic. Thus, new knowledge is gained about the threats to rights and freedoms, personal security that arise due to corruption.

The use of the system method proved to be useful when investigating the components of each of the considered phenomena. Their integrative properties inherent in the system as a whole, but absent in some elements, have been determined. The study established the significance of certain elements for the entire system, specifically the importance of security for the system of human and citizen rights and freedoms. The systematic method, which involves considering a set of objective and subjective factors, helped expand the boundaries of cognition for the phenomenon of corruption and human rights and freedoms, its security.

Using the structural and functional method, the role of each component of the phenomena under study was determined. Corruption and human rights and freedoms were considered through the functions they perform in society. The following techniques were applied: structural analysis (to identify the components of the objects under study); functional analysis (to specify the functions that the elements of this system perform); complex analysis (to investigate legal phenomena in their interaction with other phenomena and processes, i.e., as a structural element of the system, whose activities are aimed at achieving a common purpose).

Results and Discussion

Corruption is investigated in many sciences. In sociology, corruption is interpreted as a dysfunctional phenomenon, a pathology of society, which gives rise to despicable forms of relationships between people. In political science, corruption is interpreted as behaviour that manifests itself in the illegitimate use of an advantageous position by officials to seize and retain power in society. In economic theory, corruption is usually interpreted as a type of behaviour of civil servants aimed at obtaining benefits through state resources for personal purposes. The reasons for the spread of corruption are seen in excessive and ineffective state intervention in the economic life of society. In legal science, the phenomenon of corruption is usually considered as a socially dangerous illegal behaviour, characterized by bribery and corruptibility of officials when they use their official powers usefully. That is, this is a type of offence, a crime of officials against the state.

Abuse of official position for personal purposes affects both the public administration system and the functioning of society as a whole. Within the limits of this approach, corruption is interpreted as an illegal act consisting of the following elements: the subjects of the offence (individuals who are officials or seek to benefit from the official position of another individual; the motive (receiving a benefit in the form of money, valuables, or property services character, illegal acquisition or provision of certain advantages), criminal action (abuse of position, giving or receiving bribes, etc.), united by an important a priori property – contradiction to the legitimate interests of society and the state.

By threatening human rights and freedoms, corruption also threatens personal security. Any interaction with other people, communities, technical means, etc. can be a potential source of danger to humans. Six groups of hazards are distinguished by origin: natural, technogenic, anthropogenic, ecological, social, biological, which are further subdivided by the particular source and object of influence, methods of influence and consequences, possibilities of countering the danger, etc. Corruption is a type of social danger.

Human security is traditionally a concern of international organizations. Back in 1994, the United Nations in the "Human Development Report"[1] clearly formulated the concept of human security, which is based on the idea of the right of everyone to live freely, a life independent of poverty and despair. All people have the right to live without fear and poverty, while everyone has equal rights to develop their abilities to improve the quality of their lives and ensure security through its seven components: political security (the enjoyment of political and civil rights, as well as freedom of political expression); public security (ensuring observance of customs, traditions, survival of ethnic groups, and their material support); personal security (physical protection of the population from torture, war, crime, ill-treatment, domestic violence, etc.); economic security (freedom from poverty); food security (everyone should have access to sufficient food at all times); health security (access to medical care and disease prevention); environmental safety (protection against pollution and other environmental hazards). Evidently, due attention is paid to personal safety. The concept focuses on the individual as the principal source of security and turns national security into a means of protecting it. Corruption does not just threaten all these benefits, including human security, it makes them virtually inaccessible to the majority of the population.

In the 2021/2022 Human Development Report, the UN emphasizes that humanity is currently living in uncertain times. The COVID-19 pandemic has been going on for several years, and all new strains of the virus are appearing. Military actions in Ukraine affect the lives of many people around the world, are accompanied by human sacrifice and suffering, and therewith, in one way or another, affect the developing crisis associated with a sharp increase in the cost of living. Climatic and environmental disasters worsen the world every day. Billions of people already have to contend with food insecurity. This is mainly due to inequality in well-being and the power that defines basic rights, such as the right to food. People around the world are now admitting that they feel increasingly insecure. Insecurity and polarization only complicate the current situation. No technological innovation can replace decent leadership, concerted action, and trust. But neither trust nor proper leadership is possible in corrupt states.

Special attention should be paid to the personal security of a human, which can be considered as a

[1]Human development report. (1994, March). Retrieved from https://hdr.undp.org/system/files/documents//hdr1994encompletenostatspdf.pdf.

concept that includes everything that improves the quality of life of people and society in different dimensions – political, economic, social, environmental, etc. Thus, in the political dimension, personal security is possible if there is no electoral fraud, decision-making at all levels of government is effective, governance principles are not violated, the government does not resort to violence against individuals, human rights standards are observed, the authorities take appropriate measures to combat terrorism, the population enjoys constitutionally proclaimed rights and freedoms, the state protects and expands the rights and opportunities of people, provides for their basic needs and does not harass them in any way. In the economic dimension, personal security involves overcoming unemployment and poverty, and providing adequate food. In the social dimension, personal security is impossible without legal equality, social justice, social harmony, the ability of the authorities to resist any violence, the spread of diseases and epidemics (Hassan, 2020).

In the ecological dimension, safety involves the state of the natural environment, which ensures the prevention of deterioration of the ecological situation and the emergence of threats to human health, which is guaranteed by the implementation of a wide range of interrelated environmental, political, economic, technical, organizational, state-legal, and other measures[1]. Manifestations of corruption at any stage of these measures negate all the efforts of society and every citizen.

Bribery is receiving money, services, or other valuables by an official, as well as giving them money, services, or other valuables for performing work that this individual should have done anyway, or for performing their functions in a specific way. A bribe can be active or passive. Acceptance of an offer, promise or receipt of an illegal benefit by an official in Ukraine is a criminal offence.

Bribery is closely related to other corrupt criminal offences in the sphere of official activity and professional activity related to the provision of public services, specifically with the bribery of a person providing public services, official negligence, official forgery, abuse of power or official position, etc.

Legalization (laundering) of property obtained by criminal means also constitutes a criminal offence (Gurzhiy, 2014).

Nepotism deserves special attention. The term *"nepotism"* is now used quite rarely to denote official favouritism, injustice, and privileges for relatives, cronies, friends, mistresses, which are granted regardless of professional qualities (usually low) and the lack of benefit or even harm to the cause mainly in those areas where relatives connections and subjective attitude are inappropriate, e.g., when hiring for government institutions, when entering higher education institutions, when defending theses and attesting scientific personnel (Tymoshenko, 2019). Nepotists represent a serious threat to the safety of citizens. Such people are used to achieving what they want without effort, they are used to being allowed everything, and other people can be considered as service personnel who exist only to create comfortable conditions for them. As a rule, these individuals have a very low professional competence and even lower moral qualities and spread their mentality onto everything they touch. Today, nepotism is essentially replaced by *cronyism*, which is an effective means of "privatizing" the state in the light of clan capitalism.

Abuse of influence is a form of corruption where a person exchanges the possibility of real or potential influence on decision-making, e.g., by an official, for illegal benefits. According to Article 369-2 of the Criminal Code of Ukraine (2001)[2], abuse of influence is "an offer, promise, or granting of an unlawful benefit to an individual who offers or promises (agrees) for such a benefit or for provision of such a benefit to a third party to influence the decision-making by an individual authorized to execute functions of the state or local government". This criminal offence is comparable with bribery, but with a significant difference: abuse of influence involves an "intermediary" or an individual who acts as an intermediary between the decision-maker and the party seeking an undue advantage. However, the beneficiary is not necessarily an official. They cannot make decisions that benefit the individual in whose interests they act, but they can use their position to influence the individual who makes such decisions.

Corruption contributes to political instability, underdevelopment, and imperfection of legislation, ineffectiveness of government institutions, weakness of civil society institutions and the destruction of democratic traditions, as well as a decrease in the level of political culture of citizens, deformation of legal consciousness, weakness of the judicial system, neglect of the rights and legitimate interests of citizens, impunity for violations of legislation, clannishness in solving political and economic issues, the spread of crime. These factors threaten the personal safety of every person and citizen. Of particular concern is the increase in crime rates. Crime is a substantial threat to human rights and freedoms and their security. The basis for recognizing crime as a type of violation of human rights is the fact that the common object of

[1]Law of Ukraine No. 1264-XII "On Environmental Protection". (1991, June). Retrieved from https://zakon.rada.gov.ua/laws/show/1264-12#Text.
[2]Criminal Code of Ukraine. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text 2341-III.

crimes is a set of public relations that ensure the enjoyment of a person's rights and freedoms. As a way of violating human rights, crime is characterized by a comprehensive nature, permanence, scale, and increased harmfulness (Tymoshenko *et al.*, 2021).

Presently, there are increasingly more fair calls to equate responsibility for wartime corruption with punishment for collaborating with the enemy. While Ukrainians protect the safety of the civilized world, the personal safety of every person from russian aggressors, Western countries should open a second anti-corruption front and hit the "moneybags" of corrupt people from the previous and current government (Dunda, 2022; Peters, 2018).

A key issue for determining human rights violations as a result of corruption is the causal relationship. This is true both for the inaction of the state as a whole and for the corrupt actions of individual state officials. Corrupt actions (or inaction) cause violations of human rights in the legal sense only if the violations – those concerning, e.g., the right to an adequate standard of living, housing, education, etc. – are predictable and directly related to the actions of corrupt officials (Hladky, 2018).

The reason for the high dynamics of the spread of corruption is the lack of opportunities for people to exist with dignity, as a result of which a person trusts only those individuals who can help them get the necessary benefits for an additional fee (Kramer, 2017).

It is quite difficult to agree with this. Usually, people who take and give bribes are not the poorest people. An exception may be a bribe for the provision of medical services, when a person is faced with a dilemma – pay or die. A person who gives a bribe may be a victim of corruption.

Another interesting idea that deserves attention is that corruption is a natural form of adaptation of an undeveloped person to the conditions of a developed civilization. Under the modern conditions of the market economy, those people who are most able to adapt survive. A person who refrains from bribes, crimes, meanness, and impudence thereby loses the means of survival in conditions of insufficient resources. "If a person had to live under the conditions of economic standards that came from the outside, most likely, they will use new opportunities according to the old rules (thinking how it is easier to steal under new conditions)" (Kramer, 2017).

Corruption is a new form of exploitation. Almost all transnational threats, including human trafficking, terrorism, and arms trafficking, are linked to corruption, without which it is impossible. Corruption adversely affects people who are forced to live in a corrupt world. It undermines democracy, the rule of law, hinders the effective provision of public services, and negates people's hopes for security, without which it is impossible to fully realize human rights and freedoms.

Conclusions

As a result of the conducted study, the authors concluded the purpose of the study was achieved. The possibility of exercising human rights and freedoms depends on the absence of corruption. Under the influence of corruption manifestations, rights and freedoms are transformed, and a person's opportunities to realize their legitimate interests decrease. The same can be said about rights and freedoms.

Since corruption is a natural tendency of an individual, it is impossible to overcome it, but it is possible to prevent many of its manifestations and thereby reduce the damage it causes.

As a first step on this path, it would be appropriate to introduce changes to the legislation not only regarding the strengthening of responsibility for corruption, but also to eliminate opportunities for corruption as much as possible.

Economic measures will also be useful, namely the creation of mechanisms for withdrawing everything illegally acquired from corrupt officials. It is necessary to strengthen the social function of the state, eliminate unemployment, poverty, and achieve real implementation of the principle of legal equality and social justice. Finally, the state should pay attention to the legal awareness of the population. Moral and ethical education also requires attention. An individual should realize that personal safety depends on many factors, including the behaviour of each person, their civic position and respect for the current legislation.

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Корупція як загроза правам і свободам людини

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■ **Анотація**. Розглянуто сутність корупції, її основні вияви в сучасному глобалізованому світі та вплив на права і свободи людини. Констатовано взаємозв'язок та взаємозалежність між масштабами корупції та можливістю реалізації прав і свобод людини. Зауважено, що корупція стримує економічний розвиток України, негативно позначається на всіх сферах суспільного життя, становить реальну загрозу державі, суспільству та кожній людині. Нині, в умовах воєнного стану, корупція настільки ж небезпечна, як і мародерство. Розкрадаючи бюджетні кошти, продаючи країні-агресору запчастини для військової техніки, навіть продаючи гуманітарну допомогу, корупціонери фактично працюють на агресора, чим створюють неабияку загрозу життю, здоров'ю, іншим правам і свободам людини. Зазначене підтверджує актуальність статті. Мета дослідження полягає у встановленні та характеристиці взаємозалежності корупції та прав і свобод людини, визначенні наслідків трансформації прав та свобод людини під впливом корупційних виявів і можливості їх попередження. Методологічну основу статті становлять діалектичний, феноменологічний та синергетичний підходи, а також формально-догматичний, формально-логічний, формально-юридичний, системний і структурно-функціональний методи. У висновках констатовано, що між корупцією та правами і свободами людини існує зворотно пропорційна залежність: чим більшими є масштаби корупції, тим меншою стає спроможність реалізувати права та свободи людини. Порушення прав і свобод нерідко є наслідком саме діяльності корупціонерів. Корупція підриває довіру до державних інституцій, стає серйозною перешкодою для відправлення правосуддя, досягнення верховенства закону, юридичної рівності та соціальної справедливості. Обов'язок запобігати корупційним виявам і будь-яким іншим протиправним посяганням, а отже, забезпечувати можливість реалізації прав і свобод, покладається на державу та громадянське суспільство. Результати дослідження мають сприяти не лише стримуванню корупції, а й створенню умов реальної безпеки людини та громадянина, що підтверджує практичну цінність

■ **Ключові слова**: хабарництво; підкуп; відповідальність; право; попередження

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Principles of access to justice and guarantees of its implementation in criminal proceedings

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■ **Abstract**. In the conditions of competition and conflict of criminal proceedings, when the interests of its participants conflict with each other and are directly opposite, the importance of ensuring a real and not a formal mechanism for exercising the right to a fair trial increases. The above indicates the need for an in-depth investigation of the structure and legal guarantees for the proper implementation of the principle of access to justice. The purpose of this study was to establish the content of the principle of access to justice and determine individual guarantees for its implementation in criminal proceedings. According to the set purpose and specifics of the subject of the study, a set of methods was applied, including formal logical, historical legal, methods of comparative and system-structural analysis, formal legal, comparative legal, statistical methods. The principal results and the practical value of this study are as follows. The content of an independent and impartial court was covered and legal guarantees of independence of courts from the executive power, procedural guarantees of independence of courts from parties to the process were defined. The study clarified the legally established conditions for ensuring the independence of the court, which are legally laid down in the provisions of Articles 34, 35, 389-391 of the Criminal Procedural Code of Ukraine. The possibility of supplementing the current criminal procedural legislation with an additional principle – "independence and impartiality of the court" was emphasized. The study justified that the exercise of the right of access to the court should not be limited and should apply equally to any participant in criminal proceedings, regardless of whether they are a victim, witness, suspect, or accused. It was argued that the provisions of Item 10 Part 1 of Article 284 of the Criminal Procedural Code of Ukraine limit the victim's right to access to justice, depriving them of the opportunity already at the stage of pre-trial investigation to restore their rights, freedoms, and legitimate interests violated by the criminal offence

■ **Keywords**: restoration of violated rights; independence; impartiality; judicial protection; binding nature of court decisions

■ Introduction

The fundamental renewal and adaptation of the criminal procedural legislation of Ukraine to the legislation of European countries, the cornerstone of which is fair and effective justice, is a large-scale process that requires, on the one hand, the strengthening of the protection of human rights and freedoms in criminal proceedings, and on the other hand, the presence of an effective mechanism for their implementation and creation of conditions to ensure normal and unhindered activity of judicial institutions. All these aspects determine the urgent need to develop new opinions on determining the content and specifics of implementing the principle of access to justice in criminal proceedings.

The recent summation of scientific research and legal journalism illustrates the rapid increase in attention to problems affiliated with access to justice, including in criminal proceedings, which require solutions. Such interest is explained by the existence

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of several basic approaches to understanding the analysed basis in the doctrine of the criminal procedure. Thus, O. Balatska (2020) considers access to justice as an element of the right to a fair trial, which follows from Item 1 of Article 6 of the Convention on the Protection of Human Rights and Fundamental Freedoms[1] and exists on an equal footing with others that are directly prescribed in the above-mentioned norm and formulated the practice of the European Court of Human Rights. N. Sakara (2010), investigating the implementation of the analysed basis in civil proceedings, calls access to justice a standard that, on the one hand, makes provision for the normative requirements of impartial, objective, and effective judicial protection, and on the other hand – legally consolidated procedural mechanisms, proper deadlines and unhindered appeal of any interested person to judicial institutions. O. Shylo (2006) analyses access to justice through the lens of judicial protection, which is characterized by such features as specific subject (court); an unlimited subject (which extends not only to the rights and legal interests of a person, but also to the interests of society, the state, and law); special forms of implementation (justice and judicial control); the legal procedure for the trial of criminal proceedings, which serves as a guarantee of the realization of the rights and interests of its participants; constancy and immutability of the criminal procedural act of the court.

Investigating the issue of access to court for a victim in criminal proceedings, S. Davydenko (2007), considers access to justice to be a set of conditions regulated by law and guaranteed by the state, favourable for each stakeholder to freely apply directly to the authorized state bodies of inquiry and pre-trial investigation, as well as the prosecutor's office and judicial institutions for the restoration of their rights, freedoms, and legitimate interests violated by a criminal offence, without which a person cannot exercise their right to judicial protection. On the other hand, V. Shybiko (2009) provides a broader interpretation of the category under study, noting that the specified opportunity for the participants of the proceedings to be aware of their rights to active participation in the case, to exercise these rights for a fair resolution of the case, is provided precisely by the normatively established system of relevant rules, which covers certain requirements, prohibitions, and permits and a system of appropriate procedural means the defined in criminal procedural legislation.

In modern science, other Ukrainian scientists have also addressed the question of the content and essence of the investigated basis of criminal proceedings. I. Gloviuk (2011) investigated the concept of access to justice in the criminal procedure by comparing it with the terms "access to court" and "access to judicial control". N. Derkach (2013), considering the practices of the European Court of Human Rights, tried not only to determine the elements of the legal content of the principle of access to justice and the binding nature of court decisions, but also to outline the mechanism of their implementation. V. Zaborovskyi (2018) and N. Sakara (2010) investigated the procedural aspect of access to justice in civil proceedings, including through the lens of procedural costs, while analysing the historical and doctrinal foundations of the problem. O. Kuchynska (2019), I. Mokrytska (2015) investigated the accessibility of justice in relation to other principles of the criminal procedure, singling out its specific features and determining directions for reforming the legislation to strengthen the judicial protection of a person in criminal proceedings. The scientific studies of O. Ovsiannikova (2018) deserve attention, which considers access to justice as a factor influencing the development of a positive attitude of the public towards judicial bodies. The judicial approach to the issue of access to justice was outlined in a monographic study by O. Ovcharenko (2008). R. Stepaniuk (2018), researching the content of the specified principle of criminal proceedings, insists on clarifying its normative definition in relation to those procedural possibilities, the use of which reflects the particular content of the relevant personal right. O. Korovaiko (2016) fairly draws the attention of the scientific community to the specific features of the legal and practical provision of access to justice by the court for the defending party. N. Rohatynska (2021), analysing the consequences of violating the principles of criminal proceedings, justifies that non-compliance with the requirement of accessibility leads to the recognition of evidence as inadmissible, and this, in turn, undermines a fair trial. The most considerable contribution to this issue was made by O. Shylo (2005), who, among other things, raised the issue of access to judicial protection during the pre-trial investigation in case of disagreement with the actions and decisions of the body of inquiry, investigator, and prosecutor regarding the detention of a suspect, closure of criminal proceedings, refusal to apply security measures, suspension of pre-trial investigation, etc. Finally, the research of scientists (Kaplina & Sharenko, 2020), who investigated the specific features of implementing the right to judicial protection in a pandemic, is worthy of attention. However, most of these studies cover the issues of access to justice in civil, administrative, and economic proceedings or in the sense of ensuring the right of a person to a fair trial according to the convention

[1]Convention for the Protection of Human Rights and Fundamental Freedoms. (1950, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004.

standards for the protection of human rights in criminal proceedings.

Therefore, *the purpose of this study* is a comprehensive investigation of the content of the analysed principle under national criminal procedural legislation and guarantees of its implementation in criminal proceedings.

Materials and Methods

For the investigation of the subject under study, it is important to determine the methodological basis of the worldview on access to justice, which allows further formulating the essence and content of this basis, a system of guarantees for its proper implementation. The combination of both general scientific and special methods of scientific cognition was used to achieve the outlined purpose of this study. The method of dialectics was used to expand the conceptual framework by investigating and covering the discussion of proceduralists who sometimes have differing opinions concerning the subject under study. Given that dialectics does not involve rhetoric, but rather is considered as the skill of conducting a discussion based on logical arguments, the mentioned method highlighted common features of the category of access to justice. The study uses a systematic approach to investigating the basis of access to justice as a monolithic set of its constituent components. Therefore, the system-structural method was used to investigate the internal structure of the principles of access to justice. Organizational elements were distinguished, i.e., those that determine the organization of the delivery of justice (independence and impartiality of the court, creation of a court based on the law) and functional elements, i.e., those that are determined by the implementation of the principal function performed by the court – justice (access to legal aid, interpreter's assistance, access to a court decision). Therewith, a systematic approach helped identify procedural gaps by using the method of systematic analysis of legislation. This refers to the deprivation of the victim of the right to access justice at the stage of pre-trial investigation due to the regulatory consolidation of the need to close criminal proceedings in case of the expiration of the pre-trial investigation period after notifying the person of suspicion. The comparative-historical method was used to establish evolutionary changes and the development of criminal procedural legislation by correlating and comparing individual legal prescriptions of the Criminal Procedural Code of 2012[1] and the Criminal Procedural Code of Ukraine of 1960[2] regarding the regulatory consolidation of the independence of judges and their obedience solely to the law. The comparative legal method was reflected in the comparison of provisions of Ukrainian and international criminal procedural legislation (of the Republic of Azerbaijan[3] and the Republic of Moldova[4]). This method allowed forming an opinion on the need for autonomous consolidation of the principles of independence and impartiality of the court in the provisions of criminal procedural legislation, which will contribute to the implementation of fair justice in criminal proceedings in modern conditions of reform and the development of judicial independence. The normative and dogmatic method outlined procedural guarantees for ensuring the implementation of the principle of access to justice in criminal proceedings. The generalization method was used to formulate conclusions in a scientific article.

The available scientific papers of Ukrainian and international researchers were used and analysed during the study of this issue. The regulatory framework of this study included the criminal procedural legislation of Ukraine, including the laws of Ukraine "On the High Council of Justice"[5] and "On the Judicial System and Status of Judges"[6]. Along with this, the study used empirical methods, which involved the investigation of the legal positions of the European Court of Human Rights[7], the Constitutional Court of Ukraine[8] and the Supreme Court of Ukraine[9], and allowed drawing the most general picture of the

[1]Law of Ukraine No. 4651-VI "Criminal Procedural Code of Ukraine". (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.
[2]Law of the Ukrainian SSR. "Criminal Procedural Code of the Ukrainian SSR". (1960, December). Retrieved from https://zakon.rada.gov.ua/laws/show/1001-05#Text.
[3]Law of the Republic of Azerbaijan No. 907-IQ "Criminal Procedural Code of the Republic of Azerbaijan". (2000, July). Retrieved from http://continent-online.com/Document/?doc_id=30420280#pos=1835;-45.
[4]Criminal Procedural Code of the Republic of Moldova No. 122-XV. (2003, March). Retrieved from https://continent-online.com/Document/?doc_id=30397729#pos=340;-52.
[5]Law of Ukraine No. 1798-VIII "On the High Council of Justice". (2016, December). Retrieved from https://zakon.rada.gov.ua/laws/show/1798-19#Text.
[6]Law of Ukraine No. 1402-VIII "On the judicial system and the status of judges". (2016, June). Retrieved from https://zakon.rada.gov.ua/laws/show/1402-19#Text.
[7]Decision of the European Court of Human Rights No. 65518/01 The case "Salov v. Ukraine". (2005, September). Retrieved from http://zakon3.rada.gov.ua/laws/show/980_428/page.
[8]The decision of the Constitutional Court of Ukraine in the case of the constitutional appeal of citizens against Anton Pavlovych Troian regarding the official interpretation of the provisions of Article 24 of the Constitution of Ukraine (the case on the equality of parties to the judicial procedure) No. 9-рп/2012. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/v009p710-12#Text.
[9]Decision of the Supreme Court in case No. 185/3493/19. (2021, August). Retrieved from https://reyestr.court.gov.ua/.

definition of the content and guarantees of the implementation of the principle under study. To obtain reliable and real research results, the above methods were used in mutual connection and interdependence.

Results

Independence and impartiality of the court as a component of the principle of access to justice.

The concept of access to justice has evolved considerably in recent decades. In this connection, now, more than ever, this concept needs to be interpreted broadly. Covering the content of the announced principle of criminal proceedings, O. Ovcharenko (2008) believes that the availability of justice covers two equivalent areas – institutional (judicial system) and procedural (judicature). In the Ovcharenko's opinion, the given classification corresponds to, albeit not incontrovertible, but scientifically accepted division of branches of the study of the problems of judicial power into the judicial system aspect, which is focused on the issues of the structure of the judicial system, and the judicature aspect, which reflects the procedural order of solving legally significant cases by the court. O. Shylo (2005) justifies that access to justice covers organizational, procedural, and virtuous (moral) aspects.

Without resorting to a detailed study of the essence of the principles of the criminal procedure under study, the scope of this study will encompass some institutional and procedural components that ensure the proper implementation of access to justice.

First of all, characterizing the organizational (institutional) aspect of the principle under study, it is noteworthy that Item 11 of the Opinion No. 6 (2004) of the Consultative Council of European Judges to the attention of the Committee of Ministers of the Council of Europe on fair trial within a reasonable time and judge's role in trials taking into account alternatives means of dispute settlement[1] notes that "public access to justice presupposes delivery of suitable information on the functioning of the judicial system".

In Ukrainian legislation, the principle of access to justice is defined in Article 21 of the Criminal Procedural Code of Ukraine[2] (CPCU), the analysis of which suggests that the criteria for the proper implementation of the right to a fair trial are an independent and impartial court established based on the law. Therewith, the European Court of Human Rights interprets the term "independent" as such that covers two components: the independence of the courts from the executive power and the independence of the judges from the litigants[3].

Considering the first element, according to the legal position of the Constitutional Court of Ukraine, set out in the decision[4], the independence of the court from the bodies of the legislative and executive power lies in the specific order of the composition of the judicial corps, namely the internal exclusively judicial bodies from the standpoint of holding judges accountable.

In this regard, the European Court of Human Rights notes in Item 80 of the case of Salov v. Ukraine[5] that the independence of the court is determined by the procedure for appointing its members and the terms of their powers, the presence of guarantees against external pressure and the existence of external signs of independence. The outlined conventional standards of independence of courts from the executive power are primarily implemented in the Constitution of Ukraine[6], Laws of Ukraine "On the Judiciary and the Status of Judges"[7], "On the High Council of Justice"[8], which define special procedures for appointing (dismissing) judges and terminating their powers, bringing the latter to justice, their organizational, financial, social security, as well as personal security measures of representatives of the judicial community, their families, property, etc. Along with this, a special guarantee of protection of judges from interference in their activities is the functioning of judicial self-government bodies. That is, in this way, the state has created a legal and institutional framework that guarantees access to independent

[1]Consultative Council of European Judges to the attention of the Committee of Ministers of the Council of Europe on fair trial within a reasonable time and judge's role in trials taking into account alternatives means of dispute settlement No. 6. (2004). Retrived from https://court.gov.ua/userfiles/visn6_2004.pdf.

[2]Law of Ukraine No. 4651-VI "Criminal Procedural Code of Ukraine". (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.

[3]Report of the European Commission on Human Rights No. 7360/76 "Case of Tzand v. Austria". (1978, October). Retrieved from https://www.echr.coe.int/Pages/home.aspx?p=applicants/ukr&c.

[4]Decision of the Constitutional Court of Ukraine in the case based on the constitutional submission of 47 People's Deputies of Ukraine regarding the conformity with the Constitution of Ukraine (constitutionality) of certain provisions of the Law of Ukraine "On Prevention of Corruption", Criminal Code of Ukraine No. 13-r/2020. (2020, October). Retrieved from https://zakon.rada.gov.ua/laws/show/v013p710-20#Text.

[5]Decision of the European Court of Human Rights No. 65518/01 The case "Salov v. Ukraine". (2005, September) Retrieved from http://zakon3.rada.gov.ua/laws/show/980_428/page.

[6]Law of Ukraine No. 254к/96-VR "Constitution of Ukraine". (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2%D1%80#Text.

[7]Law of Ukraine No. 1402-VIII "On the judicial system and the status of judges". (2016, June). Retrieved from https://zakon.rada.gov.ua/laws/show/1402-19#Text.

[8]Law of Ukraine No. 1798-VIII "On the High Council of Justice". (2016, December). Retrieved from https://zakon.rada.gov.ua/laws/show/1798-19#Text.

and effective judicial mechanisms and ensures a fair outcome, including criminal proceedings.

As for the independence of judges from the parties to the court procedure, then it should be noted that in the literature, procedural guarantees in such a case are considered the provisions of the CPCU[1] regarding the established procedure for the delivery of justice, the secrecy of the adoption of a court decision, the right of recusal or self-recusal of a judge.

Evidently, the norms of Ukrainian legislation contain much more procedural means that can ensure the consideration of criminal proceedings by an independent and impartial court. One of such guarantees is normatively prescribed in Article 35 of the CPCU[2] according to which the composition of the court, including the involvement of jurors to deliver justice from the formed list of jurors, is determined by automated distribution of criminal proceedings materials between judges in compliance with the rules of succession and an equal number of proceedings for each judge, etc. The analysis of the specified article suggests that the parties (prosecution and defence) cannot freely choose judges and jurors who will deliver justice in criminal proceedings. This method of forming a court, in turn, ensures, inter alia, an impartial and biased distribution of materials of criminal proceedings, which certainly contributes to an objective judicial review, considering the impossibility of appointing a judge or court composition favoured by one of the parties to deliver justice.

The guarantee of ensuring an independent and impartial trial is also the procedure established by law for transferring materials to another court, if the accused or victim works or worked in a court whose jurisdiction includes the implementation of criminal proceedings (Item 3 of Part 1 of Article 34 of the CPCU)[3]. This regulatory requirement is justified, because in this case there is a risk that due to their official position, these persons may personally or indirectly influence the objective consideration of the case by such a court.

Therewith, it is worth noting the legislative provisions that contribute to ensuring judicial independence when considering a case by a jury. Therefore, the provisions of Article 389 of the CPCU contain a prohibition for the prosecutor, the accused, the victim, and other participants in the criminal proceedings to contact the jurors from the moment the trial begins until the judgment on the merits of the indictment is rendered, otherwise than according to the procedure prescribed by the criminal procedural legislation. Article 390 of the CPCU formulates the conditions for the release of a juror from the further performance of their duties, including the existence of substantiated reasons for the juror's loss of impartiality caused by the illegal influence, where the former is necessary for resolving issues of criminal proceedings according to the law. A special guarantee of the impartiality of the jury is the procedure for meeting and voting in the jury court established in Article 391, according to which, during the resolution of issues prescribed by Article 368 of the CPCU, during the voting, the presiding juror votes last. The above not only allows the juror to decide by voting independently, proceeding from their personal conviction, but also excludes the possibility of influencing the opinion of the presiding juror.

To implement and more effectively ensure the performance of the requirements of Item 1 of Article 6 of the Convention[4], the special literature (Lyoshenko, 2021) expresses the position of the expediency of supplementing the current CPCU with a principle of "independence and impartiality of the court".

In this regard, the procedural legislation previously did not contain a unified norm that fully reproduced the content of the principle under study under modern statutory regulation. In the 1960 edition of the CPCU[5], the independence of judges and their obedience exclusively to the law was determined by a separate principle, according to which, when delivering justice in criminal proceedings, judges are independent (i.e., those who resolve cases in conditions that exclude outside influence on them) and obey only the law (i.e., those that resolve criminal cases based on the law) (Article 18).

The principle of independence of judges has an autonomous meaning in international criminal procedural law as well. Thus, Article 25 of the Criminal Procedural Code of the Republic of Azerbaijan[6] prescribes an independent basis of criminal proceedings of the independence of judges, the content of which is as follows: the impossibility of identification of judges with the conclusions made by the bodies that carry out the criminal procedure during the preliminary investigation; consideration of criminal cases

[1]Law of Ukraine No. 4651-VI "Criminal Procedural Code of Ukraine". (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.
[2]Ibidem, 2012.
[3]Ibidem, 2012.
[4]Convention for the Protection of Human Rights and Fundamental Freedoms. (1950, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004.
[5]Law of the Ukrainian SSR. "Criminal Procedural Code of the Ukrainian SSR". (1960, December). Retrieved from https://zakon.rada.gov.ua/laws/show/1001-05#Text.
[6]Law of the Republic of Azerbaijan No. 907-IQ "Criminal Procedural Code of the Republic of Azerbaijan". (2000, July). Retrieved from http://continent-online.com/Document/?doc_id=30420280#pos=1835;-45.

or other materials related to criminal prosecution by judges, according to their internal conviction and legal awareness, which are based on the investigation of evidence submitted by the parties to the criminal procedure in the court session; delivery of justice by the courts of the Republic of Azerbaijan in conditions that exclude illegal influence on the independence and will of judges; prohibiting interference in the delivery of justice, demanding explanations from judges on the merits of the cases under consideration; inadmissibility of restriction by anyone directly or indirectly for one reason or another of the delivery of justice, illegal pressure on the court, use of threats, interference, disrespect for the court, ignoring it.

As a separate principle, the independence of judges is defined in Article 26 of the Criminal Procedural Code of the Republic of Moldova[1], according to which, among other things, it is determined that a judge is obliged to resist any attempt to put pressure on him or her during the resolution of criminal cases with the purpose of influencing his or her decisions.

Considering the above, the scientific opinion given above is correct because judicial independence in criminal proceedings is not only a criterion for ensuring the restoration of rights violated by a criminal offence, but also guarantees the adoption of an unbiased, lawful and evidence-based court ruling on the application of measures to ensure criminal proceedings, implementation of proper judicial control both during the pre-trial investigation and in the court stages, consideration of issues within the framework of international cooperation, etc. The above indicates the necessity of autonomous consolidation of the principles of independence and impartiality of the court in the provisions of criminal procedural legislation, which will contribute to the delivery of fair justice in criminal proceedings in modern conditions of reform and the development of judicial independence.

Implementation of the right of access to justice in criminal proceedings.

Without diminishing the importance of the above, access to justice cannot be achieved merely through the effective functioning of the judicial system, the proper judicial procedure for the delivery of justice and other aspects of the quality of judicial proceedings (the duration of legal proceedings and the treatment of the parties by the court).

In this context, it is worth paying attention to the term "access", which has several meanings in the Great Dictionary of the Modern Ukrainian Language (Busel, 2005). Among other things, access is understood as the ability to enter anywhere, visit anybody, anything, meet somebody; the possibility to use, to do something; the possibility to obtain data on demand. Therefore, access to justice as a guarantee of ensuring human rights presupposes, first of all, the possibility of applying to court for the restoration of violated rights and obtaining legal protection without obstacles.

Therefore, the main substantive aspect of the principle under study is the right of everyone to take part in the resolution of any level of the case in court, regarding their rights and obligations, according to the procedure prescribed by the CPCU (Part 3 of Article 21 of the CPCU)[2]. Notably, ensuring such a rule in criminal proceedings has its specifics. Here, attention should be paid to the position of the Supreme Court of Ukraine[3], which notes that, as stated in Article 30 of the CPCU[4], in criminal proceedings, refusal to deliver justice is not allowed, and justice itself shall be delivered only by the court according to the rules established by this Code. After all, the criminal procedure differs from other types of judicial proceedings in that it does not make provision for cases in which the accusation brought against a person would not be considered on its merits, and therefore, in criminal proceedings, the court cannot leave the final act of the pre-trial investigation without consideration. In a broad sense, this means that the judicial power, represented by its bodies – courts, has no right to refuse to deliver justice in criminal proceedings. In a narrow sense, this means the impossibility of refusing a trial and passing a corresponding court decision by the court that is responsible for the relevant criminal proceedings. The basis of these provisions is that the jurisdiction of the courts extends to any legal dispute and any criminal charge.

Therewith, the authors of this study note that to exercise the competitiveness and parity of the prosecution and defence parties in terms of creating equal conditions to provide evidence supporting their positions, a real opportunity for victims, witnesses, accused, and other participants in the process to exercise their right to access to justice should be ensured. The court provides such opportunities by properly informing (notifying) the participants of court proceedings about the date, time, place of court hearings (summons, writ of attachment), providing access to competent legal aid, services of an independent translator, etc. Therefore, the exercise of the right to access to justice depends on the adoption of the

[1]Criminal Procedural Code of the Republic of Moldova No. 122-XV. (2003, March). Retrieved from https://continent-online.com/Document/?doc_id=30397729#pos=340;-52.
[2]Law of Ukraine No. 4651-VI "Criminal Procedural Code of Ukraine". (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.
[3]Decision of the Supreme Court in case No. 185/3493/19. (2021, August). Retrieved from https://reyestr.court.gov.ua/.
[4]Law of Ukraine No. 4651-VI "Criminal Procedural Code of Ukraine". (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.

above-mentioned criminal procedural measures by the court during the trial aimed at creating the necessary equal prerequisites for the use of the rights granted by the procedural legislation.

Thus, the implementation of the right to access to court should apply equally to any participant in criminal proceedings, regardless of whether they are a victim, witness, suspect, accused, convicted, or acquitted. After all, as noted in the decision of the Constitutional Court of Ukraine[1], the right of any individual to access to justice, which makes provision for the possibility of an individual to act as the initiator of a judicial proceeding and to take a direct part in the judicial procedure, should not be subject to unreasonable restrictions, and no one can be deprived of such a right.

Therewith, the unjustified narrowing of the implementation of the principle of access to justice is contained in the regulatory provisions of Item 10, Part 1, Article 284 of the CPCU[2], where one of the grounds for closing criminal proceedings is the completion of the pre-trial investigation period after notifying the individual of suspicion, except for cases of bringing an individual to criminal liability for committing a grave or particularly grave crime against a person's life and health. The specified norm stipulates the duty of the investigator, inquirer, and prosecutor to close criminal proceedings in case that the term of the pre-trial investigation has ended, but no person has ever been suspected of committing a criminal offence.

As it appears, these shortcomings in the legal field, which provide for the existence of such a reason for closing the proceedings, factually violate the victim's right to access to justice, depriving them of the opportunity already at the stage of pre-trial investigation to restore their rights, freedoms, and legitimate interests violated by the criminal offence. Consequently, the content of the analysed framework is much broader than access to the court and judicial procedure. It also includes recognizing that everyone is entitled to protection by law, and that rights do not make sense if they cannot be exercised.

The binding nature of court decisions as an integral component of the principle of access to justice.

A. Uzelac & C.H. van Rhee (2009), investigating access to justice and the judicial system according to the new European accessibility standards, noted that over the last decade, the European Court of Human Rights has expanded the concept of access to justice for the effective execution of judicial and extrajudicial documents. Thus, it is currently impossible to discuss access to justice without considering mechanisms aimed at ensuring all the requirements defined by law. Because without the possibility of effective enforcement of court decisions, access to justice is useless.

Thus, in the decision in the case "Yurii Mykolaiovych Ivanov v. Ukraine"[3], the Court reiterates that the right to a trial would only seem real if the state did not take the necessary measures to implement the final court decision, which requires unconditional compliance, including regarding the party in whose favour the issue is resolved. Consequently, the effectiveness of access to justice presupposes the prompt exercise of the right to execute a judgment without undue delay (Item 51).

This broad approach is adhered to by the legislators when constructing the content of the principle of access to justice, which includes in its essence the requirement for the binding nature of court decisions. Thus, according to Part 2 of Article 21 of the CPCU, a verdict and a court ruling that have entered into legal force pursuant to the procedure established by this Code shall be binding and subject to unconditional execution throughout Ukraine. The content of this provision is covered in Chapter VIII, where Articles 532–540[4] of the said legal act define the procedural order and consequences of the entry into force of a court decision, the mechanism of its enforcement, issues decided by the court during the execution of sentences and the procedure for their decision, etc.

Discussion

The author of this study argues the importance of the normative definition of the principle of independence and impartiality of the court in the provisions of criminal procedural legislation, which will contribute to public confidence in judicial activity in the delivery of fair justice in criminal proceedings in modern conditions of judicial reform and the development of judicial independence. In this context, it is worth noting that in general, scientists consider the independence and impartiality of the court regardless of the content of the basis for access to justice or as a component of the right to a fair trial (Venislavsky, 2018; Gren, 2016; Leshenko, 2020). These positions of scientists only confirm the thesis about the autonomy of the investigated categories of judicial independence and impartiality.

[1]The decision of the Constitutional Court of Ukraine in the case of the constitutional appeal of citizens against Anton Pavlovych Troian regarding the official interpretation of the provisions of Article 24 of the Constitution of Ukraine (the case on the equality of parties to the judicial procedure) No. 9-рп/2012. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/v009p710-12#Text.

[2]Law of Ukraine No. 4651-VI "Criminal Procedural Code of Ukraine". (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.

[3]Decision of the European Court of Human Rights No. 40450/04 Case "Yurii Mykolaiovych Ivanov v. Ukraine" . (2010, January). Retrieved from https://zakon.rada.gov.ua/laws/show/974_479.

[4]Law of Ukraine No. 4651-VI "Criminal Procedural Code of Ukraine". (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.

Therewith, researchers mostly refer to institutional means as guarantees of an independent court in criminal proceedings, as evidenced by numerous publications. Thus, V.O. Hryniuk (2012), investigating the issue of guarantees for ensuring the independence of the court in the criminal procedure, from the approach of closeness in the meaning of organizational and procedural guarantees, mainly focused her attention on the means defined in the regulations governing judicial activity. Among them, the researcher cites the autonomous construction of the judicial system as the main means that ensure the independence of the court; specific competitive procedure for the position of a judge, financial, social, material, organizational, technical, and other support according to their status, the unity of their legal status, the right to resign, etc. The researcher attributed the procedure for the delivery of justice, the secrecy of the consultation room, the procedural possibility of recusal, as well as the established terms of appeal and cassation appeal to the procedural guarantees.

However, according to the author's research, the legislative provisions also contain other procedural means aimed at the full performance of judges' duties. In general, the procedural guarantees defined above in the results of the present study are aimed at strengthening the independence and impartiality of judicial proceedings and are designed to reduce the possible impact on judges. Along with this, the author substantiates that important conditions for the independence of judges are the provisions of the law that determine the administration of justice by a jury. At the same time, according to O. Skriabin (2014), the content of some legal prescriptions of the code causes uncertainty in the aspect of joint decision-making based on the consequences of the trial by a jury, professional judges and jurors. In this case, Skriabin believes, the established decision-making procedure can affect the formation of jurors' own unbiased opinions and affect the ruling of a legal decision in general, which distorts the originality of the institution of jurors as a means of combating the adoption of illegitimate and unjust decisions. This position of the scientist undoubtedly deserves attention and determines the search for a balanced model for making joint decisions by juries together with professional judges.

Legal provisions that establish certain limits of independence of judges do not contribute to ensuring judicial independence. Specifically, this refers to the imperative requirement of the law defined in Item 2 of Part 2 of Article 284 of the CPCU[1], which obliges the court to decide on the closure of criminal proceedings under the simultaneous presence of two conditions, which include the prosecutor's refusal to file a public accusation and the absence of the victim's desire to support it in court. The above limits the sovereignty, impartiality, and objectivity of the court. In this regard, O.Yu. Loshenko (2021) expresses a reasonable scientific approach to the need to clarify the validity of the prosecutor's refusal to charge, and therefore the court cannot be obliged to close criminal proceedings without investigating the circumstances of such refusal.

According to the results of the scientific research, attention is drawn to the existence of legislative gaps in the context of the subject under study. Notably, the right to access to justice in Ukraine, as in many countries of the world, is not absolute and may be limited primarily by the norms of the criminal procedural law, which make provision for exceptions to the general rule. Such exceptions relate to certain restrictions on the right to appeal against certain court decisions. The scientific discussion (Radutny, 2017) reaches its greatest extent in the part of the denial of access to the court as a result of the legislative consolidation of exceptions to the possibility of appealing the decisions of the investigating judge during the pre-trial investigation according to Part 3 of Article 309 of the CPCU[2], which limits the analysed right.

Therewith, the problem of legislative limitation of the right to legal protection of the victim has long needed a suitable solution. The current criminal procedural legislation resolved it in a certain way, introducing the institution of criminal proceedings in the form of private prosecution. But later, certain restrictions were introduced into the provisions of the CPCU[3] regarding the establishment of such grounds for closing criminal proceedings as the end of the period of pre-trial investigation after informing a person of suspicion, except for cases of bringing a person to criminal liability for committing a grave or particularly grave crime against life and health of a person. Thus, a person who has suffered moral, physical, or property damage due to a criminal offence has been deprived of access to justice in such a case.

In this context, the opinion of V. Shybiko (2013) is valid. Analysing the legal provisions on the subject of access to justice for the victim in criminal proceedings with a private form of accusation, Shybiko notes that legislators must ensure the possibility of exercising the right of every participant in criminal proceedings to judicial protection at all stages of the criminal procedure, including the trial stages.

In turn, the adoption of a decision to close criminal proceedings in a pre-trial investigation is one of

[1]Law of Ukraine No. 4651-VI "Criminal Procedural Code of Ukraine". (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.
[2]Ibidem, 2012.
[3]Ibidem, 2012.

the forms of ending the pre-trial investigation and, as a result, stands in the way of further proceedings. Such a procedural decision, pursuant to the requirements of the legislation, may become the subject of consideration by an investigating judge based on the results of filing a corresponding complaint. However, as I. Hloviuk (2011) rightly points out, the judicial review of such complaints by an investigating judge during a pre-trial investigation does not have the features and properties of justice. Among such properties, Hloviuk mentions the resolution of proceedings based on the merits of the accusation, a special form of administration of justice; application of material law norms, including the resolution of the issue of the application of measures of criminal law influence. Considering the above, it is evident that the analysed basis for closing criminal proceedings restricts the victim's access to justice and is subject to exclusion from the provisions of the criminal procedural legislation. The principle of criminal proceedings under study provides not only the normative consolidation of this right, but also the procedural mechanism of its implementation in the judicial stages of the criminal procedure of Ukraine.

In the present paper, the author emphasizes that the execution of court decisions forms an integral part of the principle of criminal proceedings under study. However, this approach does not always find support in the scientific community. O.P. Kuchynska (2019) believes that access to justice, among other things, makes provision for the normative consolidation of real procedures for ensuring the productivity and effectiveness of criminal proceedings in the form of a legal and fair final procedural resolution. However, O. Balatska (2020) argues that access to justice should be separated from the binding nature of court decisions, despite the indissoluble connection between them.

Conclusions

Accumulating the opinions of scientists and the legal opinions of the European Court of Human Rights, the Constitutional Court of Ukraine and the Supreme Court of Ukraine, the authors of the present paper concluded that the structure of the principle of access to justice in the sense of Article 21 of the CPCU is versatile, the main reference point of which is the possibility of a person who believes that their rights, freedoms and legitimate interests have been violated, to apply to the court for their restoration. According to modern legislative regulations, the content of the principle of access to justice has an organizational and functional nature because it includes organizational elements, i.e., those that determine the organization of the delivery of fair justice (legality, independence, and impartiality of the court) and functional elements, i.e., those that are determined by the implementation of the main function, which is carried out by the court, is justice (access to legal aid, assistance of an interpreter, access to a court decision to be able to challenge the actions or inaction of officials, etc.).

It was proved that procedural guarantees for ensuring access to justice are tools that differ in their particular content and, together, provide participants in criminal proceedings with the opportunity to exercise the rights granted to them. Therewith, it was stated that the statutory regulation of procedural guarantees of a fair trial is far from perfect both in terms of ensuring the independence and impartiality of judicial institutions, and in terms of implementing the possibilities of a person applying to the court for the restoration of violated rights. In this regard, the authors of this study propose to exclude such grounds for closing criminal proceedings as the completion of the pre-trial investigation period after notifying a person of suspicion, except for cases of bringing a person to criminal responsibility for committing a grave or particularly grave crime against the life and health of a person, or in the case when the pre-trial investigation period has expired and no person has been informed of suspicion, which restricts the exercise of the victim's right to judicial protection.

The need to establish the principle of independence and impartiality of the court at the legislative level was substantiated. Such a principle will have an independent meaning given the fact that judicial independence in criminal proceedings is not only a guarantee of the restoration of the violated rights of a person in criminal proceedings, but also ensures the adoption of an unbiased, lawful and evidence-based court decision regarding the application of measures to ensure criminal proceedings, implementation of proper judicial control both during the pre-trial investigation and in the judicial stages, consideration of issues within the framework of international cooperation, etc.

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Засада доступу до правосуддя та гарантії її реалізації в кримінальному провадженні

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■ **Анотація**. В умовах змагальності та конфліктності кримінального провадження, коли інтереси його учасників суперечать один одному та є прямо протилежними, зростає значення забезпечення реального, а не формального, механізму реалізації права на справедливий судовий розгляд. Наведене засвідчує потребу в поглибленому вивченні структури та правових гарантій належної реалізації засади доступу до правосуддя. Мета статті – з'ясувати зміст засади доступу до правосуддя та визначити окремі гарантії її реалізації в кримінальному провадженні. Відповідно до поставленої мети і специфіки предмета дослідження застосовано комплекс методів, серед яких: формально-логічний, історико-правовий, методи порівняльного та системно-структурного аналізу, формально-юридичний, порівняльно-правовий, статистичний. Основні результати дослідження та практична цінність роботи зводяться до такого. Розкрито зміст незалежного й неупередженого суду та визначено правові гарантії незалежності судів від виконавчої влади, процесуальні гарантії незалежності судів від сторін процесу. З'ясовано законодавчо закріплені умови забезпечення незалежності суду, які нормативно закладені в положеннях ст. 34, 35, 389-391 Кримінального процесуального кодексу України. Наголошено на можливості доповнення чинного кримінального процесуального законодавства додатковою засадою – «незалежність та неупередженість суду». Обґрунтовано, що реалізація права на доступ до суду не повинна бути обмежена та має діяти нарівні для будь-якого учасника кримінального провадження, безвідносно до того, чи є він потерпілим, свідком, підозрюваним чи обвинуваченим. Аргументовано, що положення п. 10 ч. 1 ст. 284 Кримінального процесуального кодексу України обмежують право потерпілого на доступ до правосуддя, позбавляючи його можливості вже на стадії досудового розслідування відновити свої порушені кримінальним правопорушенням права, свободи й законні інтереси

■ **Ключові слова**: відновлення порушених прав; незалежність; неупередженість; судовий захист; обов'язковість судових рішень

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Current state of social security for employees of the National Police of Ukraine: a literature review

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■ **Abstract**. The study substantiated the importance and necessity of building an effective social security system for employees of the National Police of Ukraine. The purpose of this study was to provide a meaningful description of the current state of social security of law enforcement officers in Ukraine based on the analysis of scientific opinions of scientists and the norms of current legislation. This study used several general scientific and special methods of scientific cognition, which allowed solving the tasks and fulfilling the purpose of this study. Specifically, these were the logical-semantic method, the method of documentary analysis, analytical, and comparative legal methods. The study analysed the scientific opinions of Ukrainian and foreign scientists who dealt with the problems of social security of the population, namely police officers. It was emphasized that the quality of social security of police officers depends on, firstly, the proper performance of police officers' official and labour duties, and therefore, the state of ensuring the security of the state and society; secondly, the prestige of the profession of a police officer. General theoretical approaches to the definition of the term "social security" were covered, based on which the author's opinion on the interpretation of social security for employees of the National Police of Ukraine was formulated. The key elements of social security of police officers in Ukraine were described. Based on the analysis of the norms of the current legislation, the key elements of social security for employees of the National Police of Ukraine were analysed. The authors noted the unsatisfactory state of social security of police officers. Factors that confirm the unsatisfactory state of social security of police officers were highlighted. The results of the present study can be used in the development and adoption of the Labour Code of Ukraine, when improving departmental regulations of the National Police, as well as the Ministry of Internal Affairs of Ukraine, whose norms are aimed at resolving issues of social security for police officers

■ **Keywords**: police officer; legal regulation; social protection; service; social risks

■ Introduction

Ensuring, securing, and protecting the legitimate rights, freedoms, and interests of citizens is one of the priority tasks of any modern, democratic, and socially oriented state. However, in current conditions, a high-quality and effective solution to this issue becomes of particular importance and requires a special approach to implementation by law enforcement agencies because, for instance, for the whole of 2021, about 60 thousand people applied to the Verkhovna Rada Commissioner for Human Rights. This is especially true for the National Police of Ukraine, which currently acts not just as a law enforcement agency, but as a valuable tool for stabilizing society. Considering this, the priority area of activity of the Ukrainian legislator is to create conditions under which police bodies and divisions will be more motivated to perform their duties. Achieving this, a priori, is impossible without an effective social security system for employees of the National Police of Ukraine. According to L.P. Shumna (2015), social security is designed to create stability in society, as well as a decent standard of living for every individual, regardless of their status and position. Consequently, the above determines the presence of many forms and methods of social security, as well as the creation of conditions for their constant updating and improvement. Social security, as Shumna emphasizes, performs several special functions, which include: a) provision of

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certain minimum, basic guarantees for receiving key, basic social and economic benefits; b) is a unique tool to protect citizens from risks of a diverse nature: economic, social, political, etc., which may arise during a person's life; c) it provides material, financial, and other aid to those groups of people who are in a difficult situation due to certain life circumstances (Shumna, 2015). O.M. Yaroshenko (2015) also notes that social security is undoubtedly a crucial institution aimed at building and ensuring the functioning of any modern society, which is based on the principles of legality, the rule of law, as well as ensuring human rights and freedoms. According to Yaroshenko, it is social security that guarantees the development and stability of the life of each person, and therefore of the entire society as a whole. It is characterized by social orientation, clear definition of sources of funding, subject definition and a list of tools and means they use when carrying out their activities.

In the context of the issues under study, it is necessary to cite the opinion expressed by O.Yu. Kisil (2021), who concluded that social security, especially in the context of the official work of police officers, is important from the standpoint of ensuring that they perform their functions at a highly professional level. Furthermore, Kisil continues, a high-quality and efficient social security system allows minimizing the risks that police officers are exposed to daily upon implementing the law enforcement function of the state. And thus, summarizes O.Yu. Kisil (2021), social security of police officers and their family members is important: firstly, for police officers, as it creates a kind of basis for being confident in their future; secondly, for the state and society, as it improves the prestige of the police officer's profession thereby increasing the level of public trust in the state; thirdly, for members of police officers' families. Therefore, social security affects how a person, namely a police officer, will perform their official duties. However, in today's conditions, when a full-scale war is taking place in Ukraine, which has exacerbated negative social, economic, and political processes, many issues have arisen in the field of social security, including police officers, specifically: 1) a low level of financial and material support in the relevant sphere ; 2) the presence of gaps in the current legislation, especially regarding housing provision for police officers, as well as practical mechanisms for implementing the specified guarantees; 3) lack of an effectively built system of life and health insurance for police officers. Solving these and other issues requires comprehensive scientific research on the characteristics of the state of social security for employees of the National Police of Ukraine.

Considering the above, the purpose of this study was to cover the essence of social security for National Police officers, based on which to estimate the state of the relevant security.

Literature Review

In recent years, the issue of social security for employees of the National Police of Ukraine has repeatedly come to the attention of various scientists. For instance, M.V. Kalashnyk (2017) investigated social and legal guarantees for ensuring the activities of police bodies. In her study, Kalashnyk quite fairly stated the importance and necessity of solving some issues in the field of social security of the population in general, and police officers in particular. The researcher focused on the need to expand guarantees for housing payments, utility bills, improving the quality of medical care for police officers and their families; to review the pension systems of police officers, especially those who took part in military operations. The introduction of such changes, according to M.V. Kalashnyk (2017), should create conditions for adapting Ukrainian legislation in the field of social security of police officers to international requirements and standards. Therewith, the Kalashnyk limited herself only to highlighting issues, and did not suggest any particular ways to overcome them. S.M. Bortnyk (2019) noted that in general, the current regulatory framework in the field of social security of police officers and their families corresponds to the world's leading practices, but it is not without drawbacks. Specifically, Bortnyk emphasizes, it is necessary to review the practical mechanisms for implementing certain guarantees in the field of social security, namely medical, financial, and housing. Special attention should be paid to the issues of social security for family members of police officers, assistance to them in solving everyday issues. D.O. Marusevych (2021) considered the issue of social protection of police officers from the standpoint of the administrative branch of law. The specified study can be considered one of the first high-level attempts to clarify the essence, features, and characterize the administrative legal regulation of social security of police officers. Therewith, the issue of social security for police officers is subject to regulation of the labour branch of law.

Certain problematic issues of social security of police officers were considered in the scientific studies by the following researchers: O.M. Bandurka (2021), who investigated the theoretical aspects of social security law as a form of exercise of the constitutional rights and freedoms of a human and a citizen in Ukraine; S.V. Vyshnovetska (2018) summarized the main theoretical approaches to the concept of social

[1]Convention for the Protection of Human Rights and Fundamental Freedoms. (1950, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004.

security, based on which she formed her personal vision regarding the content of this scientific category; S.M. Drozd (2020) covered the theoretical aspects of state provision of equal opportunities for access to medical services and accessibility of medical care for the rural population, the author paid special attention to the term "social security"; A.V. Dutchak (2017) investigated the current state and prospects for the development of social security of citizens; O.V. Moskalenko (2020) paid considerable attention to the development of areas for improving the legal regulation of housing provision for police officers in Ukraine, considering foreign practices; M.V. Romanenko (2015) outlined the features of social security for police officers; O.V. Chernous (2017) addressed the theoretical and practical aspects of the implementation of the right of a police officer to annual leave and the state of its implementation in modern Ukraine, and many others. However, despite considerable theoretical developments, many problems in the field of social security persist for employees of the National Police of Ukraine today: firstly, of a theoretical nature, since presently most of the scientific developments aimed at improving the social security of police officers are outdated and do not correspond to current realities; secondly, of a practical nature, specifically some social security mechanisms announced in the current legislation are not implemented effectively enough, namely it concerns housing for police officers, medical care in healthcare institutions of the Ministry of Internal Affairs of Ukraine, financial support in case of loss of working capacity, etc.

Materials and Methods

The methodological framework of this study included a set of general and special methods of scientific cognition, which enabled a meaningful estimation of the state of social security for employees of the National Police of Ukraine. Thus, the method of formal analysis allowed investigating the state of research on the issues of social security, employees of the National Police of Ukraine. Using the logical-semantic method, as well as the method of interpretation, the scientific opinions of scientists were generalized, based on which the essence of the social security was covered. The method of documentary analysis allowed analysing the current legislation in the field of social security of employees of the National Police of Ukraine, based on which to provide a meaningful assessment of the state of legal regulation of public relations in the area under study. To identify the problems and provide an assessment of the state of social security for employees of the National Police of Ukraine, an analytical method and a modelling method were used. The study also employed the following general legal methods: the method of deduction, analysis, synthesis, etc.

When preparing this paper, the studies of specialists in the field of labour law were used, which addressed the theoretical issues of social security of the population and employees of the National Police of Ukraine. The regulatory framework of this study included several regulations, specifically the Laws of Ukraine: "On Mandatory State Social Insurance" No. 1105-XIV dated September 23, 1999[1]; "On the National Police" No. 580-VIII dated July 2, 2015[2]; "On the Pension Provision of Persons Released from Military Service and Certain Other Persons" No. 2262-XI dated April 9, 1992[3]. Furthermore, there were sub-legislative acts, namely Order of the Ministry of Internal Affairs of Ukraine No. 260 "On the Approval of the Procedure and Conditions for Payment of Financial Support to Police Officers of the National Police and to Higher Education Graduates of Higher Education Institutions with Specific Learning Conditions that Train Police Officers" dated April 6, 2016[4].

Results and Discussion

Starting consideration of the main issue, it is worth noting that the right to social security (by age (pension provision), illness, disability, etc.) lies in providing the state with sufficient material resources for citizens who, due to certain objective circumstances, have completely and/or partially lost the opportunity to carry out labour activity and receive monetary remuneration for it (Shvets *et al.*, 2022).

Social security of employees of the National Police of Ukraine enables the most expedient understanding of the systemic set of tools and means defined in the norms of general and special labour legislation, which are used to a) create conditions for the implementation of effective service and labour activities by police employees; b) to protect police officers and their family members from the occurrence of various types of risks that police officers may face

[1]Law of Ukraine No.1105-XIV "On Mandatory State Social Insurance". (1999, September). Retrieved from https://zakon.rada.gov.ua/laws/show/1105-14/conv#Text.
[2]Law of Ukraine No. 580-VIII "On the National Police". (2015, July). Retrieved from https://zakon.rada.gov.ua/laws/show/580-19/conv#Text.
[3]Law of Ukraine No. 2262-XI "On the Pension Provision of Persons Released from Military Service and Certain Other Persons". (1992, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2262-12#Text.
[4]Order of the Ministry of Internal Affairs of Ukraine No. 260 "On the Approval of the Procedure and Conditions for Payment of Financial Support to Police Officers of the National Police and to Higher Education Graduates of Higher Education Institutions with Specific Learning Conditions that Train Police Officers". (2016, April). Retrieved from https://zakon.rada.gov.ua/laws/show/z0669-16#n14.

when implementing the law enforcement function of the state; c) provide them (police officers) with a decent standard of living. Considering the above, it would be fair to say that the sphere of social security for employees of the National Police of Ukraine is diverse, and therefore, it covers the following elements: 1) mandatory state social insurance; 2) logistical and financial support; 3) medical care for police officers and their family members; 4) pension provision; 5) housing provision; 6)

And therefore, a successfully and effectively built social security system allows: firstly, to create a system of social guarantees for the work of police officers, which, a priori, gives them confidence in "tomorrow", and therefore is a guarantee of the proper performance of official duties; secondly, it allows the state to recruit the best individuals, professionals, who will be able to qualitatively implement the law enforcement function of the state; thirdly, it improves the competitiveness of the police profession and the level of trust in the National Police of Ukraine in general.

Covering such an element of social security as mandatory state social insurance, it is worth noting that it is the activity of employees, employers, and the state to implement the legal, organizational, economic guarantees, etc. prescribed in the current legislation, in case of an insured event. Relevant measures are implemented using money accumulated in special funds according to the procedure established by law, and formed through contributions by employers and employees, as well as budgetary and other sources (Yaroshenko, 2005). For police officers, this type of insurance is provided on a general basis, as for all categories of employees, and is determined by the Law of Ukraine No. 1105-XIV "On Mandatory State Social Insurance" dated September 23, 1999[1], according to which social insurance is provided based on the following principles: "1) normative consolidation of the grounds, conditions, and procedure for implementing social insurance measures; 2) the general obligation of state social insurance and the possibility of combining it with voluntary insurance, but only in cases prescribed by law; 3) the state acts as a guarantor of the realization of the rights, freedoms, and interests of insured individuals; 4) mandatory financing of expenditures at the expense of the state budget, which are related to the provision of material security, insurance payments, and social services at the expense of the fund's monetary resources in the amount established by this law; 5) formation and use of insurance funds on the principle of solidarity; 6) differentiation of the amount of benefits depending on the length of insurance period; 7) differentiation of pricing of insurance premiums, considering the conditions of employment and the conditions of their labour protection, the degree of risks of occupational hazards and occupational diseases; 8) ensuring the economic rights and interests of insured persons, personal interest in the effectiveness of the social insurance system; 9) employers' obligation to pay contributions to social insurance funds; 10) the existence of an obligation for the funds to exercise the insured person's right to material security and social services provided for by this Law"[2].

It should be emphasized that the basis of legal regulation of social security of police officers is also the norms of the labour branch of law. However, these issues are regulated in more detail at the level of the Law of Ukraine "On the National Police of Ukraine"[3]. Thus, special attention should be paid to the financial support of police officers. According to the above-mentioned regulation, "police officers receive monetary security, the amount of which is determined depending on the position, special rank, term of service in the police, intensity, and conditions of service, qualifications, availability of an academic degree or academic title. Therewith, the procedure for payment of monetary security is determined by the Minister of Internal Affairs of Ukraine[4].

The next specific element of social security for police officers is their medical care. The latter is an important institution of the social security system for all categories of employees, including those who work in the bodies and divisions of the National Police of Ukraine. Quality medical care is the provision of the patient's condition after treatment according to benchmarks, standards that are established based on scientific research, clinical observations, and evaluations. Therefore, it is quite fair to say that legal relations on medical care for police officers arise, change, and terminate solely based on legal norms. Therewith, their occurrence is conditioned upon the onset of social risks defined by the norms of current legislation (e.g., injury, illness, loss of working capacity, disability) (Solopova, 2009). Legal relations on medical care are personalized, since the mutual behaviour of the subjects of these relations is strictly defined and differs in the individualization of rights

[1]Law of Ukraine No.1105-XIV "On Mandatory State Social Insurance". (1999, September). Retrieved from https://zakon.rada.gov.ua/laws/show/1105-14/conv#Text.
[2]Ibidem, 1999.
[3]Law of Ukraine No. 580-VIII "On the National Police" (2015, July). Retrieved from https://zakon.rada.gov.ua/laws/show/580-19/conv#Text.
[4]Order of the Ministry of Internal Affairs of Ukraine No. 260 "On the Approval of the Procedure and Conditions for Payment of Financial Support to Police Officers of the National Police and to Higher Education Graduates of Higher Education Institutions with Specific Learning Conditions that Train Police Officers". (2016, April). Retrieved from https://zakon.rada.gov.ua/laws/show/z0669-16#n14.

and obligations. "Police officers are guaranteed free medical care in healthcare institutions of the Ministry of Internal Affairs of Ukraine.

Next, the present study addressed the pension provision for employees of the National Police of Ukraine. The pension for police officers has clearly defined limits, by establishing its minimum and maximum amount, which is carried out on general grounds, governed by the Law of Ukraine "On Mandatory State Pension Insurance"[1] and special legislation (the Law of Ukraine "On the Pension Provision of Persons Released from Military Service and Certain Other Persons"[2]). Special legislation prescribes that persons who are in police service or have been in such service (as well as in internal affairs bodies) may claim the following types of pensions: 1) for years of service; 2) on disability; 3) in case of loss of breadwinner.

And the last aspect is the provision of housing for employees of the National Police. In this context, it is worth agreeing with the opinion expressed by O.V. Moskalenko (2020), who rather meaningfully notes that the current system of housing for police officers needs comprehensive improvement. The author is convinced that the legislator should radically reconsider the approach to practical mechanisms for implementing state measures in the relevant area. For this, according to Moskalenko, it is necessary to actively investigate the positive international practices, based on which to develop proposals and recommendations aimed at improving the current regulatory framework, as well as in the development of new legislative and sub-legislative acts in this area.

In the context of the presented issues, it is worth pointing out the opinion of O.Yu. Kisil (2021), who proposes to understand the social security of police officers as a set of legal norms and legal guarantees established in them, which ensure the effective performance of official and labour activities by employees of the National Police of Ukraine, and which are implemented by providing material, financial, and other support in connection with the occurrence of certain socio-economic risks, such as occupational disease, loss of working capacity, injury during service, etc. The above-mentioned M.V. Kalashnyk (2017) emphasizes in his study that the social security of employees of the National Police of Ukraine is a set of tools and means, consolidated in the current general and special labour legislation, aimed at social support of police officers and their family members, their material, psychological, and financial support in the event of adverse consequences (loss of working capacity, occupational diseases, disability, etc.), as well as retirement age.

Foreign scientists also paid considerable attention to the issue of social security for law enforcement officers, including the police. Thus, Polish researchers Maria Orlovska-Bednarz and Marek Bednarz (2012) argue that social security is most appropriate to consider from two positions. Researchers note that according to the first approach, social security is a system of elements aimed at meeting the minimum social needs of citizens, i.e., in this context, the emphasis is on the social security of citizens, as an important human value and at the same time a need. According to the second approach, social security is: firstly, a set of measures implemented by specially authorized state institutions and organizations to protect their citizens from poverty, as well as other social and economic risks; secondly, the system of benefits to which citizens are entitled or which they can use under the circumstances and under the conditions determined by the relevant regulations.

The Spanish scholar and Honorary Counsellor of the Court of Appeal of Versailles, Serge Braudo (2015), concluded that social security is an activity of specially authorized public services aimed at insuring workers, employees, and self-employed individuals, agricultural workers, etc., against any social risks. That is, in this case, the scientist factually identifies social protection and social insurance. Therewith, the author also notes that social security provides benefits prescribed in the Social Security Code. The state has entrusted its management to various private law bodies, which, as a result, are responsible for the overall mission of the public service in the relevant field.

German scientist Bernard Degen (2016) indicates that social security includes a set of measures aimed at protecting the population or part of it from these risks. The concept of social security, Degen emphasizes, is based on the belief that there is a collective responsibility for individual, but at the same time social needs. Measures to combat the nine risks include: access to medical care and healthcare (healthcare); deduction to the social insurance fund in case of loss of earnings due to illness (medical insurance), maternity, accident at work or occupational disease (accident insurance), old age, death of breadwinner (insurance for old age and loss of breadwinner), disability (disability insurance), unemployment (unemployment insurance), as well as reimbursement of family expenses (insurance of family benefits). In a broader sense, summarizes Bernard Degen (2016), social security also includes prevention, integration, and reintegration of people who are in an inconvenient situation.

[1]Law of Ukraine No.1105-XIV "On Mandatory State Social Insurance". (1999, September). Retrieved from https://zakon.rada.gov.ua/laws/show/1105-14/conv#Text.
[2]Law of Ukraine No. 2262-XI "On the Pension Provision of Persons Released from Military Service and Certain Other Persons". (1992, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2262-12#Text.

The English scientist Brian Abel-Smith (2014) concluded that social security is any measure defined by current legislation to support individual or family income when some or all sources of income are disrupted or terminated, or when necessary, incur exceptionally large expenses (e.g., for raising children or paying for healthcare). Thus, Abel-Smith summarized, social security is aimed at providing financial support to individuals who are faced with illness and disability, unemployment, crop failure, loss of a spouse, motherhood, care for young children or retirement. Social security aid may be provided in cash or in kind, including for medical needs, rehabilitation, home care while sick at home, legal aid or funeral expenses. Social Security can be provided by a court decision (e.g., to compensate victims of accidents), employers (sometimes through insurance companies), central or local authorities, semi-state or autonomous agencies.

Thus, the analysis of scientific materials suggests that most studies covering the issue of social security of police officers are already outdated. Such researchers as O.Yu. Kisil (2021), M.V. Kalashnyk (2017) and I.V. Solopova (2009) paid quite a lot of attention to the theoretical aspects of social security in general and police officers in particular. However, the studies of scientists, from a practical standpoint, have lost their relevance, since they were written before the events that took place in early 2022 (russia's military aggression, political and economic instability). As for the norms of the current legislation, the analysis of the latter suggests that the Ukrainian legislator has not yet managed to adapt it to modern realities.

Conclusions

Thus, the article covered several theoretical approaches of Ukrainian and foreign scientists who devoted attention to the problems of social security of the population in general and employees of the National Police in particular. Furthermore, the current legislation aimed at regulating the issue of social security for police officers was analysed. The conducted study revealed that despite the importance and significance of social security for police officers, the state of functioning and implementation of the institution under study should be estimated ambiguously. Thus, on the one hand, the legislator proclaimed many state guarantees in the relevant area, which were reflected in certain legislative and sub-legislative acts, consolidating the legal basis for the activities of police officers and issues of their social security. On the other hand, researchers agree on the general unsatisfactory state of practical implementation of social security measures of the category of employees under study, which is determined by:

Firstly, the inconsistent national policy in the field of social security and police officers. After all, even though the Law of Ukraine "On the National Police" proclaimed and consolidated social guarantees for police officers and their families, practical mechanisms for their implementation were not developed;

Secondly, insufficient financial and material and technical support for the relevant sphere, which also substantially hinders the development of the institution under study;

Thirdly, departmental medical care for police officers and their families in healthcare facilities of the Ministry of Internal Affairs is imperfect. One of the reasons for such gaps is that the relevant medical institutions are not subordinate to the Ministry of Healthcare, but are coordinated and subordinate to a special department under the Ministry of Internal Affairs;

Fourthly, the lack of an effective health insurance system for police officers and their families;

Fifthly, the legislators have not developed an effective program for housing police officers, which should also make provision for the payment of rental housing and receiving benefits for paying for utilities.

Thus, promising areas for further research include the investigation of certain elements of social security for police officers, this specifically refers to pension and housing, as well as compulsory life and health insurance for police officers and their families.

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Сучасний стан соціального забезпечення працівників Національної поліції України: огляд літератури

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■ **Анотація**. Обґрунтовано важливість і необхідність побудови ефективної системи соціального забезпечення працівників Національної поліції України. Мета наукового дослідження полягає в тому, щоб спираючись на аналіз наукових поглядів учених і норм чинного законодавства, надати змістову характеристику сучасному стану соціального забезпечення правоохоронців України. У процесі підготовки статті використано низку загальнонаукових і спеціальних методів наукового пізнання, застосування яких дозволило вирішити поставлені завдання та досягнення кінцевої мети представленого наукового дослідження, зокрема логіко-семантичний метод, метод документального аналізу, аналітичний та порівняльно-правовий методи. Проаналізовано наукові погляди українських і зарубіжних учених, які займалися проблематикою соціального забезпечення населення, зокрема працівників поліції. Акцентовано на тому, що від якості соціального забезпечення поліцейських залежить: по-перше, належність виконання поліцейським своїх службово-трудових обов'язків, а отже, стан забезпечення безпеки держави та суспільства; по-друге, престижність професії працівника поліції. Розкрито загальнотеоретичні підходи щодо визначення поняття «соціальне забезпечення», на підставі чого сформульовано авторську думку з приводу тлумачення соціального забезпечення працівників Національної поліції України. Схарактеризовано ключові елементи соціального забезпечення поліцейських в Україні. На основі аналізу норм чинного законодавства проаналізовано ключові елементи соціального забезпечення працівників Національної поліції України. Наголошено на незадовільному стані соціального забезпечення поліцейських. Виокремлено чинники, які підтверджують незадовільний стан соціального забезпечення поліцейських. Результати наукового дослідження можуть бути використані під час розроблення та прийняття Трудового кодексу України, у процесі вдосконалення відомчих нормативно-правових актів Національної поліції, а також Міністерства внутрішніх справ України, норми якого спрямовані на врегулювання питань соціального забезпечення працівників поліції

■ **Ключові слова**: поліцейський; правове регулювання; соціальний захист; проходження служби; соціальні ризики

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Certain components of the constitutionalization content in the legislative procedure in Ukraine

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■ **Abstract**. The relevance of this study is conditioned upon the need to investigate individual elements of the constitutionalization content in the legislative procedure. The purpose of this study was to develop doctrinal approaches for determining the constitutionalization content in the legislative procedure. This study uses a complex of scientific methods: dialectical, modelling, and correlation, historical legal, comparative legal, formal logical, and other methods. The author's definition of the term "constitutionalization of the legislative procedure" was formed. It was proved that constitutional legal awareness in the psychological aspect forms the vector of activity of subjects of public relations. This study focuses on the importance of the constitutional legal consciousness and legal culture of the legislator – the only representative body of Ukraine, the most numerous subject of legislative initiative. The study proved that constitutionalization of law-making begins with the understanding that the society, apart from the practical development of various benefits (admittedly, through the statutory regulation of relations from such development), is also developed through the spiritual component, various forms of culture, which contain ideals created by the history of humankind through which the world is cognized. It was noted that the key values receive regulatory consolidation of the highest constitutional level as human and civil rights and freedoms, the foundations of the constitutional system, etc. It was concluded that when the state is in transition, the society faces a crisis of legal regulation, when due to certain reasons, the law partially loses its status as the most effective and universal regulator of social relations. In transitional societies, in extreme cases, the term "law" may begin to be associated with inaction and hopelessness, which may result in a surge of legal nihilism (one of the manifestations of the phenomenon of deformation of legal consciousness, especially the constitutional one)

■ **Keywords**: law-making; constitution; people's deputy; law; constitutional regulation; legal awareness

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Introduction

The development of social relations and their regulation are always mediated by law, which determines the regulation of these relations through legislative acts. The sustainable development of a state that not only declares itself democratic and legal, but is actually such, requires the adoption of laws that comply with the Constitution of Ukraine[1]. Such compliance indicates the effectiveness of Ukrainian legislation, which depends crucially on the definition of clear priorities of legislative work, which should primarily be based on strategic guidelines for the process of social changes in Ukrainian society. Therefore, at the very beginning of the development of the draft law, its text should be given not only a constitutional meaning, but also a constitutional basis for the entire legislative procedure should be laid, i.e., its constitutionalization should be ensured. The term "constitutionalization" has not found its legal definition in national legislation, its unambiguous definition is still absent from the doctrine, although recently the attention of researchers has gradually turned to investigating the nature of this phenomenon from different angles. For a long period, such a legal category as constitutionalization was correlated, as a rule, with the direct effect of the constitution and the properties of constitutional norms, or their provisions in a broad sense, which are applied together with the norms of branch legislation and have an impact on them. Presently, the content of constitutionalization has expanded, and the researchers note the comprehensive constitutionalization of the legal system as a whole, including the legal order (Bocharova, 2020).

Among modern Ukrainian scientists, it is worth highlighting the scientific opinions of such researchers as Yu.O. Voloshyn (2011), T.S. Podorozhna (2016), Ya.V. Chornopyshchuk (2013) and others, both on the concept and legal nature of constitutionalization as an independent legal phenomenon (Terletskyi, 2014; Martseliak, 2016), and on the specific features in which this phenomenon manifests itself when establishing a constitutional meaning for certain types of social relations, various integration processes, other phenomena and law and order in general (Martseliak, 2017; Chornopyshchuk, 2013).

O.V. Strieltsova (2021) investigated the constitutionalization of the association of Ukraine with the European Union. During the constitutional modernization, the provisions of the Constitution are updated to implement the further democratization of social relations in Ukraine, bringing the system of legal institutions closer to European values. The foundations for the implementation of associative relations between Ukraine and the European Union in the Ukrainian legal system are being formed. In this aspect, it is advisable to carry out constitutional reform in Ukraine.

N.V. Bocharova (2020) studied the problems of constitutionalization of intellectual property, considering the specifics of constitutional regulation in the conditions of the information society. Modern public relations in the field of intellectual property require legal institutionalization, primarily in the norms of constitutions. In this regard, the forms of constitutionalization of intellectual property are highlighted – the reflection of legal norms in the texts of constitutions regarding the results of creative activity, as well as the constitutional interpretation of these provisions.

V.M. Campo (2020) covered the constitutionalization of economic law of Ukraine. The constitutional model of the development of the entrepreneurship institution should be implemented at the level of central and local state authorities, the Ukrainian political system in general. After all, the issue of constitutional democracy is key for Ukraine's European integration. To stimulate fair competition in the context of the constitutionalization of economic relations, real political responsibility of these bodies and public officials is required.

T.S. Podorozhna (2016) considered constitutionalization through the lens of the activities of the Constitutional Court of Ukraine. Constitutionalization of the legal order takes place in line with the Constitution of Ukraine. The interaction of state bodies with civil society in ensuring law and order is based on the principles laid down in the Constitution of Ukraine, which acts as an "equalizer" in joint relations. A generalized definition of this concept is the principle of constitutionalization. Therefore, the principles of the constitutionalization of the legal order are ensured by the implementation of the norms of the state constitution by legal entities, their implementation in the legal system and observance of the legal order.

However, the problem of the constitutionalization essence for the legislative procedure has not yet become the subject of independent scientific research. This study will try to fill this gap partially within the scope of this paper, *the purpose of which was* to develop doctrinal approaches to determining the constitutionalization content of the legislative procedure.

Materials and Methods

The methodology of investigating doctrinal approaches to the definition and content of the constitutionalization of the legislative procedure, the coverage of the essential content of its components, is inextricably linked with the issue of legal understanding,

[1]Constitution of Ukraine. (1996, June). Retrieved from http://zakon5.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2 %D1%80.

the principles of law, the constitutional doctrine, the principles of the rule of law, and led to the selection of a number of leading research methods. The analysis of the methodology of legal studies of the legislative power and the transit of legislation is primarily associated with the ideas of positivism, anthropology, sociology, axiology of law, etc., which are inherent in the current state of legal methodology (Bratasiuk, 2005; Husariev, 2006).

The priority methods used in this study were dialectical, comparative legal, modelling, and correlation methods.

The dialectical method of scientific cognition was aimed at investigating phenomena and processes in their development, interrelation, and interdependence. The method of dialectical logic allowed defining the general and special in such terms as "law", "constitution", "order", "legal consciousness", "constitutional principle", as well as to determine the dual nature of constitutionalization, which, on the one hand, belongs to the fundamental democratic principles according to modern understanding, and on the other hand – to the ensuring activities of the rule-making procedure in Ukraine, since its objects have socio-political assessments. Based on general scientific methods of analysis and synthesis, this study covered the inherent features of current trends in constitutional reform in Ukraine, the current legislation in this area, which is developing under constitutional practices.

To determine the principle of constitutional legality in the system of democratic principles of modern European society, an anthropological approach was applied, which allowed formulating the term "constitutionalization of the legislative procedure" and the special role of the legislators in this procedure. The axiological approach helped substantiate the provisions on the constitutional value of engineering the construction of modern legislation in the context of rapid scientific and technological development, modern challenges to the legal regime of martial law and the emergence of new public priorities. The hermeneutical approach was used to interpret constitutional norms in terms of ensuring the right to free human development in the constitutional texts of individual European countries.

Since the subject of this study is related to legal comparativism, the main special legal method of research was the comparative legal method based on comparing the provisions on the constitutional procedure in the constitutions of foreign countries. Therewith, the content of the relevant provisions of the Constitution of Ukraine is compared with analogous legal material of other states, which allows for better coverage of the achievements of world constitutionalism, and shows the state of Ukrainian constitutional legislation against this background, determines its features and degree of compliance with world and European constitutional traditions. Methods of generalization and formalization formed the methodological framework for examining the doctrinal studies on constitutionalization and constitutional regulation of sustainable development of society, practical development of various benefits in foreign countries.

Formal and logical methods (deduction and induction) allowed formulating conclusions about the possible use of the foreign practices of constitutionalization of legislation in Ukraine, and were also applied to identify the main legal approaches to the coverage of the terms "constitutional legality" and "constitutional legal awareness".

The use of the historical legal method allowed investigating the establishment and development of scientific thought about the constitutionalization of the legislative procedure, the genesis of its formal consolidation in the Constitution of Ukraine and foreign states. The legal-dogmatic method was used to identify approaches for analysing the legislative procedure as an object of constitutional regulation and formulating the author's definition of the term "constitutionalization". The functional method helped investigate the judicial practices of the Constitutional Court regarding the mechanism of interpretation of the norms of Ukrainian legislation. The typology method allowed singling out the essential signs and properties of the constitutionalization of the legislative procedure – constitutional legality, constitutional legal awareness, constitutional control, protection of human rights in all spheres of social life.

The present study forms a holistic vision of the transition countries and the problems of ensuring the constitutionalization of the legislative procedure in them to ensure further constitutionalization of laws.

■ Results and Discussion

The study of the specific features of the constitutionalization of the legislative procedure should begin with the definition of such a legal phenomenon as "constitutionalization of the legislative procedure", proceeding from which the components of the content of the subject under study will be distinguished.

Thus, Yu.O. Voloshyn (2011) distinguishes two approaches to the interpretation of the constitutionalization, claiming that it can be interpreted in a broad and narrow sense. According to the first approach, this concept is used not only in legal science, but also in other social sciences that are related to law, e.g., in conflictology (Barabash, 2008). This refers to the system of ways of legitimizing public relations that regulate social conflicts inherent in industrial societies. Under these conditions, the effectiveness of legal regulation is reduced to a cybernetic model of the constitutional structure. At the same time, the legalization of social relations within this system appears as a gradual constitutionalization of the legal order in

general. Constitutionalization is one of the key categories of research in various humanities (Voloshyn, 2011).

In the aspect of constitutionalization of social relations, V.M. Campo (2007) notes that constitutionalization is the expansion of the constitutional foundations of the spheres of social relations through the creation of legal positions, court precedents, etc. by the relevant bodies and structures. The principles of state regulation and public relations as conditions for their improvement and development are being strengthened. Through constitutionalization, an appropriate level of constitutional regulation, a system of guarantees, security, and protection of social relations is formed.

O.V. Strieltsova (2015) emphasizes that one of the meanings of constitutionalization is an increase in the list of objects of constitutional influence through constitutional regulation of new spheres of state-political existence and social life; fundamental normalization of the key social relations. The researcher complements and clarifies the position on constitutionalization as a certain modern trend of legalization of socio-political relations, which leads to the expansion of the means of constitutional influence on the mechanism of regulation of social relations, i.e., "encompassing" of ever new spheres and industries, as well as increasing the significance of constitutional regulators in relation to the influence of legal norms on them (Strieltsova, 2015).

Ukrainian researcher T.S. Podorozhna, in forming the constitutionalization of law in general, singles out the prerequisites for the existence of "constitutional dominance" formed in the legal system: firstly, the constitution is a system of fundamental norms in law in general and branches of legislation. Secondly, it has the highest legal force, and other acts of law are adopted on the basis and in compliance with constitutional provisions, in case of contradictions, the norms of the Constitution are applied. Thirdly, the Constitution is an important law-forming factor: the direct operation of its norms, the rule-making vector in legislative activity. Fourthly, the Constitution serves as the main regulatory criterion for the interpretation and application of all legal acts, the implementation of law enforcement (Podorozhna, 2016). The researcher's conclusions appear to be useful in terms of improving the meaning of the term "constitutionalization", which she interprets as: 1) a continuous process of concretizing the principles, implementation of the values and norms of the constitution in the current legislation; 2) a component of constitutional (legal) institutionalization; 3) the process that constitutes the international law (global constitutionalism) (Podorozhna, 2014).

The Ukrainian constitutionalist M.P. Orzikh (2011) performed the theoretical analysis of the content of constitutionalization. Orzikh singled out the following essential features: constitutionality in the aspect of compliance with the constitution of actions or inaction of legal entities, legislative and sub-legislative acts; the existence of constitutional "consciousness" in legal ideology and psychology; constitutional construction (constitutional "engineering"), constitutional technology, namely, acquisition of constitutional skills and abilities by subjects of law; stable constitutional practice, which involves recourse to legal-constitutional postulates (as dogmas of law), constitutional ideology (in a broad sense), as well as to presumptions, traditions, and customs, including constitutional fictions, outside which constitutional regulation does not exist.

The author's definitions and approaches to the content of constitutionalization of various processes give grounds for covering the content of the constitutionalization of the legislative procedure per se.

To begin with, the constitutionalization of the legislative procedure involves the adoption of laws that will correspond to such a feature as constitutional legality. That is, in the plane of concepts and definitions, the terms "constitutionalization" and "constitutional legality" are interrelated. Thus, constitutional legality is a relatively new concept in the Ukrainian legal vocabulary of the countries of transitional democracies, since the legislation of such countries is in constant motion and change, including periodically repeating diametrically opposite vectors of the countries' development, which, unfortunately, cannot be ruled out. The term "constitutional legality" in the legislation of different countries is usually not directly consolidated and is not used (Kalynovskyi, 2022).

To investigate the principle of constitutional legality, it is necessary to analyse important points in the methodological aspect. In scientific sources, constitutional legality is correlated with its security and protection, i.e., with the study of the mechanism for ensuring the effect of the Constitution. In this case, ensuring constitutional legality, its protection, constitutional responsibility, and constitutional control are subject to analysis (Skrypniuk & Kmit, 2016). In general, the principle of constitutional legality is a requirement of the need for lawful behaviour or activity of subjects of constitutional legal relations. The adoption, implementation, and application of legal norms take place only pursuant to the Constitution and laws of Ukraine. The concretization of the principle of constitutional legality is reflected in its properties: universal obligation, guarantee, unity, and reality, which direct the work of state authorities (Kolomiitsev, 2020).

Turning this thesis back to the legislative procedure, constitutional legality is a mandatory condition for law-making, and it is thanks to it that the constitutionalization of this process as such takes place. The constitutional content of the adopted laws and

other regulations requires not only a proper constitutional procedure for their adoption, but also exhaustively clearly stated norms and regulations of laws, which after their entry into force will indicate their quality. For the constitutionalization of the legislative procedure, it is important that the quality of laws depends on the actual observance of the entire legislative procedure, the specific actions of the participants of this procedure at its particular phases and stages (Podorozhna, 2016).

However, today's ease of modern legislators to introduce changes (often unsystematic and controversial) to laws, underlines the main constitutional prerequisite of the legislative procedure – the real need of society for new laws, and not for another format of legal regulation. Real and valid consideration and generalization of the needs of groups of persons or society as a whole in legislative regulation, the choice of the most successful legal forms of such regulation in the form of different variants of legislative prescriptions is a manifestation of the legislator's creative duty, which is simultaneously the latter's legal duty. The preparation of inherently poor-quality laws inevitably entails the need to assess such actions from the standpoint of constitutional legality (Blikhar, 2018).

The presentation of the requirements of constitutional legality to the content and form of the legislative procedure is conditioned upon the fact that in each particular case, the subject of legislative powers is a collective of people – a deputy corps called on behalf of the people for the primary legal development of the world of public life by translating the elements of public relations that are ripe for legal regulation into the normative legislative provisions. Yu.V. Tkachenko classifies the requirements of constitutional legality, which were consolidated in the Constitution of Ukraine and which relate to the legislative procedure, into three groups. The first group consists of those that relate to the content of law-making. These are constitutional regulations that have become the basis for implementing a broad program of legislative activities. Here the scientist refers to the provisions of the articles of Chapter I "General principles" of the Constitution of Ukraine[1], which prescribe the general principles of the constitutional system that scientifically substantiate the content of laws. The second group includes the requirements for ensuring the supremacy of the Constitution of Ukraine in the legal system (Article 8), as well as the requirements that consolidate the hierarchical order of regulations (Articles 106, 113, 117, 118, 144)[2]. Yu.V. Tkachenko emphasizes that in all these cases, the criterion of the constitutionality of laws, as well as other regulations, is their content, since it is impossible to determine the legality or illegality of any of them proceeding solely from the analysis of the form alone. The third group consists of requirements of constitutional legality, which relate to the regulation of certain forms of the legislative procedure. The main requirements of constitutional legality in the field of lawmaking include the timely development and publication of new, amendments and repeal of outdated laws or their prescriptions (legal norms). They should not be conflated with the general concept of law-making, i.e., the entire process that is expressed in the publication, systematization, change, and cancellation of legislative material.

The next sign of the content of the constitutionalization of the legislative procedure is the presence of proper constitutional legal awareness of all participants in this process: from citizens, subjects of legislative initiative – to subjects of adoption of draft laws as laws.

In this context, it should be emphasized that the current state of law-making activity in Ukraine more convincingly states the gap between the objective development of social relations and the existing legal norms, which are intended to regulate the life of society. The crisis of differentiation between the "real" and "legal" constitutions deepens, and this leads to the levelling of the role of constitutional law (as law in general) in society. This situation indicates the absence or weak development of the values of constitutionalism in the modern legal culture, which is typical for states living in a transitional period of development.

Pointing to the transitional state of development of the state of Ukraine, it is not the only one in this period. Many European states (Austria, Bulgaria, Spain, Germany, Poland) during the transition period sought to become countries of sustainable democracy. Distinctive features of these countries, from the perspective of legal analysis, were the presence of constitutional control, effective protection of human rights, and the introduction of the rule of law in all spheres of public life. Admittedly, in every state, the principle of the rule of law is interpreted by the legal system (Berestova, 2020). Therefore, it is quite obvious that for young constitutional democracies, the problem of transitional justice is relevant, which will counteract the post-totalitarian legal practice, the presence of dogmatism, formalism, and a contemptuous attitude towards human rights (Savchyn, 2019).

The transitional state of countries determines a wide complex of necessarily unstable processes, however, the internal, basic ground of these processes can still be established. Thus, the specific features

[1]Constitution of Ukraine. (1996, June). Retrieved from http://zakon5.rada.gov.ua/laws/show/254%D0%BA/96-%D0%B2 %D1%80.
[2]Ibidem, 1996.

of transitional societies are that they adopted only certain external signs of democracy (free elections, a constitution with democratic principles, multi-party system), but did not implement such principles as the rule of law, separation of powers, etc. Such hybrid formations are considered "illiberal democracies" (Schedler, 2006), or "broken back democracies" (Rose, 1998), and their study in the political science literature formed a new field related to the "quality of democracy" (O'Donnell, 2004) and control of public administration. As a rule, democracy creates a more favourable environment for socio-economic growth and a more equitable distribution of public goods (Reuveny, 2003). Most of the new democracies showcase the existence of serious contradictions, primarily concerning the protection of human rights, respect for the principle of the rule of law, accountability, and transparency. "Effective democracies", i.e., those where the principles of the rule of law are observed, are currently a minority among the countries of the world, accounting for approximately half of all democratic states and a quarter of all countries in the world in general. Support for democracy by many citizens is superficial, with no real effective democratic motivation (Inglehart, 2003).

In "new" democracies, citizens may misinterpret the meaning of democracy itself, associating it with well-being (as in developed countries with sustainable democracy) and not putting the primary meaning in this self-sufficient concept, they support the new state-political regime in name only (Stoiko, 2016). All the above signs and factors, unfortunately, are inherent in Ukraine to a certain degree, given the constant reformation processes of a permanent nature of all institutions since the moment of its independence. Naturally, all of the above could not but affect both the constitutional legal consciousness of the legislators and the legal consciousness of ordinary citizens of Ukraine.

Legal awareness is a system of ideas, views, feelings, and representations of individuals, social groups, and the entire society regarding the current system of law and its role in public life. Therefore, the constitutional legal consciousness should be clarified through the characterization of legal consciousness as a general theoretical legal category (Rusynchuk, 2018). It is common knowledge that two components are distinguished in legal consciousness: legal ideology ("a systematized scientific manifestation of legal views, principles, requirements of society, classes, various social groups and strata of the population") and legal psychology ("a set of legal feelings, value attitudes, sentiments, wishes, and experiences inherent in society as a whole or in a particular social group") (Salei, 2019).

The idea of legal awareness as a more complex system containing rational, emotional, informational, evaluative, and volitional elements allows discussing the integration of certain legal knowledge, value and ideological principles, emotional and volitional legal guidelines, legal traditions and norms, institutional forms etc., in its structure. Such a set of components is necessary to achieve legal goals in relation to rational, ideological, ideological-rational, emotional-psychological, and decisional and behavioural elements. The rational-ideological component of legal awareness is the prevailing knowledge and understanding of certain aspects of legal practice in society; the legal system and its elements; state-legal mechanisms of power and management; adoption and implementation of legal decisions. That is, rational-ideological legal consciousness is stable stereotypes of legal consciousness in its forms and manifestations (Terletskyi, 2014). Legal awareness refers to the conditions for the implementation of legal norms, promotes the voluntary implementation of legal prescriptions, and creates a sense of responsibility and intolerance among citizens to violate the principle of constitutional legality. A prominent level of legal awareness contributes to public control over the government, ensures the adoption of decisions by the authorities in compliance with the democratic principles of law, disciplines the subjects of the legislative procedure, enables the continuity of the constitutional procedure, guarantees the continuity of decisions, forms the foundations of the democratic vector of development". In legal awareness, the principle of constitutional legality is transformed into the following forms: knowledge (awareness) of the individual about the content of constitutional norms and legal activities; the individual's attitude towards constitutional values (Salei, 2019). This means that constitutionalism in Ukraine only acquires the characteristics of an integral element of legal culture and legal awareness of citizens (Babenko, 2022).

Thus, constitutionalization of law-making begins with the understanding that, apart from the practical development of various benefits (admittedly, through the statutory regulation of relations from such development), the society is also developed through the spiritual component, various forms of culture, which contain ideals created by the history of humankind through which the world is cognized. The key values receive regulatory consolidation of the highest constitutional level as human and civil rights and freedoms (first and second generation), the foundations of the constitutional system, etc. At the same time, when the state is in transition, the society faces a crisis of legal regulation, when due to certain reasons, the law partially loses its status as the most effective and universal regulator of social relations. In transitional societies, in extreme cases, the term "law" may begin to be associated with inaction and hopelessness, which may result in a surge of legal nihilism (one of the manifestations of the phenomenon of deformation of legal consciousness, especially the constitu-

tional one). In Ukraine, the law and parliament, as the only representative body, have been experiencing a considerable decline in their symbolic and political role lately, up to a gradual loss of prestige. This is conditioned upon the fact that once a legislative activity, as a truly creative and comprehensive process of creating the external form of law (law genesis), recently has been increasingly reduced solely to procedure (not always upholding its constitutionality), and its important aspect was only the result.

Achieving such a result can take place in many ways: from following the constitutional procedure of introducing a draft law clearly defined by the Regulations of the Verkhovna Rada of Ukraine (VRU) and its adoption to frank lobbying for the adoption of the desired draft law; repeated holding of "signal voting" as the formation of forecasts in real time of the probability, possibility, or reality of the adoption of the law; registration of a considerable number of alternative draft laws of a related subject of regulation; making a hypernumber of amendments to the main registered draft law (amendment spam), etc[1]. That is, recently, when adopting laws, unfortunately, the speed of their adoption prevails, and therefore the adopted laws, as a rule, are aimed at providing only temporary solutions (despite the preamble or the special purpose of the law), and the law itself begins to lose its traditional features (features of general, abstract, and permanent laws).

The last feature of the constitutionalization of the legislative procedure to be highlighted in this paper is constitutional engineering as a constitutional construction (in normal conditions or in a conflict or crisis).

Constitutional engineering in the doctrine is usually understood as the structure of the Constitution, which is planned and created based on incentives (Sartori, 2001). Through the constitutional engineering methods, the political legal system is transformed. These methods ensure the evolutionary and gradual transformation of existing constitutional institutions to create a new constitutional structure, if a constructive approach to the modification of existing constitutional institutions is followed. The term "constitutional engineering" is used as a legal activity that is carried out by a specialized institution in the field of constitutional legislation of European states and is aimed at bringing constitutional legislation into compliance with the content of the European constitutional heritage (Chornopyskyi, 2017). Therefore, when talking about constitutional engineering, one should proceed from the study of various constitutional reforms, which, unfortunately, abound in the public life of the state of Ukraine.

Thus, the last two decades of Ukraine's development are also characterized by the existence of a combination of two factors that did not allow it to become a country of sustainable democracy. This refers to periodic, but quite frequent changes in the vectors and directions of the state's development (Koshova, 2022) (usually after the regular elections of the President of Ukraine, to the Verkhovna Rada of Ukraine, etc.) and revolutionary events that, as a special type of constituent power of the people, were aimed at returning to the European vector of state development, namely the "Orange Revolution" of 2004 and the "Revolution of Dignity" of 2014. The political situation of transit societies is characterized by many competing political entities (parties) (Khotynska-Nor, 2020). As correctly noted by V.F. Smolianiuk, "the political system of Ukraine, which is a "mix" of a parliamentary republic and a presidential government, has certain rudimentary Soviet features. Fragments of the political system act against each other, weakening the potential of Ukrainian society. There is a permanent struggle between the branches of government for powers, since the Constitution stipulates them indistinctly and even overlaps them. The same issues exist in relation to the functions of the head of state and the head of government" (Smolianiuk, 2016).

Furthermore, the modern period of strengthening and development of Ukraine (and in fact its restoration as a state governed by the rule of law by fighting for its freedom and the European vector of development) has become even more complicated. A separate adverse factor that affected the entire legislative, executive, and judicial branches of government was the illegal and cynical occupation of the Autonomous Republic of Crimea and the city of Sevastopol by the Russian Federation, the unprovoked armed aggression in the Donetsk and Luhansk regions, starting in February 2014, and the full-scale military invasion of the Russian Federation on February 24, 2022. Waging a systematic and complex "hybrid war" against the civilized world since 2014, the Russian Federation unsuccessfully tried to push the narratives: "internal conflict", "civil war", "quasi-state", "coup d'état", "not a government, but a bloody regime" etc. Admittedly, having a compelling media and political resource in Ukraine and the world, the Russian Federation substantially unbalanced and destabilized Ukrainian institutions, caused considerable damage to the authority of regulatory mechanisms, as a result of which the stability of the Ukrainian political system, political stability was maximally undermined, various institutional mechanisms were destroyed, etc. In the conditions of the existing statehood-

[1]Law of Ukraine No. 1861-VI "On the Rules of Procedure of the Verkhovna Rada of Ukraine" (2010, February). Retrieved from https://zakon.rada.gov.ua/laws/show/1861-17#Text.

destructing processes and the need to make instant decisions in this regard, the activity of the Verkhovna Rada of Ukraine comes to the fore, since its constitutional functions include ensuring the stability of the legal order and trying to form strategic vectors for its development and democratization (despite the influence of bifurcation). The Verkhovna Rada is authorized to provide a prompt response to changes in public relations in crisis and emergency conditions in the form of laws, resolutions, statements, and other acts of its competence. Acting correctly, within the framework of the constitutional procedure, even in the worst conditions, the legislature of a country of sustainable democracy carries out activities to develop the law. However, Ukraine is still characterized not by correctness, but mostly by inconsistency of actions in the field of legislative activity.

And the more complex the political situation in the state, the higher the level of legitimacy in society should be. For instance, V.V. Lemak defines the minimum conditions for the legitimacy of constitutional reform in a democratic society: the balance and transparency of the process at all its stages; a compromise between the government and the opposition; the implementation of the main stage of reform in parliament – the only mechanism that allows coordinating the positions of various political and public actors, all territorial components of the state, and making a joint decision; a broad public discussion of the content of the reform in society, primarily in the expert environment of professional lawyers (Lemak, 2016).

The above convinces that when implementing constitutional reform (implementing constitutional engineering), the requirement of enhanced legitimacy should be applied to the reform process, since constitutional reform is not an extraordinary political process with elements of competition, intrigue, and delay in decision-making due to a situationally formed majority. Such a process is different from sustainable politics and requires additional means of legitimation.

Conclusions

Based on the presented material, the definition of the term "constitutionalization of the legislative procedure" can be formulated, which is understood as the complex systemic influence of constitutional law, the consolidation of the constitutional basis from the pre-draft stage (considering the stage of public discussion), the draft stage, the stage of adoption of the draft law, the certifying, information stage, to the stage of entry into force by the adopted law and approval of the legislative procedure as a constitutional value of a democratic, legal society.

The key element of the mechanism of effect of constitutional values on the behaviour of subjects of constitutional legal relations is constitutional legal awareness, which at the psychological level determines the vector of behaviour of a particular subject. The present paper states the substantial importance of constitutional legal awareness and legal culture in the legislator – the sole representative body of Ukraine, comprising a numerous deputy corps, the largest subject of the legislative initiative, authorized for individual introduction and registration of both complex draft laws governing a separate special sphere of relations, and introduction of amendments (including point ones) to the current laws.

It was proved that when implementing constitutional reform (implementing constitutional engineering), an increased level of legitimacy is required for the reform process. The more complex the political situation in the state, the higher the level of legitimacy in society should be.

Constitutionalization of law-making begins with the understanding that the development of society, apart from the practical development of various benefits (admittedly, through the statutory regulation of relations from such development), is also carried out through the spiritual component, various forms of culture, which contain ideals created by the history of humankind through which the world is cognized. The key values receive regulatory consolidation of the highest constitutional level as human and civil rights and freedoms (first and second generation), the foundations of the constitutional system, etc. It was stated that when the state is in transition, the society faces a crisis of legal regulation, when due to certain reasons, the law partially loses its status as the most effective and universal regulator of social relations. In transitional societies, in extreme cases, the term "law" may begin to be associated with inaction and hopelessness, which may result in a surge of legal nihilism (one of the manifestations of the phenomenon of deformation of legal consciousness, especially the constitutional one).

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Окремі складові змісту конституціоналізації законотворчого процесу в Україні

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■ **Анотація**. Актуальність статті зумовлена потребою в дослідженні окремих елементів змісту конституціоналізації законотворчого процесу. Метою є формування доктринальних підходів до визначення змісту конституціоналізації законотворчого процесу. У статті використано комплекс наукових методів: діалектичний, моделювання та кореляції, історико-правовий, порівняльно-правовий, формально-логічний та інші методи. Сформовано авторську дефініцію поняття «конституціоналізація законотворчого процесу». Доведено, що конституційна правосвідомість у психологічному аспекті формує напрям діяльності суб'єктів суспільних відносин. Акцентовано на значущості конституційної правосвідомості та правової культури законодавця – єдиного представницького органу України, найбільш численного суб'єкта законодавчої ініціативи. Доведено, що конституціоналізація законотворчості розпочинається з усвідомлення того, що розвиток суспільства, окрім практичного освоєння різноманітних благ (звісно шляхом нормативного регулювання відносин з такого освоєння), здійснюється через духовну складову, різноманітні форми культури, що містять у собі створені історією людства ідеальні образи, за допомогою яких пізнається світ. Зауважено, що найважливіші цінності отримують нормативне закріплення найвищого конституційного рівня як права і свободи людини та громадянина, основ конституційного ладу тощо. Сформульовано висновок стосовно того, що коли держава проживає перехідний період, суспільство стикається з кризою правового регулювання, коли право через певні причини частково втрачає власний статус найбільш ефективного та універсального регулятора суспільних відносин. У перехідних суспільствах у крайніх випадках поняття «право» може починати асоціюватися з бездіяльністю і безвихіддю, наслідком чого може стати сплеск правового нігілізму (одного з виявів феномену деформації правосвідомості, передусім конституційної)

■ **Ключові слова**: законотворчість; конституція; народний депутат; право; конституційне регулювання; правосвідомість

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Legal basis of confidential cooperation in the National Anti-Corruption Bureau of Ukraine

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■ **Abstract.** The relevance of this study is conditioned upon the fact that special legislation regulating investigative operations, combating organized crime, ensuring the security of people cooperating with law enforcement agencies, adopted in 1992–1994, does not meet the conditions of modern life (liberalization and digitalization of society; changes in the banking and financial sector; ease of crossing borders, etc.), and the challenges facing the law enforcement system (transnational crime; development of technologies that complicate the technical removal of information; use of cryptocurrencies and quasi-money, etc.). The main disadvantage of this legislation is the lack of regulation of confidential cooperation as the main tool for combating crime. The purpose of this study was to investigate the state of legal support for confidential cooperation using evidence from the activities of the National Anti-Corruption Bureau of Ukraine; to identify gaps, contradictions, and conflicts; to identify ways to improve legislation. General scientific, logical, and general legal methods were used. The paper analysed the state of scientific research on the subject under study, systematized the current legislation of Ukraine, and compared its individual norms. The main study results are that the legal basis of confidential cooperation is considered for the first time as a system of legal norms of an intersectoral legal institution, not limited exclusively to the procedural aspect or scope of application. The present study is the first to investigate the functioning of the institution of confidential cooperation in the National Anti-corruption Bureau of Ukraine. The paper stated that the absence of proper statutory regulation at the level of laws of Ukraine and the lack of systematization of existing norms, which creates risks of abuse, violation of citizens' rights and freedoms. It was noted that the gaps in the legislation are filled in by departmental regulations of the relevant law enforcement agencies with the appropriate classification of secrecy. The study covered the essence and purpose of confidential cooperation, the legal norms prescribed in various laws, the specifics of their application, the subject of their legal regulation, as well as analysed differences in the legal regulation of cooperation with confidants and whistle-blowers. The practical value of this study lies in the fact that its results can be used by practising lawyers, namely investigators, prosecutors, and barristers, for whom the institution of confidential cooperation is new considering the secret forms and methods of its functioning

■ **Keywords:** confidant; whistle-blower; informant; mentor; human intelligence

■ Introduction

Corruption has been one of the fundamental issues of Ukrainian society, despite Russia's full-scale war against Ukraine. Centralization and monopolization of power, censorship in the media, concealment of data on state funds and expenditures, secret and non-competitive state purchases, reduction of financial control over representatives of state authorities and local self-government, etc. create a favourable environment for corruption. The same circumstances reduce the effectiveness of public methods of work of law enforcement agencies, including the National Anti-Corruption Bureau of Ukraine, in combating corruption, which is already hidden (latent) in nature. In this regard, more attention should be paid to covert methods, the main of which is the undercover method or human Intelligence, which in law enforcement activities is usually called confidential cooperation.

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Confidential cooperation is a relationship that is established and maintained by employees authorized to carry out investigative operations and/or pre-trial investigation (mentors or handlers) with physically capable individuals (confidants) to assist these individuals in the performance of the tasks assigned to them by these bodies, on a paid or free basis and based on confidentiality and voluntariness (Kateryniuk, 2021).

The definition of the terms "confidant" and "confidential cooperation" in the legislative acts of foreign countries is similar. The author of this study examines the UK practices in regulating confidential cooperation. According to § 26 (8) of the UK Regulation of Investigatory Powers Act 2000[1] "a person is a confidant (covert human intelligence source, CHIS) if: a) they establish or maintain a personal or other relationship with a person for the covert purpose of facilitating the doing of anything falling within paragraph (b) or (c) b) they covertly use such a relationship to obtain information or to provide access to any information to another person; or c) they covertly disclose information obtained by the use of such a relationship, or as a consequence of the existence of such a relationship". (Kateryniuk, 2021).

Section 29(5a) of the UK Regulation of Investigatory Powers Act of 2000[2] implicitly defines a handler as an officer who is given dual responsibility by the police service for managing the day-to-day activities of CHIS (sources) and for CHIS's security and welfare (Henry, 2022).

The principal issue, according to the author, which both scientists and practitioners face when investigating the legal basis of confidential cooperation is the lack of systematization of legislation regulating confidential cooperation. There is no special law that would govern these legal relations. None of the regulations defines the concept of confidential cooperation, subjects, and content of legal relations. Separate legal norms are found in the Law of Ukraine "On Investigative Operations"[3] and in the Criminal Procedural Code of Ukraine [4], but in most cases, during scientific research and in law enforcement activities, scientists are forced to resort to the analogy of right and the analogy of law, which regulate cooperation and ensuring the security of individuals assisting in the detection, prevention, investigation, and solution of crimes.

The importance and universality of the tool of cooperation between law enforcement officers and citizens in the fight against crime is also confirmed by international practices, namely the practices of Western European countries, the United States of America, and Canada, which were investigated by D.I. Nykyforchuk, V.V. Matviichuk and A.V. Savchenko (2004), as well as Ye.Ye. Hrechyn and I.I. Musiienko (2015). The main differences are related to the approach to legal support of confidential cooperation (in laws, sub-legislative acts, codes of practice); subjects authorized for confidential cooperation; persons with whom it is allowed to establish relevant relations; the limits of such cooperation; the procedure for registration of involving a person in cooperation, as well as the use of its results. The study and use of international practices began in the 2000s and continues today.

Foreign practices indicate that the cooperation of law enforcement officers with citizens is the most effective source of information in the fight against crime. For instance, in France, Spain, Germany, the United Kingdom, and the United States of America, over 85-90% of serious crimes are solved through cooperation with the population (Kozachenko, 2018). In addition, O.I. Kozachenko (2018), comparing the international and national practices of legal regulation of ensuring the security of confidants and confidential cooperation in general, gives arguments for the effectiveness of the institution of confidential cooperation in countering crime and connects it with the ability of states to really provide a prominent level of legal, social, and physical protection of confidants.

To develop a model of legislative regulation of confidential cooperation, which is the purpose of this study, it was necessary to analyse the current state of legal support, identify gaps, conflicts, and contradictions, investigate analogous studies, as well as consider the international practices of rationing this type of activity of law enforcement agencies.

■ Literature Review

The Ukrainian practices of using citizens' assistance in the fight against crime indicate that despite significant achievements in science, the rapid development of information technologies, this type of activity is still the main means of preventing and detecting crimes, and in some cases – their investigation (Gribov & Kozachenko, 2019). M.L. Hribov and O.I. Kozachenko (2019) reveal some "secrets of success" of using confidential cooperation in developed Western democracies, which consist in the wide opportunities of authorized bodies to motivate people to cooperate, including those from the criminal environment, as well as in real opportunities to ensure their security. Furthermore, the said researchers investigate the approaches to the legal support of confidential cooper-

[1]Regulation of Investigatory Powers Act. (2000). Retrieved from https://www.legislation.gov.uk/ukpga/2000/23/contents.
[2]Ibidem, (2000).
[3]Law of Ukraine No. 2135-XII "On Investigative Operations". (1992, February). Retrieved from https://zakon.rada.gov.ua/laws/show/2135-12#Text.
[4]Criminal Procedural Code of Ukraine No. 4651-VI. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.

ation, specifically at the level of laws and departmental regulations. The researchers propose to regulate the rights, obligations, and legal guarantees of confidants at the legislative level, including those related to exemption from criminal liability and punishment.

K.V. Antonov also addressed the issues of statutory regulation of the use of confidential cooperation (Antonov, 2020). Antonov continued the discussion between practitioners and scientists about the expediency of authorizing confidential cooperation between an investigator who does not have an unspoken apparatus, since this is not one of the priorities of their activities. The researcher notes that criminal procedural activities are generally public, and issues of prevention, detection, and solving of crimes are included in the subject of investigative operations, which are covert.

V.M. Davydiuk investigated the issue of the legal grounds for ensuring the security of confidential cooperation. Davydiuk emphasizes that the risks taken by the confidant can be considered justified only if safety measures are observed, reliable regulatory provision of relevant guarantees and proper organization of operational and investigative measures, covert investigative (detective) operations and various combinations (Davydiuk, 2019).

In addition, the scientific community does not stop discussing the place and role of confidential cooperation in criminal proceedings. The position expressed by, among others, D.B. Serheieva, prevails, who does not include confidential cooperation in the list of separate covert investigative (detective) operations, but considers it as a security measure for their implementation (Serheieva, 2016).

This discussion is also supported by D.V. Talalai and S.M. Saltykov, who generally agree with D.B. Serheieva. However, these researchers provide arguments in favour of a certain similarity of confidential cooperation, if not with covert investigative (detective) operations, then with investigative and procedural actions. They address the common ultimate purpose – the search and recording of evidence, as well as the main difference – the lack of regulation of the procedural consolidation of the course and results of confidential cooperation (Saltykov and Talalay, 2020).

Continuing the research on the topic of procedural aspects of confidential cooperation, it must be noted that during the use of this institution within the framework of the criminal procedure, sufficient empirical material was developed, which was analysed by N.V. Nelevda, who investigated the issue of forms of registration of confidential cooperation (Nelevda, 2021). The author concluded that the current legislation does not clearly define the agreement on confidential cooperation, its terms and conditions, and procedure for execution.

The same subject was covered by Ya.O. Talyzina, who focused on the features of the procedural execution of involving a person in confidential cooperation in criminal proceedings (Talyzina, 2020). Talyzina concluded that from a criminal-procedural standpoint, confidential cooperation is formalized by the written consent of the confidant, the resolution of the investigator on the involvement of the confidant in confidential cooperation, and the protocol/memorandum, which clarifies the rights, duties, and responsibilities of the confidant.

These publications indicate that most researchers investigate certain theoretical and practical aspects of confidential cooperation, while there are no scientific studies in the public domain that accumulate and systematize the norms of national legislation on confidential cooperation and the involvement of citizens in the detection, prevention, investigation, and solving of crimes. This is precisely the gap that the present paper intends to fill.

Among other things, a special feature of scientific research abroad is that confidential cooperation is also actively investigated as a tool for interaction of law enforcement officers with detainees, prisoners, prisoners, etc. As an example, we should cite the binary classification of informants proposed by S.M. Kleinman (2006), according to which the assigned source shares the purpose of his or her supervisor and maintains a cooperative relationship with them, while the detainee is more likely to perceive their interrogator as an enemy and will often try to withhold known information. In terms of the physical environment, S.M. Kleinman notes that the source being interviewed voluntarily communicates with their supervisor and can leave at any time. However, the detained source is in a detention centre, and their physical condition is under the control of the investigator. Thus, a secret source can be considered to exist in one of four possible categories (combinations) depending on the physical situation: prisoner or not, and access to information: active (actively received information, according to the given instruction) or passive (passively received target information without expecting that it will later have to be disclosed to the investigator).

The unipolarity of the study of confidential cooperation in the context of interaction with detainees, prisoners, and captives has led to a lack of research-to-practice studies on the use of confidential cooperation in criminal intelligence and criminal justice, which prompts scientists to actively fill these gaps (Moffett, 2022).

A common feature of Ukrainian and foreign studies is that they are primarily related to practical aspects of confidential cooperation. One of them is high-quality training of practitioners. Along with the special value of the information obtained from the informant, Pamela Henry, Nikki Rajakaruna, Charl Crous and John Buckley (2020) note the risks of confidential cooperation, which may consist of social and personal harm to a person if their identity becomes known; the risk for the authorized employee

(handler) regarding manipulation, misconduct/corruption, and personal safety; and the risk to the public body of organizational corruption and legal/regulatory responsibility to ensure the security of the confidant and handler.

Clive Harfield draws attention to the same risks. In his studies, he investigates legal regulation (2009), organization and management (2010), moral principles of confidential cooperation (2012), and also distinguishes such types of confidants as informants and infiltrated confidants (2009). On the one hand, confidants infiltrated into the criminal environment are the most valuable, and on the other hand, they carry the greatest risks both for the authorized person (handler) who cooperates with them and for the state body. Clive Harfield emphasizes that confidential cooperation relations should not only be sufficiently regulated at the legislative level, but also comply with moral and ethical principles, so that society trusts the activities of the relevant law enforcement agencies (2012). According to Harfield, confidential cooperation is most fully and consistently investigated.

■ Materials and Methods

During the preparation of this paper, several general scientific and general logical methods were used: description, analogy and comparison, analysis and synthesis, systematization; as well as general legal methods: logical legal, formal legal, and comparative legal.

During the study, the norms of the current legislation regulating investigative operations, confidential cooperation, and protection of individuals who assist law enforcement agencies in detecting, preventing, investigating, and solving crimes were described and compared; both differences and identical approaches to the statutory regulation of these relations were established. Using the analogy method, the authors of this study selected legal norms that are not included in the system of norms of special legislation but can be applied to regulate confidential cooperation relations.

The main methods used in this study were methods of analysis and synthesis, which consisted, respectively, in separating legislative acts into separate legal norms to investigate them and combine them into a single whole. To combine the norms of law into a logical structure, the systematization method was used.

The use of the comparative legal method consisted in comparing different legal institutions and categories both within the framework of Ukrainian legislation, and considering the UK practices in regulating confidential cooperation, to determine their differences and common features. The formal legal method was used to cognize particular legal institutions, legal norms, establish their meaning, define concepts and terminology, classify and interpret individual legal norms, determine the structure and construction of individual legal norms and regulations. The logical legal method was used to explain the subject of legal regulation of individual legal norms and legislative acts, systematize and classify legal norms, and combine them into a single logical structure. Using this method, gaps were identified, the practices of overcoming them were investigated, and proposals for improving Ukrainian legislation were proposed.

In the preparation of this paper, the provisions of the following regulations were used:-the Constitution of Ukraine[1]; Convention on the Protection of Human Rights and Fundamental Freedoms[2]; Criminal Procedural Code of Ukraine[3]; Criminal Code of Ukraine[4], Laws of Ukraine "On Investigative Operations"[5]; "On the National Anti-Corruption Bureau of Ukraine[6]; "On the Legal Principles of Combating Organized Crime"[7]; "On Ensuring the Safety of Individuals Involved in Criminal Proceedings"[8]; "On Prevention of Corruption"[9]; sub-legislative acts and departmental regulations, draft regulations. This study also covered modern scientific sources with the results of research on legal regulation, usage practices and features of registration of confidential cooperation both in Ukraine and abroad.

■ Results and Discussion

The legal basis of confidential cooperation before the development of the Criminal Procedural Code of Ukraine[10] in the 2012 edition was mostly investigated separately as part of investigative operations.

[1]Constitution of Ukraine: Law of Ukraine No. 254k/96-BP. (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/254к/96-вр#Text.
[2]Convention of the Council of Europe. (1950, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004#Text.
[3]Criminal Procedural Code of Ukraine No. 4651-VI. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.
[4]Criminal Code of Ukraine No. 2341-III. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.
[5]Law of Ukraine No. 2135-XII "On Investigative Operations". (1992, February). Retrieved from https://zakon.rada.gov.ua/laws/show/2135-12#Text.
[6]Law of Ukraine No. 1698-VII "On the National Anti-Corruption Bureau of Ukraine". (2014, October). Retrieved from https://zakon.rada.gov.ua/laws/show/1698-18#Text.
[7]Law of Ukraine No. 3341-XII "On the Legal Foundations of Combating Organized Crime". (1993, June). Retrieved from https://zakon.rada.gov.ua/laws/show/3341-12#Text.
[8]Law of Ukraine No. 3782-XII "On Ensuring the Safety of Persons Participating in Criminal Proceedings". (1993, December). Retrieved from https://zakon.rada.gov.ua/laws/show/3782-12#Text.
[9]Law of Ukraine No. 1700-VII "On Prevention of Corruption". (2014, October). Retrieved from https://zakon.rada.gov.ua/laws/show/1700-18#Text.
[10]Criminal Procedural Code of Ukraine No. 4651-VI. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.

However, since its adoption and in connection with the inclusion in its text of "Chapter 21. Covert investigative (detective) operations", where the investigators were first given the right to use confidential cooperation, this type of activity has also been considered as part of criminal procedural activity. Confidential cooperation is also investigated as a type of activity of individual law enforcement agencies. This can be explained by the fact that the lack of proper legislative support leads to a different understanding of the essence, role, and place of the institution of confidential cooperation in the legal system, and in this regard to different approaches to its research. Insufficient attention has also been paid to the general legal principles of confidential cooperation.

In terms of the state of scientific development of the topic concerning the use of confidential cooperation in pre-trial investigation, the results of research by O.O. Podobnyi & R.O. Belskyi (2021) should be noted, which state that so far in criminal procedural and forensic studies, the main ways of solving modern issues of the institution of covert investigative (detective) operations have been proposed at the level of doctoral theses and a fairly large number of individual scientific publications. The researchers continue that these studies did not reveal the main problematic aspects of the current theoretical and practical use of confidential cooperation in pre-trial investigations.

Thus, the proposed study is designed to cover not only the theoretical aspects of confidential cooperation, but also the possibility of using legal tools in practice.

The principle of confidentiality and the importance of keeping the informant's personal data secret at the same level as the legal guarantees of a confidant for committing crimes during the performance of a special task to prevent or disclose the criminally illegal activities of an organized group or criminal organization, i.e., under control and undercover, are important elements of the institution of confidential cooperation, which are investigated by American and European scientists, as noted by J.E. Ross (2008) in his comparative study.

These relations arise in connection with the law enforcement activities of state law enforcement agencies and are associated with the risk of violation of the constitutional rights and interests of confidants, authorized employees, persons in respect of whom confidential cooperation is carried out, and others.

Therefore, such activities of law enforcement agencies and the National Anti-Corruption Bureau of Ukraine should be legally and statutorily regulated and have a proper legal basis.

Notably, numerous attempts to adopt the Laws of Ukraine "On Investigative Operations"[1] and "On Legal Bases of Combating Organized Crime"[2] in the new wording, which propose to regulate the institution of confidential cooperation, are currently failing. Therewith, in the strategy for Combating Organized Crime, approved by the Cabinet of Ministers of Ukraine by Order No. 1126-p dated 16.09.2020[3] , a special place is occupied by the issues of regulatory support for confidential cooperation, protection, and encouragement of confidants.

The study of regulatory support for confidential cooperation in the National Anti-Corruption Bureau of Ukraine (the National Bureau) should begin with finding out its place among the authorities, status, and tasks.

The status of the National Bureau is determined by Article 1 of the Law of Ukraine "On the National Anti-Corruption Bureau of Ukraine"[4] (the Law of Ukraine "On NABU"), according to which "the National Bureau is a central body of executive power with a special status, which is entrusted with warning, detection, termination, investigation, and solving of corruption offences falling within its jurisdiction, as well as prevention of new ones". The main task is "combating corruption and other criminal offences committed by high-ranking officials authorized to perform the functions of the state or local self-government, which pose a threat to national security".

This norm is important from a theoretical and practical standpoint, as it specifies the particular tasks facing the National Bureau, and for the performance of which the authorized employees of the National Bureau establish confidential cooperation with citizens.

Investigative operations are an independent and strategic type of activity of the National Bureau, which often precedes pre-trial investigation and continues after bringing a person to criminal responsibility and is also aimed at constantly creating opportunities to obtain, record, and implement operationally significant information for effective crime prevention.

After the beginning of the pre-trial investigation, the investigative operations of detectives of the National Bureau do not essentially stop, but continue in the form of conducting procedural, investigative and covert investigative (detective) operations, including in the form of confidential cooperation. Such activities of detectives of the National Bureau in the regulations of the National Bureau are called covert

[1]Draft Law No. 1229 "On Investigative Operations". (2019, September). Retrieved from https://itd.rada.gov.ua/billInfo/Bills/Card/946.
[2]Draft Law No. 7043 "On Amendments to the Law of Ukraine on Legal Bases of Combating Organized Crime". (2022, February). Retrieved from https://itd.rada.gov.ua/billInfo/Bills/Card/38967.
[3]Order of the Cabinet of Ministers of Ukraine No. 1126-p. "On Strategy for the Fight Against Organized Crime". (2020, September). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.
[4]Law of Ukraine No. 1698-VII "On the National Anti-Corruption Bureau of Ukraine". (2014, October). Retrieved from https://zakon.rada.gov.ua/laws/show/1698-18#Text.

activities, i.e., covert, not subject to disclosure. Thus, investigative operations and pre-trial investigation are inextricably linked, as they are carried out by detectives who are authorized to carry out both types of operations. Detectives carry out covert operations in compliance with the principles of conspiracy to obtain factual data about the illegal actions of individuals and groups (gathering evidence), as well as establishing other information essential for criminal proceedings. In this regard, confidential cooperation should be considered in an indissoluble connection with both investigative operations and pre-trial investigation.

According to Article 2 of the Law of Ukraine "On NABU", the legal basis of the National Bureau's activity is the Constitution of Ukraine, international treaties of Ukraine, this and other laws of Ukraine.

And according to the provisions of Article 3 of the Law of Ukraine "On Investigative Operations"[1] (the Law of Ukraine "On IO"), the legal basis of investigative operations is the Constitution of Ukraine, this Law, the Criminal and Criminal Procedural Codes of Ukraine, the Law of Ukraine "On NABU", on ensuring the safety of persons involved in criminal proceedings, on state protection of court employees and law enforcement agencies and other laws of Ukraine.

Considering the above, the sources of law that form the legal basis of the institution of confidential cooperation in the National Bureau should be classified, considering their legal force, as follows:

1) The Constitution of Ukraine[2];

2) Convention on the Protection of Human Rights and Fundamental Freedoms[3];

3) Criminal Procedural Code of Ukraine[4] (the CPCU);

4) Criminal Code of Ukraine[5] (the CCU);

5) The Law of Ukraine "On Investigative Operations"[6];

6) The Law of Ukraine "On National Anti-corruption Bureau of Ukraine"[7];

7) Law of Ukraine "On Legal Bases for Combating Organized Crime"[8];

8) Law of Ukraine "On Ensuring the Safety of Persons Involved in Criminal Proceedings"[9];

9) Law of Ukraine "On Prevention of Corruption"[10];

10) Instructions on the organization of covert investigative (detective) operations and the use of their results in criminal proceedings[11];

11) Other sub-legislative and departmental regulations.

The present study investigates these sources of law alternately in an indissoluble connection with each other.

When conducting confidential cooperation, the employees of the National Bureau are primarily guided by the ***norms of the Constitution of Ukraine***, namely: the fundamental principle according to which a human, their life and health, honour and dignity, inviolability and security are recognized as the highest social value in Ukraine, and their observance is the main duty of the state (*Article 3*); the principle of the rule of law (*Article 8*); the principle of freedom and the inadmissibility of coercion, which includes the inadmissibility of coercion to enter into a relationship of confidential cooperation in general and to perform certain tasks (which is also manifested in the right of the confidant to withdraw from the relationship of confidential cooperation unilaterally), as well as the duty of employees National Bureau to act only on the basis, within the limits of authority and according to the procedure prescribed by the Constitution and laws of Ukraine (*Article 19*); principles of equality and inviolability of human rights (*Article 21*). This also includes the provisions of *Articles 27-34*, *55-57*, *60*, which guarantee a human's inalienable rights: to life; on respect for human dignity, which cannot be violated or limited; as well as freedom, personal integrity and housing integrity;

[1]Law of Ukraine No. 2135-XII "On Investigative Operations". (1992, February). Retrieved from https://zakon.rada.gov.ua/laws/show/2135-12#Text.

[2]Constitution of Ukraine: Law of Ukraine No. 254k/96-BP. (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/254к/96-вр#Text.

[3]Convention of the Council of Europe. (1950, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004#Text.

[4]Criminal Procedural Code of Ukraine No. 4651-VI. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.

[5]Criminal Code of Ukraine No. 2341-III. (2001, April). Retrieved from https://zakon.rada.gov.ua/laws/show/2341-14#Text.

[6]Law of Ukraine No. 2135-XII "On Investigative Operations". (1992, February). Retrieved from https://zakon.rada.gov.ua/laws/show/2135-12#Text.

[7]Law of Ukraine No. 1698-VII "On the National Anti-Corruption Bureau of Ukraine". (2014, October). Retrieved from https://zakon.rada.gov.ua/laws/show/1698-18#Text.

[8]Law of Ukraine No. 3341-XII "On the Legal Foundations of Combating Organized Crime". (1993, June). Retrieved from https://zakon.rada.gov.ua/laws/show/3341-12#Text.

[9]Law of Ukraine No. 3782-XII "On Ensuring the Safety of Persons Participating in Criminal Proceedings". (1993, December). Retrieved from https://zakon.rada.gov.ua/laws/show/3782-12#Text.

[10]Law of Ukraine No. 1700-VII "On Prevention of Corruption". (2014, October). Retrieved from https://zakon.rada.gov.ua/laws/show/1700-18#Text.

[11]Instructions on the organization of covert investigative (detective) operations and the use of their results in criminal proceedings, approved by the Order of the Prosecutor General's Office of Ukraine, the Ministry of Internal Affairs of Ukraine, the Security Service of Ukraine, the Administration of the State Border Service of Ukraine, the Ministry of Finance of Ukraine, the Ministry of Justice of Ukraine No. 114/1042/516/1199/936/1687/5. (2012, November). Retrieved from https://zakon.rada.gov.ua/laws/show/v0114900-12/page#Text.

prohibition of interference in family and personal life; for free movement and choice of place of residence; on freedom of thought and speech; on the secrecy of private communication, which can be violated and limited only in exceptional cases prescribed by the Constitution and Laws of Ukraine; for legal protection and compensation for damage caused by the state; the right to know one's rights and obligations, not to carry out an obviously criminal order.

These rules of law, which oblige authorized employees of the National Bureau to respect and not violate the constitutional rights and guarantees of a human and a citizen, apply not only to these employees, but also to confidants, and should be explained to them to prevent the excess of the performer and other offences, as well as to ensure legal guarantees for the security of the confidant themselves.

Comparable legal norms are prescribed in *Articles 2-14* of Chapter I of the ***Convention on the Protection of Human Rights and Fundamental Freedoms***[1].

In the context of the subject under study, attention should be paid to the fact that the principle of voluntary confidential cooperation comes from the guarantee against forced labour prescribed in Article 43 of the Constitution of Ukraine[2] and Article 4 of the specified Convention, and lies in the fact that a person can enter into a relationship of confidential cooperation solely based on their own free expression of will. This question has not only a theoretical nature, but also an essential practical value, as it allows distinguishing coercion, threats, bribery, deception, and other manifestations of deviant behaviour from legal methods of involving individuals in confidential cooperation.

Furthermore, the specified norms of law limit the use of confidential cooperation, if it violates the constitutional rights and freedoms of a human and a citizen; obligate authorized employees to act within the limits and according to the procedure prescribed by the Law; provide legal guarantees to confidants. These norms make it impossible to use confidential cooperation to carry out visual surveillance, survey of publicly inaccessible places, review of correspondence and other actions related to interference in private communication, which require compliance with the relevant procedures prescribed by the CPCU[3] and the Law of Ukraine "On IO"[4]. Such legal norms prevent both operatives and confidants from interfering in the private and family life of persecuted persons.

For instance, when establishing confidential cooperation with a person who has access to the mail correspondence of the persecuted individual, and also has the opportunity to secretly receive such correspondence. Pursuant to the norms of the Constitution of Ukraine and the Convention on the Protection of Human Rights and Fundamental Freedoms, the authorized employee of the National Bureau is prohibited, without appropriate court permission, to instruct a confidant to receive such correspondence, as this violates the human right to the secrecy of private communication and correspondence. The corresponding prohibition also applies to the confidant's actions. Therefore, during confidential cooperation, the authorized employee is responsible for explaining the rights, obligations, responsibilities of the confidant, the boundaries, and method of performing the assigned tasks.

The basis of the legal regulation of confidential cooperation, as well as of all investigative operations, are the norms of the ***Law of Ukraine "On IO"***. Confidential cooperation is regulated by: *Article 1*, which defines the tasks of operational units, in the achievement of which confidential cooperation can be involved, specifically for searching and recording information about criminal offences; *Article 5*, which specifies that the following subdivisions of the National Bureau are authorized to carry out confidential cooperation: detective, operational and technical, internal control; *Item 6 of Article 7*, according to which the specified operational units shall be obliged to ensure the safety of confidants, as well as their family members and close relatives, independently and with the involvement of other units; *Article 8*, which defines the rights of operational units, namely: to interview individuals and use their assistance upon consent; to enter dwellings and other premises to perform the tasks specified in Article 1 upon consent of the owners and possessors; to collect information about the illegal activities of individuals who are being checked; to carry out a special task of uncovering the criminal activity of an organized group or criminal organization according to the provisions of Article 272 of the CCU; to use confidential cooperation pursuant to the provisions of Article 275 of the CPCU; to receive information from legal entities or individuals for free or for a fee about criminal offences that are being prepared or committed, and about threats to the security of society and the state; with consent to use office premises, housing, other premises, transport and other property of legal entities and individuals.

Having carefully examined the rights of operational units, the author determined the purposes of using confidential cooperation, namely for:

[1]Convention of the Council of Europe. (1950, November). Retrieved from https://zakon.rada.gov.ua/laws/show/995_004#Text.
[2]Constitution of Ukraine: Law of Ukraine No. 254k/96-BP. (1996, June). Retrieved from https://zakon.rada.gov.ua/laws/show/254к/96-вр#Text.
[3]Criminal Procedural Code of Ukraine No. 4651-VI. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.
[4]Law of Ukraine No. 2135-XII "On Investigative Operations". (1992, February). Retrieved from https://zakon.rada.gov.ua/laws/show/2135-12#Text.

– collecting information about criminal activities of individuals and groups;

– conducting investigative and covert investigative (detective) operations;

– performing a special task to uncover the criminal activities of an organized group or criminal organization;

– conspiratorial use of premises, housing, and vehicles;

– conspiratorial use of enterprises, institutions, and organizations, and their property.

Important from the standpoint of ensuring the human and citizen rights and freedoms are the guarantees prescribed in *Article 9* of the Law of Ukraine "On IO"[1], regarding the ban on disclosure of information about security measures taken and persons taken under protection; information that may harm the investigation and national security; information regarding the conduct or non-conduct of investigative operations regarding a certain person before deciding based on the results of such activity; information related to the personal life, honour, dignity of a person, if they do not contain information about the commission of actions prohibited by law (such information must be destroyed). In addition, the results of investigative operations that constitute a state secret are not subject to disclosure. For the transfer and disclosure of this information, employees of operational units, as well as persons to whom this information was entrusted during the implementation of investigative operations or became known through service or work, shall be liable pursuant to current legislation, except in cases of disclosure of information about illegal actions that violate human rights. To obtain information, it is forbidden to use technical means, psychotropic, chemical, and other substances that suppress the will or harm human health and the environment.

These guarantees, prohibitions, and restrictions are mandatory not only for operational employees, but also for individuals involved in confidential cooperation, as explicitly stated in this study. Therefore, when involving an individual in confidential cooperation, these restrictions, duties, and responsibilities are explained to them. And that is why only those individuals who, based on their personal and moral qualities, personality, and level of education, can be involved in confidential cooperation.

This shows that confidential cooperation is a complex intellectual and procedural activity that must be carried out systematically and purposefully to perform tasks essential from the standpoint of countering crime. Confidential cooperation can only be assigned to operational employees with a sufficient level of education, knowledge, skills, personal and moral qualities, and life experience.

According to *Article 10* of the Law of Ukraine "On IO"[2], materials of investigative operations, including materials of confidential cooperation, may be used, namely:

– to start a pre-trial investigation;

– to obtain evidence in criminal proceedings;

– to prevent criminal offences;

– to search for individuals who have committed criminal offences;

– to ensure the safety of employees of the court, law enforcement agencies, confidants, and other individuals involved in criminal proceedings, their family members and close relatives.

The main obligations and prohibitions related to confidential cooperation, as well as the options for formalizing these relations, are defined by *Article 11* of the Law of Ukraine "On IO". Confidants are required to keep a secret that has been entrusted to them or has become known. At their request, confidential cooperation can be formalized by a written agreement. Such an agreement can only be concluded with a legally capable individual. Operative workers and investigators have no right to involve in confidential cooperation those individuals who are entrusted with the duty of maintaining professional secrecy, namely clergymen, notaries, medical workers, journalists, lawyers, if such cooperation would be associated with the disclosure of confidential information of a professional nature.

Social and legal protection of confidants is defined in *Article 13* of the Law of Ukraine "On IO", according to which such individuals are under the protection of the state; in case of concluding an employment agreement with them, the cooperation of individuals with the operative unit is counted towards their total length of service, and in case that in connection with the performance of the tasks of investigative operations by such an individual, their disability or death occurred, they are entitled to the benefits prescribed in such cases for employees of operational units (*Article 12*). In case of a threat to the life, health, or property of an individual involved in confidential cooperation, its protection is ensured according to the procedure prescribed in Part 3 of Article 12 of this Law. Specifically, such individuals shall be subject to the guarantees of legal and social protection prescribed by the laws of Ukraine on the relevant bodies with which they cooperate. If such a threat arises in connection with the implementation of investigative operations by the confidant in the interests of the security of Ukraine, or to identify a

[1]Law of Ukraine No. 2135-XII "On Investigative Operations". (1992, February). Retrieved from https://zakon.rada.gov.ua/laws/show/2135-12#Text.
[2]Ibidem, 1992.

grave or particularly grave crime, or to expose an organized criminal group or criminal organization, taking special measures to ensure the safety of the confidant and their close relatives is the responsibility of the operational unit. In this case, the operational unit takes the following specific measures: changing personal data, changing the place of residence, work, study, and other data pursuant to the procedure prescribed by the Cabinet of Ministers of Ukraine.

Important for confidants is the legal guarantee of non-liability in case the confidant damages the interests of the state, as well as human rights and freedoms during the performance of the relevant tasks of the operational unit in connection with the detention of an individual; suspected of committing a criminal offence, as well as in the state of extreme need, professional risk, necessary defence.

Thus, the state establishes virtually the same legal and social protection for both confidants and operative units.

A systematic analysis of the provisions of the Law of Ukraine "On IO"1 shows that the institution of confidential cooperation is not sufficiently regulated in this law. Specifically, the terms "confidential cooperation" and "confidant" are not defined; rights, duties, and responsibilities of parties to confidential cooperation; the procedure for the emergence and termination of confidential cooperation relations, as well as their procedural design, the procedure for setting and performing tasks and assignments. Furthermore, the statement of certain norms on cooperation between operational units and individuals who contribute to the performance of the tasks of the IO causes certain contradictions, namely between the obligation to assist operational units and the voluntary nature of confidential cooperation.

The specified gaps and discrepancies cannot be corrected only by making editorial or minor amendments to the Law of Ukraine "On IO"[1], but require the adoption of a new version of the law with a detailed regulation of the institution of confidential cooperation in a separate section of it, which would include the following articles: "Principles of confidential of cooperation", "Subjects of confidential cooperation", "Rights, duties, and responsibilities of the parties of confidential cooperation", "Conditions, purpose, and tasks of confidential cooperation", "Guarantees of security, legal and social status of confidants", "Execution of confidential cooperation", "Performance of a special task to reveal the criminal activity of an organized group or criminal organization", "Involvement of individuals in the implementation of investigative operations, covert investigative (detective) operations", "Using materials of confidential cooperation".

Furthermore, the specified norms of the Law of Ukraine "On IO" regulate confidential cooperation relations that have arisen and are implemented within the scope of investigative operations, and therefore their application to legal relations of confidential cooperation that take place within the framework of criminal proceedings is problematic.

The Law of Ukraine "On IO" and the CPCU[2] lack the specific norms that regulate the rights, obligations, restrictions, prohibitions, responsibilities, legal and social guarantees of security and protection of the confidant, which complicates their application to confidential cooperation relations that are in force during criminal proceedings. This gap must be eliminated during the adoption of the Law of Ukraine "On IO" in a new wording or by amending the CPCU.

In practice, this gap has been eliminated by the relevant regulations of the National Bureau, which equally govern confidential cooperation both during investigative operations and during criminal proceedings.

Furthermore, this gap is compensated by the relevant provisions of the Law of Ukraine "On Ensuring the Safety of Individuals Involved in Criminal Proceedings"[3], which provide guarantees of protection to individuals who contribute to the detection, prevention, termination, or solving of criminal offences.

At the same time, even if relevant changes are introduced to the legislation of Ukraine and the regulation of confidential cooperation at the level of the Law of Ukraine "On IO", the need for departmental regulation of these relations will not decrease because different law enforcement agencies have different organizational structures, tasks, numbers, etc., which leads to different approaches to determining priority areas of work, the need to use the capabilities of confidants, etc.

In this regard, the practices of Great Britain should be considered, where to clarify certain provisions of the UK Regulation of Investigatory Powers Act of 2000[4], which prescribes the possibility of using confidential information, a Code of Practice on the Use of Secret Sources of Intelligence Information[5] was issued. The value of this Code lies in the detailed regulation of the procedure for granting

[1]Law of Ukraine No. 2135-XII On Investigative Operations. (1992, February). Retrieved from https://zakon.rada.gov.ua/laws/show/2135-12#Text.
[2]Criminal Procedural Code of Ukraine No. 4651-VI. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.
[3]Law of Ukraine No. 3782-XII "On Ensuring the Safety of Persons Participating in Criminal Proceedings". (1993, December). Retrieved from https://zakon.rada.gov.ua/laws/show/3782-12#Text.
[4]Regulation of Investigatory Powers Act. (2000). Retrieved from https://www.legislation.gov.uk/ukpga/2000/23/contents.
[5]Covert Human Intelligence Sources code of practice. (2022). Retrieved from https://www.gov.uk/government/publications/covert-human-intelligence-sources-code-of-practice-2022.

permits for the involvement and use of confidants, the procedure for the activities of a confidant and an authorized employee (handler), performing tasks, monitoring the commission of a crime, investigative experiments, using results, etc.

According to Section 1 of this Code[1], any state body authorized to carry out confidential cooperation shall be obliged to follow the provisions of the Code. To avoid doubt, the code should be followed regardless of any opposing content of the internal instructions of the state body. This code also allows other interested parties to understand the procedures followed by these state bodies. This code is publicly available and should be easily accessible to employees of any relevant public authority who intend to use confidential cooperation. The examples included in this code are intended to help illustrate and interpret certain provisions and are provided for reference only. Theoretical examples cannot reproduce the level of detail that can be found in real cases. Consequently, public authorities should avoid using superficial similarities with examples to make their decisions and should not attempt to justify their decisions only by referring to examples and not to the law, including the provisions of this code. Examples should not be taken as confirmation that any particular government agency is carrying out the described activities; examples are given for illustrative purposes only.

This Code of practice can also be used as a model for more detailed regulation of confidential cooperation in Ukraine.

By analogy with covert investigative (detective) operations, which, apart from Chapter 21 of the CPCU[2], are regulated by the Instruction on the organization of covert investigative (detective) operations and the use of their results in criminal proceedings[3], it is proposed to regulate confidential cooperation in detail in the same Instruction by setting it out in a new wording. This edition must be approved by the Office of the Prosecutor General of Ukraine, which carries out procedural management in all criminal proceedings and supervises the observance of laws during investigative operations in all investigative and detective cases, and which accumulates not only practical experience, but also judicial practice on this matter; all law enforcement agencies that carry out pre-trial investigation and investigative activities; the Ministry of Finance of Ukraine, which is entrusted with the proper financial support of the relevant activities of the specified bodies; the Ministry of Justice of Ukraine, which takes part in ensuring legal guarantees for confidential informants, including in institutions where punishments are served; the Supreme Court of Ukraine, which ensures stability and unity of judicial practice.

This approach allows regulating the institution of confidential cooperation in the most balanced and unified way, while presented in detail in a non-secret regulation that will be made public and accessible to everyone. The author of this study believes that, among other things, it will increase the effectiveness of the fight against crime by involving individuals from the criminal environment in confidential cooperation, since the legislation on confidential cooperation will become known to a wide range of people.

During the study of the ***Law of Ukraine "On NABU"***[4], separate norms regulating confidential cooperation were singled out, namely: *Part 1 of Article 10*, which authorizes confidential cooperation of detectives and senior detectives of detective units, employees of operational and technical units and internal control units that carry out pre-trial investigation and investigative operations, as well as undercover full-time employees; *Item 7 of Part 1 of Article 16* and *Item 12 of Part 1* of *Article 17*, which determine the basic principles and conditions of confidential cooperation, namely the voluntariness and confidentiality of such cooperation, the possibility of formalizing these relations by concluding an agreement, the possibility of paying the corresponding remuneration, and also determine the content of confidential cooperation, which lies in facilitating the performance of the tasks assigned to the National Bureau.

In the context of the subject under study, the legislator defined not only the right of authorized employees to confidentially cooperate with individuals, but also established the obligation of such cooperation with individuals who report corruption offences, while emphasizing that citizens enter into such relations exclusively voluntarily.

Furthermore, the Ukrainian legislators legislatively recognized the legality and permissibility of material incentives for confidants. This has an important legal, practical, and ethical significance, since confidential cooperation for a virtuous citizen is not only an honourable cause, but also moral, intellectual, and

[1]Covert Human Intelligence Sources code of practice. (2022). Retrieved from https://www.gov.uk/government/publications/covert-human-intelligence-sources-code-of-practice-2022.
[2]Criminal Procedural Code of Ukraine No. 4651-VI. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.
[3]Instructions on the organization of covert investigative (detective) operations and the use of their results in criminal proceedings, approved by the Order of the Prosecutor General's Office of Ukraine, the Ministry of Internal Affairs of Ukraine, the Security Service of Ukraine, the Administration of the State Border Service of Ukraine, the Ministry of Finance of Ukraine, the Ministry of Justice of Ukraine No. 114/1042/516/1199/936/1687/5. (2012, November). Retrieved from https://zakon.rada.gov.ua/laws/show/v0114900-12/page#Text.
[4]Law of Ukraine No. 1698-VII "On the National Anti-Corruption Bureau of Ukraine". (2014, October). Retrieved from https://zakon.rada.gov.ua/laws/show/1698-18#Text.

temporary efforts that should be encouraged, including financially, which is the norm in modern society.

Thus, confidential cooperation is one of the important activities of the National Bureau and one of the principal methods (tools) for both investigative operations and pre-trial investigation.

The main norms of the ***CPCU***[1], which regulate the relations of confidential cooperation, are Articles 252, 256, 271, 272, and 275, which are located in Chapter 21 "Covert investigative (detective) operations".

The placement of the norms governing the use of confidential cooperation in the chapter on covert investigative (detective) operations (CIDO) caused a lively discussion in the scientific community. Some researchers classify confidential cooperation as a separate type of CIDO (Korniienko, 2015), others (Serhieieva, 2016; Skulysh, 2012), whose position is more convincing, consider confidential cooperation as a certain tool and means of conducting CIDO, and not as a separate type of CIDO.

The most successful definition of the role of confidential cooperation in the criminal procedure appears to be the laconic definition formulated by L.V. Sydorenko (2020), who considers confidential cooperation as a means of achieving the objectives of criminal proceedings, defined in Article 2 of the CPCU.

In any case, the institution of confidential cooperation is close to the legal institution of covert investigative (detective) operations, while it has its differences.

The basis of practical and scientific discussions is the correlation of the principles of publicity of the criminal procedure and the confidentiality of the secret cooperation of citizens with the pre-trial investigation body, which affects the security guarantees of such individuals.

Separate general norms of Chapter 21 of the CPCU are intended to resolve this debate and ensure the safety of confidants. Specifically, *Part 1 of Article 246* of the CPCU specifies that information about the fact and methods of conducting CIDO are not subject to disclosure, *Part 1 of Article 252* of the CPCU – that information about individuals who conducted or were involved in the CIDO, and to which security measures were applied, can be noted to ensure the confidentiality of this information.

However, *Part 1 of Article 254* and *Article 290* of the CPCU prescribe the possibility of acquainting the defence party with information about the fact and methods of conducting CIDO, as well as about the individuals who conducted them. Therewith, obligating the defence party not to disclose this information is exclusively declarative and cannot really ensure the security of the confidant.

Part 2 of Article 256 of the CPCU[2] makes provision for the possibility of questioning as a witness an individual who conducted or was involved in CIDO (including a confidant), even if security measures are taken against them. Therewith, there is no detailed mechanism for summoning such an individual. The summons of the confidant for questioning as a witness should be carried out through the relevant operational unit or pre-trial investigation body that involved the confidant.

The trend of transparency of the criminal procedure, disregard of the interests of the confidant, and unequal application of the criminal procedural law to such legal relations can be traced in *Parts 9* and *10* of *Article 352* of the CPCU[3], which regulate the questioning of a witness in court. In the specified norms, the questioning of the whistle-blower is imperatively conducted in a closed court session using measures that make it impossible to identify them, although in most cases the whistle-blower in criminal proceedings is known to everyone. As for the questioning of other witnesses (including confidants), their questioning in this mode is carried out in exceptional cases, considering the objections of the parties to the criminal proceedings. The author of the present study believes that such an approach is risky, since the security risks of confidants and other witnesses to whom security measures are applied, depend on the legal awareness of the particular composition of the court, and not on clear legal regulations. It is proposed to change the specified norm and introduce the questioning of witnesses (including confidants) to whom security measures have been applied by the relevant body, exclusively in a closed court session and using measures that make their identification impossible.

During the application of *Article 275* of the CPCU, which makes provision for the possibility of using information obtained as a result of confidential cooperation with other individuals during the CIDO, or the involvement of these individuals in the CIDO, the question of the operative's possibility of using confidential cooperation during investigative (detective) operations and other procedural actions arises, since it refers only to the CIDO and the investigator, although the CIDO can be entrusted to the operative unit.

For instance, information about the location of important evidence or a criminal can be obtained from a confidant verbally or in writing without conducting any CIDO as an investigator and operational worker. Admittedly, such information can and should be used during a pre-trial investigation. However, the admitted legal gap, or rather the unsuccessful legal wording, creates reasons for discussions about the

[1]Criminal Procedural Code of Ukraine No. 4651-VI. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.
[2]Ibidem, 2012.
[3]Ibidem, 2012.

legality of using information received from a confidant for gathering evidence and for purposes other than during the CIDO. This gap in the criminal procedural legislation should be filled by introducing relevant changes to the CPCU.

K.V. Antonov (2020) and other scientists also address this as a flaw in the current criminal procedural legislation.

Part 1 of Article 272 of the CPCU stipulates that "during the pre-trial investigation of grave or particularly grave crimes, information, things, and documents that are essential for the pre-trial investigation may be obtained by an individual who, pursuant to the law, performs a special task by taking part in an organized group or a criminal organization, or is a member of the specified group or organization, who *cooperates with pre-trial investigation authorities on a confidential basis*".

Given that the performance of a special task involves the introduction of an individual into a criminal environment, the Article emphasizes the need for detailed instruction of this individual and a clear delineation of the limits of the task and permissible behaviour to prevent illegal, compromising, or criminal actions. The same actions should be performed in all types of confidential cooperation, not just when performing a special task.

Thus, these norms make provision for the possibility of using confidential cooperation in criminal proceedings for:

1) obtaining information for conducting CIDO;

2) involvement of a confidant in conducting CIDO;

3) performing a special task to uncover the criminal activities of an organized group or criminal organization.

Article 271 of the CPCU[1] regulates separate legal guarantees of confidants who take part in the control of the commission of a crime (namely not being held criminally liable for acts that formally contain signs of a crime and which are committed "under supervision"), as well as organizational aspects, such as determination of the limits of this CIDO and the assignment of the confidant, prohibitions (for provoking, inciting, committing encroachments on the lives of other individuals and actions that may lead to serious consequences). The specified CIDO is carried out with the permission of the prosecutor. Such involvement of the prosecutor in ensuring the legality and legal guarantees of the confidant is considered substantiated. As for the involvement of the prosecutor during the implementation of confidential cooperation, on the one hand, the prosecutor should not have access to the covert apparatus of operational units and pre-trial investigation bodies, and on the other hand, they should ensure the legality of investigative operations and criminal proceedings and the observance of constitutional rights and freedoms of individuals whose rights, freedoms, and interests may be violated. At first glance, these theses are contradictory, but in practice, such a symbiosis of law enforcement agencies and prosecutorial supervision can ensure not only compliance with the principles of legality and the rule of law when carrying out covert activities involving confidants, but also ensure the effectiveness of pre-trial investigations, specifically by providing legal guarantees mitigation or even exemption from responsibility of individuals involved in confidential cooperation.

Control over the commission of a crime and the performance of a special task is not only successfully used in Ukraine, but also abroad. The main difference is that foreign countries regulate this mechanism in detail, while Ukrainian legislation allocates only 2 articles for this. Given the high risks of violation of citizens' rights and freedoms, as well as the elevated level of danger to the confidant and authorized employees, these relations should be regulated more comprehensively.

For instance, in Great Britain, such investigative action is governed by the UK Regulation of Investigatory Powers Act of 2000[2], the Code of Practice for the Covert Human Intelligence Sources[3], the Regulation of Investigatory Powers (Covert Human Intelligence Sources: Relevant Sources) Order of 2013[4], as well as the Covert Human Intelligence Sources (Criminal Conduct) of 2021[5]. These regulations thoroughly govern the actions of investigators and authorized persons, as well as confidants; cases when permission to commit a crime is an acceptable and comparable measure; who and how issues permission and controls the commission of a crime; issues of compensation for damage caused; legal guarantees of the confidant, etc. It is also proposed to regulate in detail the control over the commission of a crime and the performance of a special task in the new edition of the Law of Ukraine "On the Legal Bases of Combating Organized Crime"[6].

[1]Criminal Procedural Code of Ukraine No. 4651-VI. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.
[2]Regulation of Investigatory Powers Act. (2000). Retrieved from https://www.legislation.gov.uk/ukpga/2000/23/contents.
[3]Covert Human Intelligence Sources code of practice. (2022). Retrieved from https://www.gov.uk/government/publications/covert-human-intelligence-sources-code-of-practice-2022.
[4]The Regulation of Investigatory Powers (Covert Human Intelligence Sources: Relevant Sources). (2013). Retrieved from https://www.legislation.gov.uk/uksi/2013/2788/contents/made.
[5]Covert Human Intelligence Sources (Criminal Conduct). (2021). Retrieved from https://www.legislation.gov.uk/ukpga/2021/4/contents/enacted.
[6]Law of Ukraine No. 3341-XII "On the Legal Foundations of Combating Organized Crime". (1993, June). Retrieved from https://zakon.rada.gov.ua/laws/show/3341-12#Text.

It is also worth paying attention to *Item 16-2 of Article 1*, *Article 60* and *Article 130-1* of the CPCU[1], which define the concept of a whistle-blower and their rights, specifically the right to receive a reward.

The concepts of whistle-blower and confidant, although at first glance similar, are definitely not identical, since the whistle-blower is actually an applicant who reported the commission of a corruption crime and acquired the status automatically at the time of applying to the pre-trial investigation body. And this does not mean that a confidential cooperation relations have arisen between the whistle-blower and the investigator or detective, since certain conditions and free expression of the will of both parties are necessary for their occurrence. In this case, the investigator takes a passive position. Under certain conditions, the whistle-blower can still enter into a confidential cooperation relationship and become a confidant. For instance, if the investigator (detective) decides to involve them in conducting the CIDO or performing other tasks, and if the whistle-blower agrees to this. In this case, they assume the duties and responsibilities mentioned above, and can become a confidant.

Thus, a confidant in most cases is a person with whom the authorized employee (handler) has purposefully established a relevant relationship to perform the tasks assigned to them, and who mainly actively collects information and performs tasks set by the authorized employee (handler).

Touching on this topic, attention should be paid to the fact that the absence of the definition of the whistle-blower in the prosecutor's office as the addressee of a report on a corruption crime is a clear gap in the legislation. This gap can be a formal basis for refusing to grant the status of a whistle-blower, resolving the issue of paying them remuneration and ensuring other rights of the whistle-blower, since the whistle-blower can also apply with a corresponding application or message to the prosecutor who is authorized to start a pre-trial investigation.

Particular attention should be paid to Article 130-1 of the CPCU, which prescribes the procedure for paying a reward to a whistle-blower. Specifically, the reward to the whistle-blower is paid not only for reporting a corruption crime, but also for actively assisting in its disclosure, i.e., for assisting the pre-trial investigation body in the performance of the tasks of investigation and solving of crimes. Thus, the subject of confidential cooperation relations with the confidant and with the whistle-blower is still very comparable. The payment of remuneration is an additional motive for the whistle-blower to promote anti-corruption, and the state encourages whistle-blowers to engage in such behaviour.

The norms of the ***Law of Ukraine "On Ensuring the Safety of Individuals Involved in Criminal Proceedings"***[2] ensure compliance by the state with guarantees of the safety of individuals who reported a criminal offence to a law enforcement agency or otherwise took part in or contributed to the detection, prevention, termination, or solving of criminal offences (factually confidants), whistle-blowers, victims, witnesses, and others (*Article 2*).

The security measures prescribed by this Law, which may also be applied to confidants, are stipulated in Section III of this Law.

Therewith, the main security measure for both the confidant and the authorized employee is discipline in matters of confidentiality and conspiracy of relations between them.

The implementation of security measures in the National Anti-Corruption Bureau of Ukraine is entrusted to the Department of Special Operations of the National Anti-Corruption Bureau of Ukraine. Certain measures, such as ensuring the confidentiality of information about an individual, are also taken by detectives and operatives authorized to carry out pre-trial investigation and investigative operations.

It is absolutely impossible to disagree with the researchers who believe that ensuring the safety of individuals involved in the execution of tasks of investigative operations during covert and confidential cooperation is a primary task for the entire system of law enforcement agencies. However, the approach to improving the institution of ensuring the security of individuals involved in the performance of tasks of the investigative operations during covert and confidential cooperation, by changing and amending the CPCU[3] (Horbachov, 2017) is quite controversial, due to the different subject matter of legal regulation. Nevertheless, the Law of Ukraine "On Ensuring the Safety of Individuals Involved in Criminal Proceedings" should still be a special law[4]. Discussions about whether confidants are among the entities to which this law applies should be terminated by introducing appropriate changes to Article 2 of this Law.

Since, as stated above, a confidant may have the status of a whistle-blower in certain cases and conditions, it is advisable to investigate the protection and security guarantees provided to the whistle-blower by the ***Law of Ukraine "On Prevention of Corruption"***[5].

[1]Criminal Procedural Code of Ukraine No. 4651-VI. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.
[2]Law of Ukraine No. 3782-XII "On Ensuring the Safety of Individuals Involved in Criminal Proceedings". (1993, December). Retrieved from https://zakon.rada.gov.ua/laws/show/3782-12#Text.
[3]Criminal Procedural Code of Ukraine No. 4651-VI. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.
[4]Law of Ukraine No. 3782-XII "On Ensuring the Safety of Persons Participating in Criminal Proceedings". (1993, December). Retrieved from https://zakon.rada.gov.ua/laws/show/3782-12#Text.
[5]Law of Ukraine No. 1700-VII "On Prevention of Corruption". (2014, October). Retrieved from https://zakon.rada.gov.ua/laws/show/1700-18#Text.

Item 20 of Part 1 of Article 1 of the Law of Ukraine "On the Prevention of Corruption" defines a broader concept of a whistle-blower, which does not require, to determine the status of a whistle-blower, to report corruption to a particular addressee, but requires that such information be known to the whistle-blower in connection with their labour, professional, economic, public, scientific activity, completion of service or training or involvement in procedures prescribed by law, which are mandatory for starting such activity, completion of service or training.

The concept of a whistle-blower defined by this law differs from that defined in the CPCU1. The principal differences are that the whistle-blower under the CPCU is an individual who reported a corruption crime and a pre-trial investigation body.

If the confidant proactively turned to an operational worker, investigator (detective) with a report on possible facts of corruption crimes, stated the circumstances known to them (in oral or written form), which became known to them under certain conditions, then they can acquire the status of a whistle-blower and relevant rights and guarantees of their safety stipulated by the Law of Ukraine "On Prevention of Corruption".

Section VIII of this law stipulates that whistle-blowers and their relatives shall be protected by the state. In addition to the measures prescribed by the Law of Ukraine "On Ensuring the Safety of Individuals Involved in Criminal Proceedings", legal guarantees may be applied to them, namely in the form of the right to free legal aid and representation in court, including for protecting labour rights; as well as the right to receive remuneration.

An essential legal guarantee for protecting the rights of whistle-blowers is to limit their legal liability for disclosing confidential information in reports and statements about known facts of corruption.

This guarantee is of great practical importance, since the whistle-blower faces a difficult choice when deciding on cooperation with a law enforcement agency: on the one hand, they do not agree with the violations that they witnessed, and on the other hand, their moral principles, and sometimes legal restrictions, do not allow them to violate their obligations concerning non-disclosure of certain information. The law removes this burden from the whistle-blower by recognizing their choice to report corruption and promote law enforcement as the only legitimate behaviour.

Therewith, a substantial disadvantage of protecting the rights of a whistle-blower in comparison with the protection of the rights of a confidant is that the principle of confidentiality in relations with the confidant is absolute, and in the case of a whistle-blower, information about the whistle-blower can be disclosed in cases prescribed by law. Specifically, the pre-trial investigation body must inform the National Agency for the Prevention of Corruption about the identity of the whistle-blower. This is completely inappropriate in confidential cooperation relations. The specified norm must be excluded.

The norms of the ***Criminal Code of Ukraine***[1] (the CCU) are applied to confidential cooperation relations as prohibition norms and as norms guaranteeing the rights of confidants, namely:

– *Article 172* guarantees compliance with the whistle-blower's labour rights;

– *Article 328* prohibits disclosure of the fact and content of confidential cooperation, information about which constitutes a state secret, and ensures the principle of confidentiality;

– *Article 380* ensures the obligation of the relevant authority to take appropriate security measures against the confidant under the threat of criminal liability;

– *Article 381* guarantees compliance with security measures, ensures the principle of confidentiality;

– *Article 387* prohibits a confidant from disclosing data from pre-trial investigation and investigative operations under the threat of criminal liability and ensures the principle of confidentiality.

An essential legal guarantee of the protection of the rights of confidants involved in the performance of a special task pursuant to Article 272 of the CPCU[2] is the provisions of *Article 43* of the CCU1, which prescribe that an individual who performs a special task shall not be criminally liable for the forced commission of criminal offences, except for grave and especially serious crimes specified in Part 2 of this Article, for the commission of which this individual cannot be sentenced to life imprisonment, as well as to imprisonment for a term longer than half of the maximum term prescribed by the sanction of the Article of the special part of the CCU.

The specified legal guarantee of the protection of individuals who cooperate with the investigation on a confidential basis is also stipulated in *Part 2 of Article 14* of the ***Law of Ukraine "On the Legal Bases of Combating Organized Crime"***[3], which prescribes partial or full exemption from criminal liability and punishment of members of organized criminal groups, which contribute to exposing such groups and crimes committed by them, bringing the guilty to justice, and compensating for the damage caused.

These provisions of the law are also orienting for law enforcement officers, as they direct them to use

[1]Criminal Procedural Code of Ukraine No. 4651-VI. (2012, April). Retrieved from https://zakon.rada.gov.ua/laws/show/4651-17#Text.
[2]Ibidem, 2012.
[3]Law of Ukraine No. 3341-XII "On the Legal Foundations of Combating Organized Crime". (1993, June). Retrieved from https://zakon.rada.gov.ua/laws/show/3341-12#Text.

confidential cooperation to solve grave and especially grave crimes, as well as to counteract organized crime. This corresponds to the principle of expediency and consistency of confidential cooperation.

The procedure for mitigating liability for such crimes is defined by Chapter 35 of the Criminal Procedure Code of Ukraine (Criminal Proceedings Based on Agreements).

The specified norms of criminal and criminal procedural legislation are important from a practical standpoint because sometimes citizens, due to certain circumstances, make mistakes, establish contacts with dishonest citizens, and later become members of criminal groups and organizations. It is such individuals who need a way out of this inconvenient situation, when having committed an offence, being connected with criminals by common criminal experience, they cannot escape this trap and need the help of law enforcement officers. Such persons are the most valuable for law enforcement officers, who can offer a legal way out of a dire situation and a legal way of resocialization with the least legal consequences.

The practice of attracting confidants from the criminal environment is known to be widely used in the United States of America. M.L. Rich (2010) argues that individuals without a criminal past can still be informants, but the most effective is to involve confidants from among individuals who are not perceived as hostile by the criminal environment.

Notably, the practice of introducing "undercover agents" and conducting "special police operations" is widely used not only on the American continent, but also in Europe. Specifically, in his studies, E.W. Kruisbergen (2013) examines the practices of law enforcement agencies in the Netherlands in conducting "police special operations" to uncover the criminal activities of organized criminal groups by introducing (infiltrating) such groups of individuals who perform a special task. Therewith, the author emphasizes that this most effective, but risky method is used by law enforcement agencies in the Netherlands as an exceptional method when it is impossible to document and bring to justice the participants and leaders of organized criminal groups in other ways (Kruisbergen, 2017).

It should be noted separately that the conduct of covert investigative (detective) operations and the use of their results in criminal proceedings is regulated by the ***Instruction on the organization of the conduct of covert investigative (detective) operations and the use of their results in criminal proceedings***[1].

Items 3.9.1., 3.12, 4.10 of this Instruction factor in the principle of confidentiality of covert cooperation and, in order not to disclose the confidant, provide that the use of information obtained as a result of confidential cooperation is carried out under the condition of guaranteeing the safety of the individual who provides such information; materials that can disclose confidential individuals receiving information are not provided together with the protocol on the results of covert investigative (detective) operations; in case of implementation of security measures against employees of operative units who conducted covert investigative (detective) operations or were involved in their implementation, information about these individuals is noted in the protocol with ensuring confidentiality according to the procedure specified by law.

As noted above, this Instruction, based on the example of the Code of Practice for the Covert Human Intelligence Sources[2], can be a basic sub-legislative regulation, in which, apart from the CIDO, separate issues of organizing the implementation of confidential cooperation and the use of its results both in operational and investigative operations, and in criminal proceedings.

Apart from the specified regulations, the procedure for confidential cooperation is governed by the relevant internal regulations of the National Anti-Corruption Bureau of Ukraine, which, due to their limited access, are not covered in this paper. The specified regulations define the terminology, regulate the procedure and documentation of the involvement of individuals in confidential cooperation, determine the authorized individuals to carry out confidential cooperation, types of confidential cooperation and confidants, the procedure for carrying out confidential cooperation and the use of the results of confidential cooperation, etc. Comparing the departmental regulations of various law enforcement agencies that regulate confidential cooperation, it is established that in general they apply identical techniques and approaches to regulating these legal relations, while the main differences are in the classification of types of confidants, forms, and methods of agent activity, registration of confidential cooperation and its results, which are conditioned upon the specifics of these bodies.

During the comprehensive study and systematization of regulations that govern confidential cooperation in the field of such scientific subjects as criminal procedure, investigative activity, organization of the work of law enforcement, judicial bodies

[1]Instructions on the organization of covert investigative (detective) operations and the use of their results in criminal proceedings, approved by the Order of the Prosecutor General's Office of Ukraine, the Ministry of Internal Affairs of Ukraine, the Security Service of Ukraine, the Administration of the State Border Service of Ukraine, the Ministry of Finance of Ukraine, the Ministry of Justice of Ukraine No.114/1042/516/1199/936/1687/5. (2012, November). Retrieved from https://zakon.rada.gov.ua/laws/show/v0114900-12/page#Text.
[2]Covert Human Intelligence Sources code of practice. (2022). Retrieved from https://www.gov.uk/government/publications/covert-human-intelligence-sources-code-of-practice-2022.

and prosecutor's offices, not only gaps were found, but also areas that have relevant legal regulation and provoke further scientific research, specifically clarifying the role of the prosecutor in the implementation of confidential cooperation; comparison of the legal status of a whistle-blower and a confidant; research into the motives of confidential cooperation and the legal grounds and permissible limits of the use of "compromising" materials; interaction of law enforcement agencies, the prosecutor's office and the court in criminal proceedings based on agreements between the prosecutor and the suspect who is involved in confidential cooperation, including to perform a special task of uncovering the criminal activity of an organized group or criminal organization.

■ Conclusions

Thus, the article covered several theoretical approachThe present study clarified the current state of regulatory support for confidential cooperation and established its insufficient regulation. The regulations governing these relations were systematized, and these acts were classified by legal force. It was established that the main regulation that governs confidential cooperation is the Law of Ukraine "On Investigative Operations", which is outdated and does not correspond to the real relations that have developed in society between authorized employees of law enforcement agencies and confidants, the challenges and threats that law enforcement officers face and society. The study identified gaps and discrepancies in the legislation, established the competition of norms governing the institute of whistle-blowers and the institution of confidential cooperation. It is proposed to resolve these discrepancies and fill the gaps by adopting the Law of Ukraine "On Investigative Operations" and the Law of Ukraine "On Legal Bases of Combating Organized Crime" in new editions, as well as by introducing relevant changes to the Criminal Procedural Code of Ukraine. During the preparation of the specified draft laws, it is proposed to consider the practices of the legal regulation of confidential cooperation of Great Britain and to regulate confidential cooperation in more detail in the joint Instructions on the organization of covert investigative (detective) operations, investigative measures and confidential cooperation and the use of their results in criminal proceedings and investigative operations. The need for the same regulation of security issues and guarantees of protection of confidants both at the stage of operative and investigative activity and at the stage of criminal proceedings was emphasized. Despite the insufficient statutory regulation of confidential cooperation, this type of activity of the National Bureau has a suitable legal basis, as the gaps in the legislation are filled by analogy of right and analogy of law, as well as by relevant departmental regulations. Therewith, it was discovered that even the current legislation allows effectively applying confidential cooperation to counter crime, as well as to ensure proper legal, social, and physical protection of confidants. However, it is possible under the conditions of admission to confidential cooperation of operatives, investigators, and prosecutors who have the appropriate theoretical and practical training and relevant experience, as well as under the conditions of proper organizational and financial support for this type of activity.

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Правова основа інституту конфіденційного співробітництва в Національному антикорупційному бюро України

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■ **Анотація**. Актуальність теми зумовлена тим, що спеціальне законодавство, яке регулює оперативно-розшукову діяльність, боротьбу з організованою злочинністю, забезпечення безпеки осіб, які співпрацюють з правоохоронними органами, прийняте у 1992–1994 роках, не відповідає умовам сучасного життя (лібералізації та цифровізації суспільства; змінам у банківському та фінансовому секторі; легкості перетину кордонів тощо) та викликам, які стоять перед правоохоронною системою (транснаціональна злочинність; розвиток технологій, які ускладнюють технічне зняття інформації; використання криптовалют і квазігрошей тощо). Основним недоліком цього законодавства є неврегульованість конфіденційного співробітництва як основного інструменту боротьби зі злочинністю. Метою роботи є дослідження стану правового забезпечення конфіденційного співробітництва на прикладі діяльності Національного антикорупційного бюро України; виявлення прогалин, суперечностей і колізій; визначення шляхів удосконалення законодавства. Використано загальнонаукові, логічні та загальноправові методи. У роботі проаналізовано стан наукового дослідження теми, систематизовано чинне законодавство України, здійснено зіставлення його окремих норм. Основні результати дослідження полягають у тому, що правову основу конфіденційного співробітництва вперше розглянуто як систему правових норм міжгалузевого правового інституту, не обмежуючись виключно процесуальним аспектом чи сферою застосування. Уперше досліджено функціонування інституту конфіденційного співробітництва в Національному антикорупційному бюро України. Констатовано відсутність належного нормативно-правового регулювання на рівні законів України та несистематизованість наявних норм, що створює ризики зловживань, порушення прав і свобод громадян. Зауважено, що прогалини в законодавстві заповнені відомчими нормативними актами відповідних правоохоронних органів з відповідним грифом секретності. Розкрито сутність і призначення конфіденційного співробітництва, проаналізовано норми права, закріплені в різних законах, особливості їх застосування, предмет їх правового регулювання, а також відмінності в правовому регулюванні співпраці з конфідентами та викривачами. Практична цінність результатів дослідження полягає в тому, що їх можуть використовувати юристи-практики, зокрема слідчі, прокурори й адвокати, для яких інститут конфіденційного співробітництва є новим з огляду на таємні форми й методи його функціонування

■ **Ключові слова**: конфідент; викривач; інформатор; наставник; агентурна розвідка

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