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## SPIS TREŚCI

- 3 Peculiarities of Survey of Children Victims of Domestic Violence  
*Anna Sukharieva*
- 10 Teleological conditionality of the collection, examination and use of evidence by the prosecution party in criminal proceedings  
*Artem Kovalenko*
- 19 Civil-military administrations as the subject of counteraction to a crime on the territory of Joint Forces Operation  
*Bogdan Lutsenko*
- 26 Procedure of voluntary association of territorial communities in Ukraine  
*Nataliia Brovko, Svitlana Poliarush-Safronenko*
- 34 The assurance of internal communication into the system of public diplomacy  
*Daria Mostova*
- 42 Constitutionalization of direct democracy in the context of globalization  
*Mosondz Serhii, Yanchuk Artem, Mazur Tamara*
- 47 European principles of policing and tasks for their implementation in Ukraine  
*Volodymyr Chumak*
- 56 Problematic issues of preventive activities of agencies and units of the National Police to resist and prevent bullying  
*Dmytro Sorochan*
- 62 Function of the Cabinet of Ministers of Ukraine in the field of scientific and technical activity  
*Viktoriia Tarasenko*
- 70 Human Rights Guaranteeing as the Priority in the Activities of Police Agencies in Ukraine  
*Olha Bezpalova*
- 77 Judgment mediation: essence and types  
*Victor Makoviy*
- 84 Importance of legal language for the stability of legislation  
*Viktor Lazariev*
- 91 System of Forensic Investigation of Documents  
*Viktor Sezonov*

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# Peculiarities of survey of children victims of domestic violence

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## Summary

In the article, the author revealed the most pressing issues regarding the survey of children victims of domestic violence and described in detail the procedure for interviewing minors. It has been established that the process of obtaining testimony from underage victims of domestic violence has certain difficulties. A list of grounds that are undesirable to use when communicating with children is identified, recommendations are provided for interviewing children victims of violence.

The main conclusions about the importance of the process of questioning children as one of the main evidence bases, which will allow a comprehensive, objective and unmistakable establishment of the truth in the case. The main types of violence against children, subjects who commit violence against children, dangerous consequences for the society where domestic violence against children is actively manifested are characterized.

It is established, on what features it is necessary to pay attention to process of interrogation of the child on what reliability of the received information depends. Attention is drawn to the fact that the procedure of interviewing children victims of domestic violence is regulated not only by national legislation but also by international law.

The author states that in accordance with international standards and world practice, the interview of a child who is a victim of violent crimes, domestic violence or has witnessed violence should be conducted in a friendly atmosphere for the child, where she feels protected and comfortable. The article describes the "green room" as a specially equipped room for interviewing such children.

**Keywords:** domestic violence, children's survey, "green room", violence against children

Among the scientists who to some extent conducted research on children victims of domestic violence should be noted such as: D. Puras, O. Kalashnik, O. Kochemyrovskaya, T. Tsyuman, O. Kovaleva, V. Bondar, T. Wojciech, V. Melnychuk, V. Paul, E. Lukyanov, T. Matyushkova. However, these studies either partially reveal the specifics of the survey of children victims of domestic violence, or do not take into account the provisions of the updated legislation in this area. Today there is a need to

study features of psychological and tactical methods that application the survey children who are victims of domestic violence.

In this regard, the purpose of this article is to identify the causes of violence against children, provide sound suggestions for improving techniques for effective and successful interviewing of children victims of domestic violence, to explain in more detail the algorithm of interviewing a child victim.

Violence - intentional physical or psychological influence of one person on another, against his will, which causes physical, moral, property damage to this person, or involves the threat of causing such damage for criminal purposes. Such influence on a person is carried out by committing certain intentional acts. The person who commits violent acts, is aware of their nature, anticipates the consequences of these acts and wants or knowingly allows them to occur<sup>1</sup>.

Domestic violence - any intentional acts of physical, sexual, psychological or economic orientation of one family member in relation to another family member, if these actions violate the constitutional rights and freedoms of a family member as a person and a citizen, and inflict moral damage on him, harm to his physical or psychological health<sup>2</sup>.

A special place among subjects who were victims of violence in the family have children. Violence and child abuse are becoming more common. This problem should be solved as each family individually and society of the whole. The state, headed by public authorities, should not stand aside, but protect this category of children. Children living in abusive families are inevitably injured. The consequences negatively affect the development of physical and psychological health.

Violence against children is physical, psychological, sexual violence or lack of upbringing and care for children by parents, guardians or strangers caring for children. Violence against children can include any act of violence, neglect, abuse or inability, unwillingness, or inability to raise and care for children from parents or others, resulting in actual or potential harm to the child. It can be observed in the family, at the child's place of residence, on the street or in organizations, schools, or communities with which the child interacts<sup>3</sup>.

Most domestic violence is perpetrated by a husband against his wife. It is common for a father to abuse his or her minor children. However, violence can be perpetrated by both mother and father. If the mother herself is a victim of violence, she may commit negative, violent acts against her child as a compensatory mechanism for her humiliation by her husband. And in the future, children who grew up in an atmosphere of violence build their relationships with their parents based on the same violence.

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<sup>1</sup> Shemshuchenko U., Legal Encyclopedia of 6 tons. Ukrainian Encyclopedia them. M.P. Bazhana, Kyiv 2002, Art. 720 - ISBN 966-7492-04-4.

<sup>2</sup> <http://zakon4.rada.gov.ua/laws/show/2789-14>

<sup>3</sup> Wikipedia. URL: [https://uk.wikipedia.org/wiki/Violence\\_for\\_children](https://uk.wikipedia.org/wiki/Violence_for_children)

For society, it is dangerous because children who were victims or witnesses of violence in the family, transfer count this negative experience in their lives. Such a family raises a potential aggressor or victim for society - a person who considers it the norm that others can be humiliated and "if necessary" beaten.

In the event of an appeal, notification of a child in difficult life circumstances because of abuse or threat to his or her life or health, the Children's Service together with a unit of the National Police, a social worker or other social service provider (if there is a possibility of involvement), a representative of the health care institution, acting within its powers, immediately assesses the level of safety of the child. Other entities may be additionally involved in such an assessment within the scope of their authority.<sup>4</sup>

If during the assessment of the child's safety level the facts of threat to his life or health are revealed, such child should be immediately sent to a health care institution for medical examination of the child, provision of necessary medical care, if necessary, treatment in hospital. According to the Cabinet of Ministers of Ukraine of 24 September 2008 g. N 866 on " On Activities of guardianship for the Protection of the child " issue should be resolved on the temporary placement of the child in a family of relatives, friends, family patronage educator .

Particular attention should be paid to the peculiarities of the method of interviewing a child who has experienced domestic violence. Because the child is in a depressed, intimidated, stressful state after the violence against him, the person who interviews such a child must show him his attention and understanding. It is important to reassure the child that he or she will be assisted and that no one will accuse him or her of violence.

The process of interviewing children is a more complicated procedure than it seems from the outside. Given that children of different ages have certain levels of development; this can lead to misrepresentation. Therefore, it is important that experienced psychologists, representatives of social services for children and juvenile prevention workers are present during the interview of this category of persons. Information on domestic violence can be obtained from a variety of sources, but information obtained from a child victim is often the only main evidence in a case.

It is important to remember that communicating with a child separately from the parents increases the likelihood that the child will tell a police officer the truth about his or her past fears. If a child's interview is conducted in the presence of parents, there is a risk that the child will say what his or her parents want to hear, rather than what actually happened

During interrogation, it is necessary to pay attention to features of the child:

- how the child is exposed to suggestion;
- how easy it is to get a child confused;

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<sup>4</sup> The procedure for ensuring social protection of children in difficult life circumstances, including children who have suffered from abuse "from 1.06.2020 №585

- how often the child tells a lie;
  - which survey strategy is the most effective;
  - what exactly causes changes in testimony;
  - why it happens that some talk more about their experience, and others
- less.

The reliability of the information obtained depends on:

- the level of development of the child;
- features of the phenomenon;
- survey methods.

During the survey it is necessary to take into account:

- it is desirable to interrogate the child as soon as possible after the violence committed against him;
- keep in mind that the child's emotions are related to the trauma, and interview him constantly immersed in retro trauma;
- the child better remembers non-verbal information that he can tell during the survey and which he needs to help verbalize;
- it is not necessary to avoid frequent surveys of the child, as this may lead to distortion of information;
- remember that stress affects the child's memory, so it is necessary to pay attention to how violence has affected the child's condition, as it will depend on the indications, and the effect of stress depends on the situation and affects the brain.

When communicating with children who have been victims of domestic violence, one of the main tasks of the interviewer is to establish a trusting relationship between him and the child. Given the child's mental instability and trauma, most children cannot tell adults what has happened to them because they will not be believed. The child always perceives the abuser as a stronger and more authoritative person, so he believes that the version of the aggressor will be perceived, but it is not. Another feature of communication is the manifestation of compassion. The child should feel that the person interviewing them really regrets what happened, that they are sympathized with and understood.

It is always important to remember that a child who has been abused often feels guilty about what happened to them. Therefore, an adult should not condemn a child, but on the contrary create safe and comfortable conditions when telling the child about the circumstances of the case, support and approve of the child's behavior, show a desire to find a way out of a situation of violence. If the interviewer helps to overcome the child's fears, it will allow to obtain as much information as possible about the negative events that happened to the child.

When communicating with a child who has suffered from violence, it is unacceptable<sup>5</sup>:

- "Read notations";
  - distract from talking to the child;
  - promise a reward for providing information;
  - to force to answer, to insist on telling the truth, even if they are sure that the child is cheating; require detailed information if the child does not tell everything that you think he knows for sure;
  - to provoke the child by asking how she would like to punish the offender (s), which, in her opinion, should be a fair punishment for what was done;
  - condemn any of the answers heard from the child. Correct the "wrong answer".
- In this case, additional questions will help;
- make assumptions about who is to blame;
  - to show irritation, interrupt, adjust the child;
  - to ask the child why the criminal harmed her. The child does not realize this and often blames himself;
  - to give hope for what they are not sure of, for example, "nothing bad will ever happen to you again", or "such actions will never happen again";
  - promise your child that you are not going to tell anyone about the things you hear from her. Information on the case may need to be passed on to other police agencies or bodies;
  - allow any manifestation of contempt for the victim. Show understanding and respect, perceive the affected child as he is.

In addition to national legislation, the procedure for interviewing children victims of domestic violence is also regulated by international law. Thus, according to paragraph 1 of Article 35 of the Council of Europe Convention for the Protection of Children against Sexual Exploitation and Sexual Violence of 25.10.2007, which was ratified by the Verkhovna Rada of Ukraine in 2012 and is part of national legislation, countries that have ratified the Convention must necessary legislative or other measures to ensure:

- conducting interviews of the child without unreasonable delay, immediately after the notification of the facts to the competent authorities;
- conducting surveys of the child, if necessary, in a specially equipped and adapted for this purpose room;
- conducting surveys of the child by a person specially trained for such purposes;
- conducting all interviews of the child by the same persons, if possible and where appropriate;
- as few interviews as possible and to the extent that this is essential for the purposes of criminal proceedings;

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<sup>5</sup> V. Andreenkova, V. Baidyk, T. Wojciech, O. Kalashnik etc., Prevention and counteraction to manifestations of violence: activity of educational institutions, Educational-methodical manual, Kyiv 2020, FOP Nichoga SO, art. 196

- the possibility of accompanying the child by his or her legal representative or, where appropriate, by an adult of his or her choice, unless a reasoned decision is made in respect of that person.

We fully agree with T.A Malovana that during the interrogation of a child, the choice of the place of interrogation plays a very important role, as conducting an interrogation in the office of a police officer can have negative consequences both for the child and for the case as a whole. The child may be closed, not provide complete evidence that is important for establishing the truth in the case, and most importantly may receive additional psychological trauma, which will harm his physical and psychological health.<sup>6</sup>

In accordance with international standards and world practice, the interview of a child who is a victim of violent crimes, domestic violence or has witnessed violence should be conducted in a friendly atmosphere for the child, where he feels protected and comfortable. Such a place is a specially equipped room, which is called - "green room". Such rooms are equipped, as required by international standards, with comfortable furniture for children, the necessary video and audio recording equipment, as well as methodological materials for working with children.

The main purpose of conducting the interview in such a room is to reduce re-traumatization of the child during the interview due to special techniques and comfortable atmosphere, as well as technical equipment that allows video recording of interrogation and further use this video for investigation without re-interrogation.

Thus, the survey of a child has a special, clearly formalized by law process. However, in addition to following the appropriate legislative procedure for interviewing children victims of domestic violence, it is necessary to have a sufficient level of communicative knowledge, be able to focus on age and psychological characteristics of the child victim when communicating with her, take into account the emotional stress with the trauma of our past. Conducting a survey requires tact, restraint, a culture of communication. Considering the specifics of the development of the child's psyche can significantly help in establishing the truth in the case.

It is necessary to focus on the place of the interviews, not to treat it formally, as this can help to establish psychological contact and obtain the necessary information, a place where the child will feel protected and comfortable. Such a place is a specially equipped room, which is called - "green room".

On how well will be established psychological contact with a child who has suffered from domestic violence are tactical and psychological techniques apply, on depends achieve the main goal - getting complete and accurate information and providing psychological assistance to child victims of domestic violence.

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<sup>6</sup> T. Malovana, The place of interrogation of a child victim of a crime in criminal proceedings. Bulletin of criminal proceedings №3 / 2015 , p. 178-185

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<http://zakon4.rada.gov.ua/laws/show/2789-14>

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Malovan T. (2015), Place of interrogation of a child victim of a crime in criminal proceedings, Bulletin of Criminal Procedure №3, p. 178-18

Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse of 25 October 2007

# Teleological conditionality of the collection, examination and use of evidence by the prosecution party in criminal proceedings

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## Summary

The article is devoted to the study of the patterns of teleological (target) conditionality of the collection, examination and use of evidence by the prosecution party in criminal proceedings. Teleology is considered by the author as a doctrine of purpose, expediency, according to which human activity is directed to a specific goal and subordinated to it. It is emphasized that in the legal doctrine the laws of teleology are reflected in the principle of expediency. In criminal procedural law, the principle of expediency can be considered in a broad sense (as the focus of the participants in criminal proceedings to achieve general goals, objectives of the criminal proceeding) and in the narrow sense (as the focus of the participants in the proceedings to achieve their own procedural goals).

It is proved that the goals (tasks) of representatives of the prosecution party are specified due to the procedural functions of such a subject, its procedural interest, the situation in criminal proceeding at its given stage, and a number of other factors. The implementation of such tasks may be adversely affected by the need to comply with official and unofficial indicators of detection and investigation of criminal offenses, significant workload, professional deformation, low level of education or insufficient personal experience of these persons.

It is established that within the evidentiary activity the representatives of the prosecution party carry out procedural actions, make procedural and tactical decisions, which are conditioned by the goals (tasks) of such subjects. The evidentiary activity of the representatives of the prosecution party is aimed at the realization of the public (social) interest and their procedural functions.

**Keywords:** criminal proceedings, evidence, collection, examination, use, subjects of proving, prosecution party, procedural functions, teleology.

The development of practice-oriented recommendations for the collection, examination and use of evidence in criminal proceedings requires a preliminary study of the specifics of such activities. Evidential activity that is carried out by authorized persons in criminal proceedings is, among other things, conditioned by the tasks (goals) that such persons face in the proceedings. These tasks derive from the general tasks of criminal proceedings defined by the CPC of Ukraine and are specified by a

number of factors (procedural status and interest of the subject of proving, the stage of the proceeding and the situation that has developed in it, professional and moral qualities of the person, etc.). The above gives grounds to assert the teleological (target) conditionality of proving in criminal proceedings, which has its own patterns and requires a separate study.

The specifics and determination of the procedural activity of the participants in the criminal proceedings were studied by O. Baev, O. Bululukov, I. Glovyuk, I. Ivasyuk, O. Kaplina, V. Koldin, O. Krestovnikov, S. Patyuk, V. Shevchuk, V. Shepitko and other scientists. Legal and practical problems of carrying out evidentiary activity in criminal proceedings were reflected in the works of V. Vapnyarchuk, I. Glovyuk, O. Kaplina, H. Slyusarchuk, O. Starenkiy, A. Stepanenko, O. Shilo, O. Yanovska and others. However, the main patterns that characterize the teleological conditionality of the collection, examination and use of evidence in criminal proceedings, have not received sufficient attention in the literature to date, which justifies the relevance of this article.

The purpose of the article is to substantiate the teleological (target) conditionality of the collection, examination and use of evidence by the prosecution party in criminal proceedings.

Criminal proceeding in general, and the procedural activities of its participants, are directly related to evidentiary activities. We agree with V. Vapnyarchuk that the subjects of proving in criminal proceeding are the court, the investigating judge, the parties to the criminal proceeding (paragraph 19 of Article 3 of the CPC of Ukraine), the victim, the civil plaintiff (their representatives, legal representatives), civil defendant (his representative), a representative of the legal entity in respect of which the criminal proceeding is conducted<sup>7</sup>. It is these participants in the criminal proceeding who take an active part in establishing the circumstances of the criminal offense and, based on the evidence available in the proceeding, take procedural actions, make procedural and tactical decisions.

Each of these entities has its own statutory tasks and pursues its own goals while performing its functions in the proceeding. We consider it necessary to investigate the connection between the specifics of the evidentiary activity of the representatives of the prosecution party and the tasks, the goals they have, through the prism of the philosophical concept of teleology.

In special literature, teleology is defined as the doctrine of purpose, expediency, according to which human activity is directed to a specific goal and subordinate to it, as well as the consideration of things, phenomena in terms of expediency as opposed to causality, or as a supplement to it. The teleological approach focuses on the question – for what purpose one or the other process is carried out<sup>8</sup>. In the legal doctrine, the laws of teleology are reflected in the principle of expediency.

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<sup>7</sup> Vapnyarchuk V., Theory and practice of criminal procedural proof.: monograph. Kharkiv: Yurait, 2017. p. 408

<sup>8</sup> Shynkaruk V., Encyclopedic Dictionary of Philosophy / H. Skovoroda Institute of Philosophy of the NAS of Ukraine. Kyiv: ABRIS, 2002. p. 742

Expediency is one of the key principles of legal responsibility, where the mentioned principle consists in conformity of measures of legal responsibility to its purposes<sup>9</sup>. In criminal law, the principle of expediency is revealed through such key characteristics as the need to achieve the goals and objectives of criminal law, the choice of those criminal-law measures that may achieve the goals and objectives of criminal law and the relevance of criminal-law measures to specific circumstances and trends in criminal law<sup>10</sup>.

Within the criminal procedural law, this principle was not singled out by the legislator as an independent one. However, a systematic analysis of the provisions of criminal procedure legislation makes it possible to assert significant impact of the named principle on criminal proceedings and procedural activities of its participants. We agree with I. Ivasyuk, who believes that the principle of expediency is inherent in the criminal process of any state, including the Ukrainian one. According to the quoted author, the pre-trial investigation and trial should be rational, aimed to perform the tasks of the criminal process most effectively on the one hand, and to ensure respect for the rights and freedoms of its participants on the other<sup>11</sup>.

The principle of expediency in criminal proceedings can be considered in a broad and narrow sense. In a broad sense, this principle directs the activities of participants in criminal proceedings to implement the general tasks of criminal proceedings. Such tasks form the purpose and the goals which should be reached as a result of the procedural resolution of any criminal-legal conflict.

Most generally, tasks of criminal proceedings are set out in Art. 2 of the Criminal Procedure Code of Ukraine. These include the protection of the individuals, society and the state from criminal offenses, protection of the rights, freedoms and legitimate interests of participants in criminal proceedings, as well as ensuring prompt, complete and impartial investigation and trial so that everyone who has committed a criminal offense is prosecuted to the extent of his guilt, no innocent person has been accused or convicted, no person has been subjected to unreasonable procedural coercion and that proper legal procedure has been applied to each participant in the criminal proceedings<sup>12</sup>. In order to achieve the stated goals, only legal means should be chosen (parts 1, 2 of Article 9 of the CPC of Ukraine), which demonstrates the inseparable connection between the principle of expediency and the principle of legality.

In particular, all procedural decisions and procedural actions in criminal proceedings should be expedient. For example, in accordance with Part 1 of Art. 223 of the CPC of Ukraine, the purpose of all investigative (search) actions is to obtain

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<sup>9</sup> General Theory of Law: edited by Petrishin O. Kharkiv: Law, 2020. p. 568

<sup>10</sup> Stepanenko O., The principle of expediency in the criminal law doctrine and criminal legislation of Ukraine: Thesis. Cand. Sc. (Jurisprudence): 12.00.08. Odessa, 2017. p. 249

<sup>11</sup> Ivasyuk I., Expediency as a philosophical and legal category and its manifestation in the system of principles of criminal proceedings. Our law. 2013. №. 8. p. 122-127

<sup>12</sup> Criminal Procedure Code of Ukraine. Code of Ukraine; Law, Code 13.04.2012 № 4651-VI // Law of Ukraine / Verkhovna Rada of Ukraine. URL: <http://zakon.rada.gov.ua/laws/show/4651-17>

(collect) new evidence and verify already obtained ones in a particular criminal proceeding. The factual basis for any investigative (search) action is the internal belief of the authorized subject about the possibility of achieving the purpose of such action. According to Part 1 of Art. 94 of the CPC of Ukraine, such a belief must be based on a sufficient set of appropriate, reliable and admissible evidence in the specific proceedings.

In our opinion, the narrow understanding of the principle of expediency in criminal proceedings is connected with the differentiation of procedural functions and tasks of the participants in criminal proceedings. This understanding is based on the focus of each participant in the criminal process on the implementation of his personal tasks, achieving his own goals. S. Patyuk rightly emphasizes that given in Art. 2 of the CPC of Ukraine tasks are general, but there are also tasks that are inherent in certain stages of criminal proceedings, to the parties to criminal proceedings, etc.<sup>13</sup> It can be argued that the tasks of all subjects of proving in criminal proceedings are in one way or another aimed at the implementation of the general objectives of the proceedings and derive from them. These tasks are specified due to the procedural function of the subject, its procedural interest, the situation in criminal proceedings at its appropriate stage, and a number of other factors that need to be investigated.

Scholars define proving as the activity of subjects of criminal proceedings on collection and examination (verification and evaluation) of evidence, formation of their own positions on the basis of such evidence and implementation of these positions according to the criminal procedural law<sup>14</sup>. Evidence is collected and verified by carrying out the procedural actions provided by law. The result of proving (the use of evidence), in accordance with Art. 94 of the CPC of Ukraine, is to make certain procedural decisions in criminal proceeding. In this context, procedural decisions should be divided into intermediate ones (for example, about subsequent procedural actions in a pre-trial investigation or trial) and final ones (closing criminal proceedings, drawing up an indictment and sending it to court, final court decisions, etc.). Any procedural decisions are a necessary part of the procedural activities of authorized entities and are aimed at achieving their objectives in criminal proceedings.

In addition, within the evidentiary activity, authorized persons (investigator, interrogator, prosecutor) make tactical decisions, use tactical techniques and other tactical means to achieve the purpose of the procedural action or the tasks of the proceeding as a whole. V. Bernaz and S. Smokov note that procedural decisions consist in the choice of ways and means of achieving both general and specific tasks of the investigation. Such decisions, in contrast to procedural ones, do not directly cause emergence, change or termination of procedural relations, but affect the situation of

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<sup>13</sup> Patyuk S., Tasks of criminal proceedings. Scientific Journal of the National Academy of Internal Affairs. 2013. № 1. p. 95-101

<sup>14</sup> Kaplina O., Shilo O., Criminal proceedings. Educational and methodical manual, Kharkiv: Pravo, 2019. p. 584

the investigation in order to resolve it<sup>15</sup>. O. Bululukov writes that the adoption of tactical decisions by investigators is conditioned by the need to obtain evidentiary information and to identify the person who committed the criminal offense<sup>16</sup>. According to V. Bernaz, a tactical decision consists of the goal for which it is determined, the subject or subjects of its adoption and the means to achieve the goal [11, p. 45]. Thus, we can conclude that the tactical decisions of the investigator, interrogator and prosecutor are characterized by an obvious teleological (target) conditionality.

Within the framework of the proposed research, the process of goal-setting in criminal proceedings and the impact of the goals set for the representatives of the prosecution party in their evidentiary activities are of scientific interest.

The specific tasks of participants in criminal proceedings are primarily determined by their procedural functions. For the subjects of proving, evidentiary activity is one of the main components of their procedural functions.

I. Glovyuk defines criminal procedural functions as areas of criminal procedural activity, which are characterized by the presence of their own tasks, at the achievement of which the activities of the subjects are aimed. The criminal procedure function determines the rights and responsibilities of the subject of the process, determines its purpose and role [12, p. 40]. According to O. Baev, the criminal procedural decisions of the prosecutor, the investigator are determined by their functions in criminal proceedings and are aimed at ensuring the most optimal, rational criminal prosecution. Decisions of the defense, in his opinion, have the opposite direction and largely determine the entire course and complexity of criminal proceedings at all stages.

Evidentiary activity is a large part of the procedural functions of the prosecution party. In accordance with Part 1 of Art. 92 of the CPC of Ukraine, one of the responsibilities and, consequently, the tasks of the prosecutor, investigator and interrogator<sup>17</sup> is to prove the circumstances provided for in Article 91 of the CPC of Ukraine. Provisions of Art. 36, 40, 40<sup>1</sup>, part 2 of Art. 93 and a number of other norms of the CPC of Ukraine provide the listed subjects with a wide range of powers aimed at the implementation of evidentiary activities in criminal proceedings.

It seems that a correct understanding of the evidentiary tasks of the prosecution party is impossible without an analysis of the impact of the principle of publicity provided for by the Art. 25 of the CPC of Ukraine. According to the latter, the prosecutor, investigator (and interrogator) are obliged within their competence to

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<sup>15</sup> Bernaz V., Smokov S., *Investigator's decision (forensic, procedural and psychological aspects)*: monograph. Odessa: Publishing House of the Odessa Law Institute, 2005. p. 151

<sup>16</sup> Bululukov O., *Optimization of tactical decisions: subjective and objective conditionality*. Problems of legality. 2016. №. 133 p. 166-177

<sup>17</sup> Systematic interpretation of the cited norm in conjunction with Art. 40<sup>1</sup> of the CPC of Ukraine and other provisions governing the procedural status of the interrogator, allow us to conclude unequivocally that the duty and task of proving rests with him as well.

initiate a pre-trial investigation in each case of direct detection of signs of a criminal offense (except when criminal proceedings can be initiated only on the basis of the victim's application) or in cases of receiving statements (notifications) about the commission of a criminal offense, as well as to take all measures provided by law to establish the event of the criminal offense and the person who committed it.

Thus, during the pre-trial investigation, the investigator and interrogator under the procedural guidance of the prosecutor are obliged to carry out evidentiary activities, which is to establish and confirm circumstances provided by Art. 91 of the Criminal Procedure Code of Ukraine in order to implement the task of ensuring a prompt, complete and impartial investigation and other general tasks of criminal proceedings. In court hearing, the prosecutor upholds the public (state) prosecution by submitting court evidence that confirms the position set out in the indictment in order to implement the task of ensuring a prompt, complete and impartial court hearing and other general tasks of criminal proceedings.

These subjects implement the evidentiary tasks by taking procedural actions, making procedural and tactical decisions required by the situation in the proceedings. In addition, these tasks, and hence the means of solving them, vary depending on the stage of the proceedings.

Specific goals achieved as a result of the evidentiary activity of the representatives of the prosecution party are dictated by their procedural functions: prosecution, pre-trial investigation, procedural guidance of the pre-trial investigation, operative support of the pre-trial investigation, etc. However, I. Glovyuk rightly notes that at the stage of pre-trial investigation it is difficult to fully differentiate criminal procedure functions, because in accordance with Part 2 of Art. 9 of the CPC of Ukraine, the prosecutor, investigator (and interrogator) are obliged to thoroughly, fully and impartially investigate the circumstances of criminal proceedings, identify both accusatory and exculpatory evidence and circumstances, which mitigate or aggravate the punishment, provide a proper legal assessment and ensure the adoption of lawful and impartial procedural decisions.

Special attention should be paid to the evidentiary activities of operatives as representatives of the prosecution party at the stage of pre-trial investigation. According to Art. 41 of the CPC of Ukraine, as a general rule, operatives do not have procedural independence, cannot carry out procedural actions in criminal proceedings on their own and can't initiate or apply to the investigating judge or prosecutor. The mentioned subjects may carry out investigative (search) actions and covert investigative (search) actions in criminal proceedings only on the obligatory written instructions of the investigator, prosecutor, while using the powers of the investigator. Thus, in cases of collection or examination of evidence by the officers of the operational units, the subject of proving is the person who gave the relevant order, while the employees of the operational units themselves perform an auxiliary

evidentiary function. However, operatives do make their own tactical decisions when carrying out evidentiary activities.

Another criterion that forms the specific objectives of the evidentiary activity of the participants of criminal proceedings is their procedural interests. Procedural interest can be defined as a conscious desire of the subject of criminal proceedings, which is due to the substantive interest or the need to implement criminal procedural competence/criminal procedural obligation in order to achieve the objectives of criminal proceedings and aimed at effectively meeting public, state or private needs. These interests are carried out in criminal proceedings by using legal remedies provided by criminal procedure law<sup>18</sup>.

O. Shpotakivska believes that public (social) and personal interests are most characteristic of the criminal process. The quoted author connects the public interest with the tasks of criminal proceedings, and its implementation – with the activities and powers of officials conducting criminal proceedings. In her opinion, personal interests are primarily inherent in persons who are directly interested in the results of the proceedings. Such persons are the suspect, accused person, victim, civil plaintiff, civil defendant<sup>19</sup>. We believe that the representatives of the prosecution party, as well as the investigating judge and the court in criminal proceedings do not have their own criminal procedural interests and instead are guided by the public interest, which is expressed in the previously analyzed Article. 25 of the Criminal Procedure Code of Ukraine.

Thus, the evidentiary activity of the representatives of the prosecution party is aimed at fulfilling their tasks in criminal proceedings and at realization of public (social) interest. To do this, such persons must choose the most effective and rational ways, means of gathering and examining evidence, make appropriate and legitimate tactical and procedural decisions in order to comprehensively, fully and impartially investigate the circumstances of criminal proceedings.

However, professional deformation, the need to meet formal and informal indicators of detection and investigation of criminal offenses, a significant workload may force the prosecution to focus on the evidence of an accusatory nature and ignore the exculpatory ones, to abuse procedural rights or violate the requirements of procedural law in the course of evidentiary activities. The literacy of the means of proof is also influenced by the level of education and personal experience of such an authorized person.

Summarizing the above, it can be concluded that the investigator, interrogator and prosecutor choose certain methods, means of collecting and examining evidence, as well as make tactical and procedural decisions in view of their goals (objectives) in

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<sup>18</sup> Glovyuk I., *Criminal-procedural functions: theoretical and methodological principles and practice of implementation*: Thesis. Cand. Sc. (Jurisprudence): 12.00.09. Odessa, 2017. p. 602

<sup>19</sup> Baev O., *Criminal procedural decisions and decisions in criminal proceedings*. Scientific Journal of the Voronezh State University. 2009. № 1. p. 329-340

criminal proceedings. The tasks of such subjects originate from the general tasks of criminal proceedings and are specified due to the procedural status, procedural interest of the subject, his personal and professional qualities, the stage of the proceedings and the situation in it.

The evidentiary activity of the representatives of the prosecution party is aimed at the realization of the public (social) interest and their procedural functions. These persons must choose the most effective and rational ways, means of gathering and examining evidence, make appropriate and legitimate tactical and procedural decisions in order to comprehensively, fully and impartially investigate the circumstances of criminal proceedings. The implementation of such tasks may be adversely affected by the need to comply with official and unofficial indicators of detection and investigation of criminal offenses, significant workload, professional deformation, low level of education or insufficient personal experience of these persons.

Prospects for further research in this area are related to clarifying the patterns of teleological (target) conditionality of the collection, examination and use of evidence by the defense party, victims and other subjects of proving in criminal proceedings.

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# Civil-military administrations as the subject of counteraction to a crime on the territory of Joint Forces Operation

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## Summary

The article is dedicated to determine the role of civil-military administrations in counteracting crime on the territory of the Joint Forces Operation (hereinafter the JFO).

The state of unannounced war forces Ukrainian authorities to take "hybrid" measures not only to ensure national security and defense, rebuff and deterrence of armed aggression of the Russian Federation in Donetsk and Lugansk regions, but also measures to provide support to business entities and persons living in the area of the JFO. The existence and activity of civil-military administrations is one of such measures, they are entrusted with simultaneous solution of civil, military and law enforcement tasks.

The study of the legislation regulating the activities of civil-military administrations gives grounds to confirm that this body by its powers carries out counteraction to crime at two levels: general-social and special-criminological.

Countering crime at the general-social level civil-military administrations exercise through their powers in such areas as economic, budgetary, social, education and culture, defense and national security, civil protection, law and order, urban development, property management, environmental protection, regulation of land relations. The powers in the above spheres do not provide for combating crime as the main task of civil-military administrations but create conditions for self-realization of individual and positive development of the population, definitely affecting the level of crime both in the region and in the country in general.

The rights vested in civil-military administrations give them the opportunity to directly influence crime in order to reduce it on a special criminological level, specifically: limitation of traffic and pedestrians, checking documents, conducting inspections, establishing restrictions on arms trading, as well as its withdrawal and others.

Thus, civil-military administrations, within their rights and powers, have civil, military and law enforcement nature, indirectly and directly affect the level of crime in the territories entrusted to them.

**Key words:** Joint Forces Operation, counteracting crime, civil-military administrations.

Since 2014 Ukraine has been in a state of unannounced war. This situation is a regular result of the lack of effective public administration since independence and meets modern economic, political, security, defense and military realities. However, our country, despite the existence and periodic aggravation of the armed conflict, carries out possible measures to ensure national security and defense, rebuff and deterrence armed aggression of the Russian Federation in Donetsk and Luhansk regions, while respecting the avoidance of escalation of the situation, saving human lives and preventing destabilization in the region and the country as a whole. Nowadays, since April 30, 2018, the format of the JFO has been chosen to achieve the stated goals.

The JFO combines the cooperation of power structures of different agencies, which carry out special military measures in the relevant territory. At the same time, the territory of the JFO is at the same time the territory of habitation of the citizens of Ukraine, to ensure the life of which the Law of Ukraine No. 1669-VII of 02.09.2014 "About temporary measures during the period of the antiterrorist operation" was adopted, which "identifies temporary measures to provide support to business entities carrying out activities in the territory of the antiterrorist operation and persons living in the zone of antiterrorist operation or relocated from it during its conduct". On this maintenance of activities forecasted by this law, and other vital processes of communities located in JFO is entrusted to the military-civilian administrations. The activity of civil-military administrations is regulated by the Law of Ukraine from 03.02.2015 No. 141-VIII "On civil-military administrations", among the powers of which there are, among others, several different measures to counteract crime.

The current analysis of recent studies and publications demonstrates the interest of both the scientific community and legal practitioners in the renewal, saving and protection of rights and freedoms of citizens of Ukraine, protection of its sovereignty and renewal of territorial sustainability and integrity. The JFO zone (until April 2018 Antiterrorist operation) is quite atypical complex and at the same time more important for the above purposes, the effective achievement of which is possible by solving certain problems, which are dedicated to the works of such authors as V. V. Abroskin ("Activity of the National Police of Ukraine to ensure public safety in the conditions of antiterrorist operation"), D. O. Kuzmenko ("Administrative and legal regulation of public administrations in the zone of the joint forces operation"), D. I. Nesterov ("Criminal characteristics and features of the investigation into the facts of shooting (explosions) in the area of Joint Forces Operation"), M. O. Semenyshyn ("Theory and practice of prevention of venally-violent crimes by bodies and units of the National Police of Ukraine (based on the Joint Forces Operation)"), K. V. Yarovoy ("Administrative and legal principles of cooperation of the National Police Ukraine with the subjects of public administration in the zone of the anti-terrorist operation) and others.

The mentioned studies are certainly a significant contribution not only to native science, but also the practical solution of problems and invention of ways to maximize the effectiveness of the JFO, but criminological support and support of the JFO requires appropriate specialist attention, because countering crime is economical and resulting activity than punishment and correction, especially when it concerns human lives and national interests of the country and society.

Therefore, the purpose of this article is to study the criminological activities of civil-military administrations in the JFOzone. Such attention cannot be excessive, because atypical for our country state subject, atypical condition of the territory and atypical situation require careful study of all possible subjects and measures of counteraction to crime, deterrence of new and spread of existing criminal offences both in the JFO zone, and in the controlled territory.

The definition of military-civil administrations is provided by the Law of Ukraine of 03.02.2015 No. 141-VIII "About military-civil administrations", especially "these are temporary state bodies in villages, towns, cities, districts and regions, acting within the Anti-Terrorist Center under the Security Service of Ukraine (in case of their building-up to fulfill the powers of the relevant bodies in the zone of the anti-terrorist operation) or within the Joint Operational Headquarters of the Armed Forces of Ukraine (in case of their building-up to fulfill the powers of the relevant bodies in the zone of implementation of measures to ensure national security and defense, rebuff and deterrence armed aggression of the Russian Federation in Donetsk and Luhansk regions) and are formed to ensure the Constitution and laws of Ukraine, ensure security and normalization of life, law and order, participation in countering acts of armed aggression, diversion and terrorist acts, prevention of humanitarian catastrophe in the zone of rebuff of armed aggression of Russian Federation, especially conducting the anti-terrorist operation. In addition, the specificity of this body lies in the implementation of the powers entrusted to it, which unify the powers of local executive authorities, as well as local self-administration bodies in the cases established by this law.

According to the mentioned above, the civil-military administration is an authorized representative of state and local authorities, which influences (manages) the public life in the zone of JFO, as well as taking measures to ensure and protect law and order in the respective territories. In his work, V.S. Shevchenko specifies management in the JFO zone as "a unique form of interaction between civil and military administrations, focused on ensuring the primary performance of tasks of the AFU to protect the sovereignty and integrity of state territory, as well as socio-political and socio-economic processes of territorial development, taking into account the specifics of the ATO. Civil-military cooperation is realized by coordinating the efforts of power structures and institutions and civil administrations.

As early as IV century B.C. Plato stated an opinion about the priority of counteraction to crime over the repressive policy of the state. This position is still

considered recent not only among the native scientific community, but also among foreign researchers. Now the system of counteraction to crime is carried out at three levels: general-social, special-criminological and individual.

The rights and powers of military-civil administrations provided by the Law of Ukraine "About military-civil administrations" give reasons to believe that the mentioned body is a subject of counteraction to crime, which influences crime mainly at the general social level. Although, the activities of the subjects at this level does not provide a direct impact on crime, but is considered a kind of foundation, a fundamental direction, that indirectly affects the counteraction against crime by ensuring economic development, increasing the level of the prosperity of the population, decent and accessible social protection, education of mass culture, increasing the level of sense of justice and other areas of life of the population. Therefore, countering crime civil-military administrations at the general social level is provided by the powers in the following areas:

- in the economic sphere (for example: preparation and approval of programs for socio-economic and cultural development of the respective administrative-territorial units, purposeful programs on other local self-administrations, ensuring balanced economic and social development of the relevant territory, efficient use of natural, labor and financial resources, par. 1, 2 p.1 art. 4);

- in the budgetary sphere (for example: drafting and approval of the local budget, making amendments in it, ensuring implementation of the respective budget, drafting and approval in accordance with district, regional budgets, amending them, approval of reports on their implementation; sharing of funds transferred from the state budget in the form of donations, subventions severally between the district budgets, local budgets of cities of regional significance, villages, countrysides, cities of district significance, p. 5 part 1 art. 4; p. 3 part 3 of art. 4);

Building an effective economic model and rational outgiving of budgetary funds will contribute to improving the standard of living of the population and at the same time reduce the risks of seeking criminal ways of benefication not only among economic and general criminal mercenary crimes, but also as human traffick, illegal arms trading, diversion, espionage and others.<sup>20</sup>

- in the social sphere (for example: the involvement on a contract requirement of enterprises, institutions and organizations regardless of the form of ownership to participate in the integrated socio-economic development of villages, settlements and cities, the coordination of this work in the relevant territory; to organize, if necessary, the rationed provision of the population with drinking water, food, essential things and medicines, p. 3 part 1 art. 4; p. 10 art. 5);

- in the field of education and culture (for example: management of educational, health, cultural, physical culture and sports institutions, health-giving institutions

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<sup>20</sup> Shevchenko V., Administrative and legal status of military-civil administrations. Scientific Journal of the National Prosecution Academy of Ukraine. 2016. № 4 (12). p. 196–206

belonging to or transferred to territorial communities, youth youth youth institutions at the place of living; organization of their logistical and financial support, p. 15 part. 1 art. 4);

- in the area of defense and national security (for example: assistance in organization of conscription of citizens for military service of officers, fixed-term military and alternative (non-military) service, as well as their mobilization, preparation of young people for service in the Armed Forces of Ukraine, organization of training (test) and special military training, ensuring delivery of enterprises, institutions and organizations, regardless of ownership, also the population with the order of the military commissar on the announcement of mobilization, implementation of measures to create appropriate Conditions for the functioning of checkpoints across the state line of Ukraine, p. p. 18, part 23 . 1 Art. 4);

- in the area of civil protection (for example: organization and participation in implementation of activities related to mobilization training and civil protection, determination of areas where potentially hazardous activities may be carried out in conditions of civilian presence with the participation of personnel of the Armed Forces of Ukraine, other military formations and law enforcement bodies using weapons and military equipment, p.p. 20, 37 part 1 art. 4);

- in the sphere of ensuring law and order (for example: creation in accordance with the law at the expense of the local budget of institutions for free primary legal aid, appointment and dismissal of heads of these institutions, involvement in the manner prescribed by law of individuals or legal entities of private law to provide free primary legal aid; promoting the activities of the judiciary, prosecutor's office, justice, security service, the National Police, the Bar, the National Anti-Corruption Bureau of Ukraine and the State Penitentiary Service of Ukraine; hearing information from prosecutors and heads of the National Police on the state of law, the counteraction against crime, public order and the results of activities in the relevant territory, p. p. 30, 31, 32 part. 1 art. 4).<sup>21</sup>

The mentioned sphere is more important, since unlike the others, it is through it the direct influence on crime in order to reduce its level. The essence of activity in this area "is most fully disclosed through its own subsystems: countering crime, prevention of offences and implementation of law enforcement activity. The result of the latter in this case is not only inevitability of application of responsibility to persons who committed offenses, but also application of maximum efforts to deter them from offenses".

But for the mentioned spheres, the rights and powers of civil-military administrations also extend to the spheres of urban planning, property management, environmental protection, regulation of land relations. Effective regulation of relations in the above spheres will contribute to the improvement of living standards, increase

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<sup>21</sup> Ukrainian Law on Civil–military administrations of 03.02.2015 № 141-VIII. URL: <https://zakon.rada.gov.ua/laws/show/141-19#Text>.

of jobs, provision of social protection of the population, increase of the cultural level of citizens, will certainly contribute to law-abiding way of life of citizens.

As was mentioned above, the next level of counteraction to crime is a special criminological level. This level provides activity of special subjects of counteraction to crime, directed on social relations affected by crime, and also unlike the general social level, defines a circle of subjects, which will be affected. In the general understanding, military-civilian administrations are not a special body to counteract crime, since the prevention, detection, suppression and disclosure of criminal offenses or countering crime is not their main tasks, the same about the existence of such a body in the territory where the complex of military and special measures of power structures to restore the sovereignty and territorial integrity of Ukraine, as well as ensuring national security and defense, rebuff and deterrence of war are implemented.

The rights of military-civil administrations, provided by article 5 of the Law of Ukraine "About military-civil administration", give them the opportunity to directly influence the level of crime on the territory entrusted to them, such as: to establish restrictions on being on the streets and other public places without certain documents at certain time of the day; to temporarily limit or prohibit the movement of vehicles and pedestrians on streets, roads and areas; to organize checks of identity documents of individuals, and if necessary - inspection of things, vehicles, luggage and cargo, office space and housing of citizens, but for the restrictions established by the Constitution of Ukraine; to organize control over the work of telecommunication enterprises, to use local radio stations, television centers and printing houses for carrying out explanatory work among the population, personnel of military formations and law enforcement agencies; impose restrictions on trade in weapons, strong chemicals and poisons, alcoholic beverages and alcohol-based substances; to seize firearms and ammunition, cold steel from citizens, and from enterprises, institutions and organizations also training and combat equipment, explosives, radioactive substances and materials, strong chemical and poisonous substances (p. p. 1, 2, 3, 5, 6, 7 art. 5).<sup>22</sup>

The existence and activity of civil-military administrations is associated with the implementation of JFO, as measures to restore sovereignty and territorial integrity and assert their own independence, so their powers are civil, military and law enforcement, because only this way can ensure the implementation of state and self-governing power, create conditions for the protection and livelihood of the population living in the territory of JFO. The full implementation of the powers of civil-military administrations, defined by the legislation, is possible only with a positive impact on crime, its deterrence and reduction, especially since this impact is not limited to the territory of the JFO, but affects the whole territory of our country.

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<sup>22</sup> Law of Ukraine "About temporary measures for conducting anti-terrorist operation" of 02.09.2014 № 1669-VII.  
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# Procedure of voluntary association of territorial communities in Ukraine

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## Summary

The article is focused on the reform of local self-government in Ukraine in order to decentralize municipal power. The authors of the article have studied some papers of the following authors: M. Baimuratov, O. Batanova, V. Hryhoriev, U. Dudka, N. Kaminska, A. Oliynyk, V. Pohorilko, O. Stohova, O. Frytskyi, A. Shevchenko. The authors have suggested the features of the procedure for association of territorial communities in Ukraine: a) regulation by the norms of the law; b) initiating a voluntary association; c) preparation of draft decisions on association; d) decisions on a voluntary association; e) formation of an association; f) reorganization of local self-government agencies. The authors have formulated the definition of the procedure of association of territorial communities in Ukraine as regulated by legal norms of initiation of voluntary association of territorial communities, preparation of draft decisions on such association, adoption of appropriate decisions and formation of the said voluntary association, as well as the process of reorganization of local self-government agencies.

The stages of the procedure of association of territorial communities in Ukraine are: 1) initiation of a voluntary association of territorial communities; 2) the procedure for preparing draft decisions on a voluntary association of territorial communities; 3) preparation of decisions on a voluntary association of territorial communities; 4) formation of a united territorial community and reorganization of local self-government agencies.

**Key words:** territorial communities, voluntary association, procedure of voluntary association, system of local self-government, decentralization, local self-government.

Decentralization processes in Ukraine are related to the improvement of constitutional and legislative regulation of local self-government and its system. Legal regulation of the stated problem is carried out by the norms of international law, constitutional and legislative legal norms. The study of the procedure of a voluntary association of territorial communities in Ukraine has theoretical and practical

significance. Theoretical significance of researching the problem is to study the works of the authors on the problem and to formulate conclusions on improving the organizational and financial independence of territorial communities. Practical significance of this problem involves the improvement of the implementation of decentralization and municipal public authority in practice.

The issue of the latest research on local self-government reform concerns the components of the local self-government system, improvement of legal regulation of a voluntary association of territorial communities, propositions of conclusions and recommendations on the procedure of association of territorial communities in Ukraine. The authors who studied those issues include the works of: M. Baimuratov, O. Batanov, V. Hrihoriev, U. Dudka, N. Kaminska, A. Oliinyk, V. Pohorilko, O. Stohova, O. Frytskyi, A. Shevchenko and others. The procedure for voluntary association of territorial communities in Ukraine has not been studied yet.

The purpose of the research is the procedure of voluntary association of territorial communities in Ukraine. To achieve this purpose, it is necessary to solve the following tasks: a) to analyze international and national legal norms regulating the elements of the system of local self-government and their scientific research; b) to formulate the features, definitions and stages of the procedure of association of territorial communities in Ukraine; c) to offer conclusions and recommendations in regard to the research topic.

The problem of reforming local self-government primarily concerns the improvement of legal regulation of its system. According to the European Charter of Local Self-Government, where local self-government is defined as the right and ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population (the Art. 3)<sup>23</sup>. The Constitution of Ukraine stipulates that local self-governing as the right of a territorial community – residents of a village or a voluntary association of residents of several villages into one village community, residents of a settlement, and of a city – for the purpose of an independent settlement of issues of local charter in compliance with the Constitution and laws of Ukraine (the Art. 140)<sup>24</sup>. International norms and norms of the Constitution of Ukraine regulate local self-government and its system as the right and ability of a territorial community and local authorities within the limits of the law to regulate and manage a significant share of public affairs, under their own responsibility, in the interests of the local population. Making the constitutional norm of the Law of Ukraine dated from May 21, 1997 „On Local Self-Government in Ukraine” more concrete, it stipulates that local self-government in Ukraine is a state-guaranteed right and real ability of a territorial community – residents of a village or voluntary association of residents of several

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<sup>23</sup> European Charter of Local Self-Government of 15.10.1985 № ETS N 122 / URL: [http://search.ligazakon.ua/l\\_doc2.nsf/link1/MU88002H.html](http://search.ligazakon.ua/l_doc2.nsf/link1/MU88002H.html)

<sup>24</sup> The Constitution of Ukraine of the Verkhovna Rada of Ukraine on 28 June 1996 Article 141.

villages into one village community, residents of a settlement, and of a city – independently or under the responsibility of agencies and officials of local self-government to solve issues of local significance within the limits of the Constitution and laws of Ukraine (the Art. 2)<sup>25</sup>. It should be noted that the Constitution and the mentioned Law of Ukraine enshrine such a subject of local self-government as a voluntary association of residents of several villages, settlements and cities that corresponds to the organization of cooperation of two or more territorial communities on a contractual basis<sup>26</sup>. The Law of Ukraine dated from February 5, 2015 “On Voluntary Association of Territorial Communities” introduces another subject of local self-government system, namely: voluntary association of territorial communities of villages, settlements, cities. The law stipulates that a united territorial community, the administrative center of which is a city, is an urban territorial community, the center of which is a settlement – as a settlement, the center of which is a village – as a rural<sup>27</sup>. Thus, the enshrinement of voluntary association of territorial communities of villages, settlements, cities by the Law of Ukraine dated from February 5, 2015, in our opinion, requires clarification of the norms of the Art. 140 of the Constitution of Ukraine and the Art. 2 of the Law of Ukraine dated from May 21, 1997 “On Local Self-Government in Ukraine” by changing the terms of “settlements and cities” to the terms of “rural settlements and cities”. Such clarification, in our opinion, will help to improve the legal regulation of such a subject of local self-government as a voluntary association of territorial communities of residents of several villages, settlements and cities, which can be characterized as a territorial group.

M. Baimuratov, V. Pohorilko, O. Frytskyi, having analyzed the concept of territorial community, emphasize that local self-government primarily acts as an expression of self-organization, initiative, self-discipline of citizens (residents of a certain territory), its formation as an integrated system within the whole society, if necessary, should primarily take place at its lower levels, in the primary cells. In this regard, the main producer of the interests in the system of local self-government is the local community, defined as a territorial group (community). The concept of “territorial group” is relatively new to the legal science of Ukraine, which has not received both unity of opinion in science and legislative definition. This term does not appear in the Basic Law of Ukraine or in the Law of Ukraine “On Local Self-Government in Ukraine”<sup>28</sup>. Thus, the legislative consolidation of the territorial group will contribute to the improvement of the practical implementation of the formation and activity of the voluntary association of territorial communities.

Thus, O. Batanov, studying the place and role of territorial communities within the system of local self-government, emphasizes that the formation of effective local self-

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<sup>25</sup> Law of Ukraine “About local self-government in Ukraine” of 21.05.1997 Article 170.

<sup>26</sup> Law of Ukraine “On Local Community Cooperation” of 17.06.2014 Article 1167.

<sup>27</sup> Law of Ukraine “On Voluntary Association of Territorial Communities” of 05.02.2015 Article 91.

<sup>28</sup> Pohorilko V., Frytskyi O., M.O. Baimuratov M., Municipal law of Ukraine: Jurinkom Inter, 2001. p. 115-119

government in modern Ukraine is largely constrained by the result of objective (for example, weak financial and economic base) and subjective factors, such as the presence of contradictory and sometimes diametrically opposed approaches to understanding the real nature, functions and tasks of local self-government. Therefore, due to the novelty of the institution of local self-government for the constitutional and legal mechanism of public authority in Ukraine, there is a current need for thorough scientific and legal development of issues concerning the nature, foundations, principles of organization and operation of local self-government. Issues in regard to the place and role of the territorial community in the system of local self-government are of particular attention in the process of formation of the domestic theory of local self-government. Although there is no doubt about the issue on the special role of these communities in the implementation of tasks and functions of local self-government in the legal literature, but the problems of constitutional and legal status of territorial communities, including the concepts regarding the definition, types, forms of activity, basic functions of territorial communities, etc. have not been studied in general. There is no fundamental research on these issues within the science of constitutional law, which to some extent slows down the implementation of legislation on local self-government in Ukraine<sup>29</sup>. Thus, O. Batanov emphasizes the lack of research of such a subject of the system of local self-government as a territorial community and voluntary association of territorial communities in the process of their reform and decentralization in order to implement municipal public power.

V. Hryhoriev studies public municipal power and believes that the formation of a modern approach to the constitution of public self-government (municipal) power is inextricably linked with the democratization of state and public life, with the development of civil society and the rule of law in Ukraine that leads to self-limitation of state power and recognition, legalization of other, non-state interests by the state, which produce local communities. The foreign policy aspect of the problem also deserves attention. Ukraine's accession to the Council of Europe – the continent's largest international intergovernmental organization – has led to the implementation of a number of commitments made during the signing of international framework agreements developed by Member States of this organization, including in the field of formation and development of local self-government on the own territory. The most important of them, which have the nature of fundamental principles of organization and functioning of local self-government, were enshrined in the European Charter of Local Self-Government of 1985 and have the character of international standards of constitution of municipal democracy, public self-government (municipal) power<sup>30</sup>.

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<sup>29</sup> Batanov O., Territorial community - basis of local self-government in Ukraine: monograph. Institute of State and Law. V.M. Koretsky National Academy of Sciences of Ukraine, 2001. p. 260

<sup>30</sup> Hryhoriev V., Formation of public self-government in Ukraine: Thesis. Cand. Sc. (Jurisprudence): 12.00.13. Odessa, 2002.

Thus, V. Hrihoriev emphasizes the development of local self-government in the administrative and territorial unit of the territorial group (community) and the united territorial community in relation to the implementation of municipal power in the context of decentralization of state and public life.

U. Dudka, studying the state, problems and perspectives of local self-government's development in rural areas, emphasizes that local self-government in Ukraine in accordance with the norms and rules of legislation should strengthen the principles of the constitutional system, ensure the implementation of constitutional human and civil rights, to create conditions for the satisfaction of the population with vital needs and legitimate interests, as well as to develop local democracy. However, the effectiveness of local self-government of most territorial communities can be questioned, because it does not create and maintain vital conditions that would ensure comprehensive human development, would provide quality and accessible social, administrative and other services, and, accordingly, it does not contribute to the sustainable development of communities. Especially it is about rural communities. In his opinion, it is not possible to improve the quality of providing state-guaranteed quality social and administrative services for the members of territorial communities, especially rural and urban, due to the large fragmentation of territorial communities, lack of own development opportunities, aging population, significant outflow of economically active part of the community to large cities or outside Ukraine. U Dudka also believes that local self-government agencies are responsible for providing such services according to the current territorial and legislative basis. Local self-government agencies do not have enough authority, experience, and funding. To solve the problems of local self-government in rural areas it is necessary: to create appropriate logistical, financial and organizational conditions that will ensure the implementation of their powers by local self-government agencies; to differentiate the powers of executive agencies and local self-government under the principle of subsidiarity and on the basis of decentralization of power; to introduce a reasonable territorial basis, where local self-government agencies and executive agencies will be able to function in order to provide affordable and quality services; to involve the population in solving local problems; to promote the development of democracy<sup>31</sup>. Thus, U. Dudka believes that it is necessary to voluntarily unite rural territorial communities into a territorial community with a common administrative center in order to increase the efficiency of local self-government of rural territorial communities.

N. Kaminska understands the territorial community as the territorial basis of local self-government – a village, settlement, city<sup>32</sup>. Thus, the administrative and territorial

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<sup>31</sup> Dudka U., Local self-government of rural areas: state, problems and prospects of development. Separated Subdivision of National University of Life and Environmental Sciences of Ukraine. Berezghany Agrotechnical Institute

<sup>32</sup> Kaminska N., European system of local and regional self-government and Ukraine: monograph. Kyiv, 2012. p. 413

<sup>11</sup> Olinyk A., Constitutional freedoms of citizen and their provision in Ukraine: monograph. Kyiv National University of Technologies and Design, 2018. p. 274, 277

basis in Ukraine is a village, settlement, city (territorial community or basic level), district and ARC, region (regional level).

A. Oliinyk emphasizes that local self-government, among other functions, performs the function of protection and defense of the rights, freedoms and legitimate interests of individuals, ensures constitutional freedoms directly through territorial communities (through local referendums, general meetings, etc.) and through rural, settlement, city (district in cities) councils, their executive agencies and officials, as well as through district and regional councils, which represent the common interests of territorial communities of villages, settlements, cities. One of the areas of improving the activities of local self-government and its agencies and officials to ensure the constitutional freedoms of a man and citizen is the association of territorial communities (ATC) in accordance with the Law of Ukraine dated from February 5, 2015 "On Voluntary Association of Territorial Communities"<sup>33</sup>.

O. Stohova, having studied the reform of the administrative and territorial system of Ukraine as part of the decentralization process, concludes that the prerequisite for this reform is the need to unite territorial communities to create self-sufficient basic units of territorial organization, which should become a real basis for local self-government. The process of unification of territorial communities has been going on in Ukraine since 2015. The next stage of decentralization should be the adoption of a law regulating the administrative and territorial system of Ukraine<sup>34</sup>. Thus, O. Stohova considers the reform of voluntary association of territorial communities in order to increase their ability to exercise municipal power and to ensure human and civil rights and freedoms at the level of local self-government as part of the process of decentralization of municipal power in Ukraine.

A. Shevchenko defines a territorial community as a set of residents united by permanent residence within a village, settlement, city as independent administrative and territorial units or a voluntary association of residents of several villages that have a common administrative center<sup>35</sup>.

As a result of studying the works of authors concerning the procedure of association of territorial communities in Ukraine we can formulate features, definitions and stages of such procedure of association. Features of the procedure of association of territorial communities in Ukraine are: a) regulation by the norms of the law; b) initiating a voluntary association; c) preparation of draft decisions on an association; d) decisions on a voluntary association; e) formation of an association; f) reorganization of local self-government agencies.

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<sup>34</sup> Stohova O., Administrative and territorial reform in Ukraine as part of the process of decentralization. Modern society. 2017. № 2. p. 207-217

<sup>35</sup> Shevchenko A., Legal nature and status of the territorial community. Scientific Journal of the National Academy of Internal Affairs. 2017. № 3. p. 332-342

The stages of the procedure of association of territorial communities in Ukraine are: 1) initiation of a voluntary association of territorial communities; 2) the procedure for preparing draft decisions on a voluntary association of territorial communities; 3) preparation of decisions on a voluntary association of territorial communities; 4) formation of an association of territorial community and reorganization of local self-government agencies<sup>36</sup>.

Conclusion. Summing up the conducted research, we offer the following conclusions and recommendations. The procedure for association of territorial communities in Ukraine is the initiation of voluntary association of territorial communities regulated by legal norms, preparation of draft decisions on such association, adoption of appropriate decisions and formation of the said voluntary association and the process of reorganization of local self-government agencies.

As a recommendation, we offer to clarify the provisions of the Art. 140 of the Constitution of Ukraine and the Art. 2 of the Law of Ukraine dated from May 21, 1997 "On Local Self-Government in Ukraine" by changing the terms of "settlements and cities" with the terms of "rural settlements and cities". The clarifications offered in the text will help to improve the legal regulation of voluntary association of territorial communities of the residents of several villages, towns and cities as a territorial group.

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# The assurance of internal communication into the system of public diplomacy

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## Summary

The purpose of this article was to highlight the Internal communications is an essential component of an organization's effort to maintain employee engagement and keep everyone, at all levels, focused on what really matters and it is one of the key mechanisms that work to align employees behind common goals. Usually, internal communication falls under the responsibility of executive branch of the power but can be contributed to by all departments across an organization.

Complete internal communication<sup>37</sup> strategy into the system of Public Diplomacy provides employees with the information they need to succeed both personally and professionally. It's important to ensure that the internal communication strategy into the system of Public Diplomacy strategy covers vertical, horizontal, formal, and informal types of communication, and is in line with the main organization's strategy. This paper presents the term of internal communication, which is quite new in the domain of Ukrainian foreign policy and in the field of international public relations. Although this term is used increasingly often by political scientists, communications experts as well as politicians it is still an area, which is relatively little known. Therefore, to be effective, communication should be bi-directional, involving not only shaping messages that country transmits abroad, and analysis of how the message is interpreted by different companies and develop tools for listening and persuasion.

**Keywords:** public diplomacy, internal communication, obtaining feedback, engaging, informing

Today, we understand public diplomacy as an instrument used by states, associations of states, and some sub-state and non-state actors to understand cultures, attitudes and behavior; build and manage relationships; influence thoughts and mobilize actions to advance their interests and values.<sup>38</sup> An International communication is realized by representatives of foreign services, but also by representatives of other ministries, multinational corporations, civil society

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<sup>37</sup> Business Dictionary. URL: <http://www.businessdictionary.com/definition/internal-communication.html>

<sup>38</sup> Bruce G., American Public Diplomacy: Enduring Characteristics, Elusive Transformation. Hague Journal of Diplomacy 2011. №. 6, p. 353.

organizations, and even influential individuals who do not represent a particular state, organization, or corporation.<sup>39</sup>

Beyond keeping employees informed, good internal communication can keep your workforce engaged, motivated, united and connected. Especially after the year 2020, the importance and impact of good internal communication is undeniable. Moreover, in times of insecurity and great change, effective internal communication can be the glue that gets your organization through it all<sup>40</sup>.

Public diplomacy is best described as the information shared (both internally and externally) by a company, about the company. This could take the form of an all-hands meeting, messages sent via an employee-engagement app, emails, intranet messages, digital or printed signage, or printed materials. Internal communicators forge the following unique, key links among the following elements:

- The employee experience;
- Company-wide business goals;
- Changes related to digital transformation;
- Any new initiatives, executive hires, programs, or projects.

Business communications align business goals and objectives with every employee. Without a robust internal communications program, your business goals may fail.

The concept of a national brand and public diplomacy differs in the fields they envision, it differs by the format and content of the message, and it differs by the communicating actors among other distinctions.

The concept of an internal communication, national brand and public diplomacy differs in the fields they envision, it differs by the format and content of the message, and it differs by the communicating actors among other distinctions. Internal communications process is arguable most effective when it is an interdisciplinary effort<sup>41</sup>. Due to the conceptual framework of internal communication strategy into the system of Public Diplomacy is developed based on the data, received after gap analysis. The process consisted of three main stages (preparation, improvement suggestions and development of IC strategy) as described in the figure 1.

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<sup>39</sup> Bjola, C., Kornprobst M., Understanding International Diplomacy - theory, practice and ethics. New York, 2018.

<sup>40</sup> URL: <https://staffbase.com/blog/internal-communication-system/>

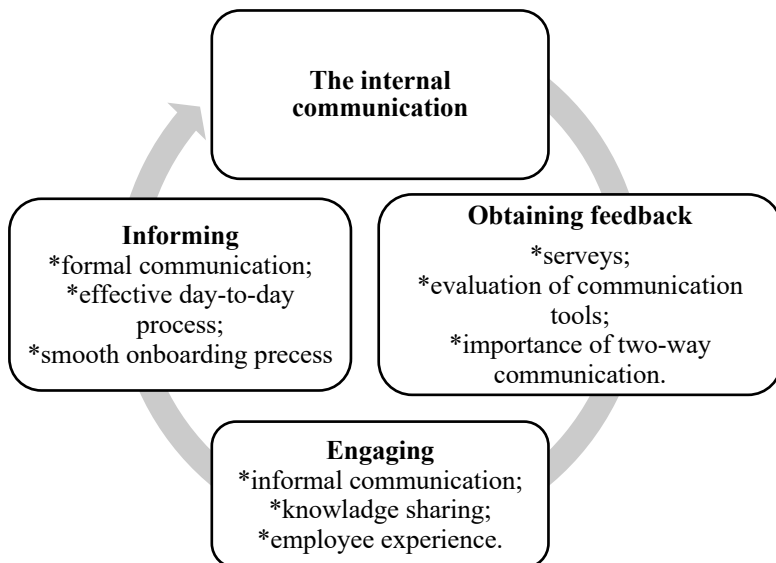
<sup>41</sup> URL: <https://sprigghr.com/blog/hr-professionals/8-reasons-why-internal-communications-is-critical-for-success/>

<b>Preparation</b>	<b>Improvement suggestions</b>	<b>Development of internal communication</b>
<ul style="list-style-type: none"> <li>•Assesment of existing internal communication situation;</li> <li>•Identification pf most relevant internal communication needs in Public diplomacy.</li> </ul>	<ul style="list-style-type: none"> <li>•Finding so;utions to the most challenging internal communication strategy parts;</li> <li>•Defining target groups and setting maininternal communication doals in the sustem of Public diplomacy.</li> </ul>	<ul style="list-style-type: none"> <li>•Development of internal communication strategy into the system of Public diplomacy that includes;</li> <li>•</li> <li>•strategic and tactic communication levels.</li> </ul>

Figure 1. The process of developing internal communication conceptual framework into the system of Public Diplomacy:

The public diplomacy phenomenon attracted the attention of researchers as more and more governments implemented public diplomacy as a tool of their foreign policy.

The main task while creating the internal communication strategy in the system of Public Diplomacy was to ensure that suggested channels and tools would create a dynamic process. It was important not only to set the target groups, main messages, channels and ownership, but also to create an environment for positive employee experience and lifecycle in the organization through engagement and working feedback and measurement/ evaluation system that inform, engage and obtain feedback as described in the figure 2.



This diagram is about the main task of internal communication strategy in the system of Public Diplomacy is prepared by author.

By the way, the conceptual framework of internal communication strategy includes:

1. Definition of the internal communication goals and actionable objectives, target groups of the internal communication strategy. The internal communication goals in the system of public diplomacy aligned with main organization strategy and set in strategical and tactical communication levels. Proposed methods of increased employee engagement. Objectives of the internal communication strategy set up following SMART method: specific, measurable, achievable, realistic and timely.

2. Guidelines on how to lay out a timeline and internal communication strategy roadmap, set-up of specified communication tools and channels, ownership and responsibilities table, communication plan, and its preliminary budget.

3. Defined key metrics and recommendations on the frequency of the evaluation process of the IC tools, such as employee engagement metrics, employee referrals, intranet usage.

There are 5 steps how to ensure that internal communication is an effective process in organization<sup>42</sup>:

1. Set the purpose or the internal communication goal: employees want to understand organization's goals, have a clear sense of the plans for getting there, and be confident and assured in their contributions towards those plans. They want to feel

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<sup>42</sup> The system for Internal Communication. Project of the EU Public Finance Management. Kyiv, 2021

valued, listened to, and feel that they are a part of the team. Illustrating purpose is not limited to showing employees direct goals. An example of this would be regular sharing of information about team or organization-wide achievements. This keeps employees motivated and is effective in reassuring the value of their contributions. One of the best practice examples comes from Finnish Tax Administration and shows that setting a common target and understanding what the “problem” to be solved is but leaving for the professional communicators making the channel choices and creating the content is one of key success elements for effective internal communication. Shared responsibility for setting internal communication goals enables internal communication owner to see common internal communication issues and find solutions as well as set proper internal communication goals. Creativity thrives in organisations where employees are trusted and allowed to experiment and where the value of communications is understood.

2. Ensure consistency in communication: the absence of a strategic and effective internal communications system is what causes an organization to fail in ensuring consistency between external and internal messages. Especially in larger, decentralized organizations, information does not always flow consistently through all departments and managerial levels. This is largely due to the risk of individual managers sharing information at their own discretion also hinges upon their ability to communicate well in the first place. In order to ensure information that employees receive comes from the right source, is timely, and reaches everyone at all levels (or meet the SMART goals), an organization needs a well-defined but flexible and fast editing process with a short approval chain up and down the hierarchy. It is important to have well established two-way communication channels. The other component necessary to achieve these goals is the establishment of fast, interactive, and reliable channels to reach all employees. Fast and interactive typically means digital tools and channels. Word-of-mouth and informal communication alone often end up supporting rumours and misunderstandings and is extremely difficult to control, especially in larger organizations. Effective internal communication does not muzzle informal communication entirely. Instead, it increases its advantages while decreasing its potential risks through frequent and immediate communication, helping employees to interpret information and instructions accurately and efficiently.

3. Create a channel for feedback, debate, and discussion: internal communication can be used to create an open channel for open organizational culture. This can be done in many ways: employee polls, links to internal discussion forums, the announcement of events that encourage feedback and criticisms, even organization-wide invitations to debates on goals, mission statement, calibrating values or internal projects. The same goes for encouraging feedback. Internal communication is a two-way dialogue between employees and employers. Listening to the employees and regularly asking for their feedback, allows organizations to avoid making mistakes in

the future and understand where the strengths lie so they can be proven even more by using them in internal branding.

4. Encourage cross-departmental communication and collaboration: cross-departmental communication is essential if an organization wants its employees to share gained know-how (knowledge share). Holding Q&A sessions or special gatherings between different departments to communicate, collaborate, and share insights is an effective way of achieving this. As an example for common, regular inter-departmental Q&A meeting sessions can work to encourage the sharing of knowledge across departments, enhancing overall employee engagement. Additionally, consistent cross-departmental collaboration prevents employees from feeling isolated from one another, making it one of the strongest internal communications practices. It is important for internal communication process owner to collaborate with different departments while setting the internal communication goals. Using metrics to track progress of internal communication process can be beneficial for employees, making them aware of the specific approaches that communicators use to demonstrate the ROI for their internal communications initiatives. When involving intermediaries, such as departmental managers, in communicating with staff members, evaluations should include both intermediary engagement and the end-user engagement.

5. Avoid communication overload: the aim is to be able to send the right information, to the right target group, at the right time. Balancing communicating what is necessary with what the employees can handle at once can help to cut down on communication overload.

Language has always been an issue of prime importance in diplomacy. This is so because if the exchange of information is not communicated in a language understood by the parties involved then no communication has occurred at all. Communication can be defined as an activity by which information is conveyed. It involves mutual exchange of messages by writing, speech and signals or behavior. Below we examine the application of written, verbal as well as non- verbal communication. Having discussed the various forms of communication in diplomacy, I wish to submit that they are all still relevant and in use today. However, three factors seem to have greatly influenced and caused a departure from the traditional means of communication. These are the advances in Information and Communication Technology (ICTs), increased participation of NSAs in international relations, and the increased mandate of the MFA. Below we examine the impact of these three factors on diplomatic communication.

Key benefits of a well-functioning and integrated internal communication process into the public diplomacy are the following:

Clear understanding of organization's mission, values and strategic goals | Importance of clear and frequent strategic level communication. The overall objective of internal communication is to ensure that the goals of the organization are

achieved and that employees are well prepared to contribute to achieving these results. It is about healthy environment and well-functioning information processes.

Employee engagement and improved organizations culture. A strong internal communications strategy will ensure that BI's employees feel supported, appreciated and empowered. Clear channels of communication facilitating feedback and two-way discussion are essential for such a working environment to flourish.

Advocacy and employer branding. Organization's employees are the biggest, most influential employer ambassadors. An internal communications strategy helps create a more positive image of the organization. External audiences trust the voice of current employees even more than the voice of top managers or official representatives. Effective IC is a key element for successful external communication and a positive BI's reputation.

Effective know-how management at an organization. Well-functioning IC strategy creates an environment for better cross departmental communication and knowledge sharing.

In conclusion, we've mentioned that a process for effective of internal communication was prepared to ensure the main pillars of building successful ant effective of internal communication into the system of public diplomacy strategy framework. Current public diplomacy studies view the discipline as a link between international relations, diplomacy, political science, and sometimes, communications.

By the way, internal communication programs can be daunting for some organizations, especially when looking to revamp their practices. However, we're here to show you how to create a successful program and avoid the typical roadblocks that come with enhancing your strategy.

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# Constitutionalization of direct democracy in the context of globalization

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## Summary

The article considers the issue of constitutionalization of direct democracy in the context of globalization and global constitutionalism, identifies ways of such constitutionalization and defines the role of the Constitutional Court in the process.

It is noted that modern researchers begin to address the issue of constitutionalization of public relations more often, noting that this process is inextricably linked with the activities of constitutional courts, which in one way or another affect the process of constitutionalization of public relations, type of a legal family, national and other peculiarities.

The authors conclude that constitutionalism as a phenomenon and constitutionalization as a process are the priority mechanisms for building democracy in Ukraine. This is ensured by the Constitutional Court of Ukraine's verification of legal acts of government bodies for compliance with general rule of law.

**Keywords:** constitutionalization, people's sovereignty, global constitutionalism, direct democracy.

In modern conditions of dynamic development of public relations, integration of Ukraine into the European legal space, global tendencies directed on making legal systems correspondent to the existing requirements, conditions and standards, questions of transformation, adaptation, influence of globalization processes on development of the constitutional law are of a special value.

In the modern world, constitutional law, along with other traditional sciences, is changing because of influence of external factors, and, consequently, ceases to be a purely internal affair of the state, reflecting the general trends of globalization.

Legal concepts of the beginning of the XXI century do not reflect the innovations that have become the realities of the modern world. Constitutional construction has ceased to be a matter that falls within the internal competence of the state, so in the

process of modern constitutional and legal research it is necessary to consider the new needs and interests of the people as a subject of constitutional and legal relations<sup>43</sup>.

One of the main areas to be studied within the outlined issues, of course, is people's sovereignty as a core as well as the primary element of the formation of political power in the state, one of the leading forms of which is the institution of direct democracy and, consequently, its constitutionalization in globalization.

The current state of development of direct democracy, as well as significant globalization and integration processes that affect it, confidently prove that without the adjustment of certain constitutional requirements, further institutional development of this institution in Ukraine is impossible. This problem is especially acute in the context of the existing constitutional support of the relevant issues and in general the text of the Constitution, which we use. In particular, V.M. Shapoval notes that the Law of Ukraine "On Restoration of Certain Provisions of the Constitution of Ukraine" of February 21, 2014, in fact, amended the Constitution of Ukraine, and in a manner not established in its section XIII. In addition, the said Law was adopted through improper parliamentary procedure. Therefore, there is a problem of legality of the current constitutional text<sup>44</sup>.

Thus, the question arises - what should be the form of such constitutionalization. Traditionally, the legal basis, the basis of constitutionalization is certainly understood as the constitution, which accumulates legal norms of the highest order for the entire national legal system. Thus, the traditional way of constitutionalization of certain social relations is the inclusion of relevant norms in the text of the constitution. However, recently the Constitutional Court of Ukraine has played an important role in the constitutional modernization and, consequently, in the constitutionalization of the relevant provisions, as the only body of constitutional jurisdiction in Ukraine that provides official interpretation of the Basic Law of Ukraine and establishes relevant legal positions.

Due to the relevant areas - direct inclusion in the text of the Basic Law of Ukraine or the constitutionalization of relevant public relations through the decision of the Constitutional Court, the constitutionalization of the institution of direct democracy takes place.

In fact, by determining the process of constitutionalization of the relevant provisions, the modernization of the institution of democracy takes place. Exploring the use of this institution as a way to implement the "will of the people" it is advisable to turn to the positions of scientists. Yes, F.A. Hayek noted that "the specific process we have chosen to find out what we call the will of the people has consequences that have little to do with anything worthy of being called the 'common will' of any

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<sup>43</sup> O.V. Shcherbanyuk, People's sovereignty and the realization of the power of a democratic state, Monograph Book II, Kyiv Logos, 2013, p. 3.

<sup>44</sup> V.M. Shapoval Executive power (theoretical and constitutional aspects), Kyiv, 2016, p. 3.

substantial part of the population"<sup>45</sup>. And O. Petryshyn stressed that the people should govern themselves as much as possible through direct democracy, as the mechanism of representation can be used to limit the participation and control of the people over the exercise of power by elected representatives, preserving their powers<sup>46</sup>.

Saying said that it is worth paying attention to the study of ways to modernize the constitutional and legal support of democracy. Thus, Ukrainian researchers emphasize that in the context of constitutional modernization it should be assumed that democracy is the essence of the constitutional order, and the interests of the people and the constitutional order should be identical concepts<sup>47</sup>.

Turning to constitutionalization as one of the tools of modernization of democracy, it should be noted that modern researchers begin to address the issue of constitutionalization of public relations more often, noting that this process is inextricably linked with the activities of constitutional courts, which in one way or another affect the process of constitutionalization of public relations, type of a legal family, national and other peculiarities.

Thus, in particular, N.V. Bocharova emphasizes that constitutionalization does not stop with the adoption, amendment or supplementation of the texts of constitutions. As a legal phenomenon, modern constitutionalization was first manifested in the decisions of the constitutional review bodies of France and Germany in the 70-90s of the twentieth century. In their activities, the bodies of constitutional control, first of all, the constitutional courts, have become important subjects of the formation of the constitutional space and the development of legal systems. Legal positions of constitutional jurisdictions have become an effective tool for constitutionalization, is a significant increase in the role and importance of constitutional principles and norms in the legal system, socio-political and state life, the formation of constitutional and legal worldview<sup>48</sup>. In essence, constitutionalization leads to a gradual saturation of constitutional norms and principles of all spheres of social and legal life.

This process shows that in addition to the traditional way of constitutionalization of certain social relations, bringing them to the rank of the highest legal order, recently another way of constitutionalization is used more often. Thus, today Ukraine is facing the problem of modernization of the constitutional system (constitutional

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<sup>45</sup> F.A. Hayek, *Law, Legislation and Freedom: A New Exposition of the Broad Principles of Justice and the Wide Principles of Justice and Political Economy*, in Vol. 3: *The Political System of the Free People* / F. A. Hayek; Kyiv Sfera 2000, p. 11.

<sup>46</sup> O. Petryshyn, *People's power as the foundation of the democratic, legal, social state* / O. Petryshyn // *Bulletin of the Academy of Legal Sciences of Ukraine (Collection of scientific works)*, Kharkiv 2009. - № 4 (59), p. 5.

<sup>47</sup>O.V. Shcherbanyuk *People's sovereignty in the theory of political and legal doctrines: historical school: monograph. Book I*, Kyiv Logos 2013, p. 129.

<sup>48</sup> N. V. Bocharova, *Constitutionalization of intellectual property in terms of information society and knowledge economy*, Dnipro, Innovation 2019, art. 185-186.

modernization<sup>49</sup>), which is particularly acute in relations between citizens and government institutions.

In constitutional modernization, an important role belongs to the only body of constitutional jurisdiction - the Constitutional Court of Ukraine, which makes decisions on the compliance of laws and other legal acts with the Constitution of Ukraine and gives an official interpretation of the Constitution. Ensuring such modernization, it objectively introduces a new system of values for Ukraine, based on the ideology of the legal state and the rule of law. In essence, the comprehensive systemic constitutionalization carried out by the Constitutional Court is designed to bring the current constitutional and legal norms as close as possible to the real state of public relations.

That is why in scientific circles there are more and more discussions about the need to study and analyze the modernization potential of the Constitutional Court of Ukraine. In our opinion, such a study should be based not on irrelevant, selective aspects of the activities of a single body of constitutional jurisdiction, but primarily on empirical material, which will systematically investigate such issues not only in terms of positivist understanding, but will also consider the existing interconnected experience and the interaction of law and morality, law and morality, national characteristics, customs, traditions and fundamental legal principles, norms etc. In the research the decisions of the Constitutional Court which constitutionalized and modernized certain provisions on the institution of democracy and direct democracy as its component should be mentioned, such as decisions of February 26, 1996 year № 1-rp / 98, dated March 27, 2000 № 3-rp / 2000, dated April 19, 2001 № 4-rp / 2001, dated October 5, 2005 № 6-rp / 2005, dated April 16, 2008 № 6-rp / 2008, of 15 October 2008 № 23-rp / 2008, of 18 October 2000 № 11-rp / 2000, of 13 December 2001 № 18-rp / 2001, of 18 June 2002 № 12- rp / 2002, dated April 26, 2018 № 4-rp / 2018 and others. However, formally the Constitutional Court of Ukraine does not participate in the formation of the doctrine or legal support of the institution of democracy.

The idea of people's sovereignty has always been and is a priority for the development of any modern civilized state, regardless of the form of government and political system. At the same time, different states use different mechanisms to achieve this goal. Some mechanisms justify themselves and become essential in the implementation and enforcement of relevant individual and collective rights of citizens, while others are ineffective.

In our opinion, the main mechanism for ensuring and implementing the principle of people's sovereignty is the theory and practice of constitutionalism, based on the ideas of the rule of law and the rule of law.

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<sup>49</sup> A. O. Yanchuk, Constitutional modernization, or separate aspects of the rule of law in the Ukrainian legal system in Legal Bulletin of KROK University, ed. 8, Kyiv 2011, p. 36-41.

In science, constitutionalism is seen as a socio-political system that limits the arbitrariness of power and determines the guarantees of human rights and fundamental freedoms. In the narrow sense, constitutionalism is embodied in the activities of constitutional justice bodies to verify the legal acts of public authorities for their constitutionality. Such features of constitutionalism as the restriction of arbitrariness, the definition of guarantees of human rights and fundamental freedoms through the Constitutional Court of Ukraine's review of legal acts of the authorities for their constitutionality that make constitutionalism one of the main mechanisms for building democracy in Ukraine.

Thus, constitutionalism as a phenomenon and constitutionalization as a process are the priority mechanisms for building democracy in Ukraine. This is ensured by the Constitutional Court of Ukraine's verification of legal acts of government bodies for compliance with general rule of law.

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# European principles of policing and tasks for their implementation in Ukraine

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## Summary

It is noted that today one of the main trends in the development of European principles of law is the separation of police law and, as a consequence, European principles of policing.

It is emphasized that the principle of the rule of law in the police is a manifestation of national values in the implementation of police tasks and functions of the state, which determine the relationship of such categories as «law and order», «freedom», «responsibility» and «justice».

It is concluded that the practical implementation of the principle of legality in the police has a direct consequence of the rule of law in civil society, the effective implementation of tasks and functions entrusted to the police.

It is emphasized that the system of European principles of policing should be divided into: common law (legality; rule of law; respect for the rights and freedoms of citizens; humanism; depoliticization; separation of powers; democracy) and special European principles (political neutrality; public authorities; determining the level of service standards and their publication; informativeness and publicity; selection and consultation; assistance and courtesy; error correction; optimal service within the funds spent).

**Key words:** police, principles, Ukraine, foreign experience, legality

First of all, it should be noted that for the analysis of any legal system it is advisable to determine the essence of such a category as the «principle of law». After all, as rightly points out AM Kolodiy, any principles, including the principles of law, are the product of human activity, the result of which they act and the interests of which they satisfy. Principles are social phenomena, both in source and content: their emergence is determined by the needs of social development, and they reflect the laws of social

life. The main sources of these principles are politics, economics, morality, ideology, social life.<sup>50</sup>

In this context, it should be noted that in the modern world the issues of formation of new branches, sub-branches and institutions of law are beginning to intensify, one of which is police law, which is separated from administrative law. It is well known that law as a system of legal norms governing social relations is based on guiding (fundamental) principles. Within the framework of police law, which regulates police activity, there is a need to define modern European recognized legal principles.

Topical issues of the principles of organization and activity of both the former militia and the modern police were covered in the scientific works of the following scientists: Yu. E. Avrutin, O.M. Bandurka, D.M. Bakhrakh, K.S. Belsky, I.A. Gorshenova, A.V. Gubanova, S.M. Gusarova, S.V. Dodina, R.A. Kalyuzhny, S.V. Kivalova, T.O. Kolomoyets, V.K. Kolpakova, A.T. Komzyuk, R.S. Melnik, V.P. Naumenko, O.V. Negodchenko, O.I. Ostapenko, A.P. Pavlov, P.V. Pashka, O.S. Pronevich, O.P. Ryabchenko, K. K. Sandrovsky, R.D. Swan, O. Y. Synyavska, Yu. P. Solovey, S.S. Tereshchenko, and others.

In general, the concept of «principle» (Latin «principium» - is the basis, the beginning) in the reference and encyclopedic literature is considered as a scientific or moral basis, a rule from which do not deviate<sup>51</sup>; determine that the "principle" is the basic starting point of any scientific system, theory, ideological direction, principle<sup>52</sup>; also under the concept of «principle» understand the feature underlying the creation or implementation of something, a way to create or implement something<sup>53</sup>; in the new explanatory dictionary on the Ukrainian language indicate that the «principle» is a belief, norm, rule, which guides someone in life, behavior, canon.<sup>54</sup>

It should be noted that today one of the main trends in the development of European principles of law is the separation of police law and, as a consequence, European principles of policing. The reference literature indicates that the analysis of the phenomenon of police law objectively necessitates the clarification of the legal status of the police, whose activities in a democratic state should be based on legally defined legal principles.<sup>55</sup>

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<sup>50</sup> A. M. Kolodiy, Principles of law: genesis, concept, classification and implementation, Almanac of law, 2012. ed. 3. p. 42–46

<sup>51</sup> V.I. Dal, Explanatory dictionary of the living Great Russian language: [in 4 volumes] / ed. I. A. Baudouin de Courtena, Moscow 1998. vol. 4, p. 414

<sup>52</sup> Dictionary of foreign words / [head. ed. VV Pchelkina], Moscow 1988, p. 624

<sup>53</sup> Dictionary of foreign words: 23000 words and terminological phrases / [L. O. Pustovit, O. I. Skopienko, G. M. Syuta and others], Kyiv: Dovira - UNVC "Ridna Mova" 2000, p. 1018.

<sup>54</sup> New explanatory dictionary of the Ukrainian language: in 3 vols. Vol. 2 / [compiled by: O. Yaremko, O. Slipushko]. Kyiv: Aconite, 2003, p. 926.

<sup>55</sup> Basic principles of police of foreign countries // Textbooks. Administrative law of foreign countries. URL: [https://pidruchniki.com/1016052058834/pravo/osnovni\\_printsipy\\_diyalnosti\\_politsiyi\\_zarubizhnyh\\_krayin](https://pidruchniki.com/1016052058834/pravo/osnovni_printsipy_diyalnosti_politsiyi_zarubizhnyh_krayin) (17.12.2018).

The current practice of defining the principles of policing in the member states of the European Union is characterized by the legal framework for policing, where the basic legislation governing policing enshrines the principles of such activities. In particular, in Georgia, Latvia and Lithuania, it is the Law on Police. It should be noted that the legislative enshrinement of the basic principles of police activity follows from the principles enshrined in the Constitutions of these states. Thus, the Law of Georgia «On Police» defines the following principles of policing: the principles of protection and respect for fundamental human rights and freedoms; legality; non-discrimination; proportionality; exercise of discretionary powers; political neutrality and transparency of police activities.<sup>56</sup> According to the Latvian law «On Police», the principles of police activity include: the rule of law, humanism, human rights, social justice, openness, unity.<sup>57</sup> In the Law of the Republic of Lithuania "On Police", the Lithuanian legislator defines such principles of Lithuanian police activity as: the principle of democracy, humanism, legality, social justice, publicity and professional secrecy, as well as single-headedness and collegiality.<sup>58</sup>

It should be noted that the principles of the police of Georgia and the Baltic States are based on the following principles.

1. The general legal nature of the police has the principle of the rule of law, the essence of which is reduced to the priority of human rights, the recognition of man as the highest social value of the rule of law, democracy and social state. As part of the implementation of this principle in the practice of policing, it is worth mentioning the definition of the above principle in paragraph 41 of the Report of the Venice Commission at the 86th plenary session, according to which the mandatory components of the rule of law include: legality, legal certainty, justice, respect for human rights, non-discrimination and equality before the law.<sup>59</sup> We see the right opinion of Y. V. Kryvytsky, who emphasizes that the rule of law in a sense is a mechanism for protecting human and civil rights and freedoms, practiced in the Anglo-Saxon legal tradition, as well as in part - in some states whose legal systems tend to Romano-Germanic legal family.<sup>60</sup> In turn, P.M. Rabinovych interprets the rule of law as a universal role of law in relations between all participants in public life, in the life of governmental and non-governmental organizations, social communities, groups,

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<sup>56</sup> Law of Georgia "Police Code" of 04.10.2013 № 1444 URL: <https://matsne.gov.ge/ru/document/download/2047533/1/ru/pdf> (29.11.2018).

<sup>57</sup> «Par policiju» Latvijas Republikas likums Izdevējs : Augstākā PadomeVeids: likums Pieņemts 04.06.1991. URL: <http://likumi.lv/doc.php?id=67957> (10.12.2020).

<sup>58</sup> Law of the Republic of Lithuania "Police Code" 11.12.1990 № I-851 URL: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.281866?jfwid=q86m1vvqk> (11.12.2018).

<sup>59</sup> On the rule of law: Report of the Venice Commission (Commission for Democracy through Law) at the 86th plenary session, March 25-26, 2011. Law of Ukraine. 2011. № 10, p. 177

<sup>60</sup> Y. U. Kryvytskyi, The rule of law as a principle of police activity: prospects of consolidation and implementation in the conditions of reforming the Ministry of Internal Affairs of Ukraine. Legal Ukraine. 2013. № 8, p. 8–13

associations, all people.<sup>61</sup> We also find interesting the position of Y. S. Shemshuchenko, who defines the rule of law as a principle of natural law, as a set of ideal, spiritual and highly just ideas about law. But in the state there is not an ideal, but a positive law, expressed in laws and other sources. It is the result of state law-making activity.<sup>62</sup>

Thus, we can conclude that the principle of the rule of law in the police is a manifestation of national values in the implementation of police tasks and functions of the state, which determine the relationship of such categories as «law and order», «freedom», «responsibility» and «justice».<sup>63 64 65</sup>

2. The principle of observance of human rights and freedoms is almost the main one during the implementation of measures of administrative coercion by the police. In this context, it should be noted that an important role is played by international European standards, due to rising crime rates, high migration rates and significant differences in the organization of police training. When introducing this principle into the practical activities of police bodies, the principle of general respect and observance of human rights, provided for in paragraph «z» of Art. 55 of the Charter of the United Nations (UN) of June 26, 1945. The principle of universal respect for human rights belongs to the generally recognized principles of international law, which in accordance with the Constitution of Ukraine are part of the legal system of Ukraine.<sup>66</sup>

3. Legitimacy is a guiding principle in the system of principles of organization and functioning of police bodies, as it is the basis of the entire legislative array of policing, including enshrined in the Constitutions of the leading member states of the European Union. Currently, legal science has formed a general conceptual understanding of the concept of legality in general (meaning legality as a principle, as a legal regime, as a method<sup>67</sup> and legality as a principle of organization and operation of the mechanism of the state. Thus, legality is often described as the strict and strict adherence of state bodies and officials to the law in the process of applying the law<sup>68</sup> or as following the law by state bodies and its citizens<sup>69</sup>. In the same context, it is worth noting the

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<sup>61</sup> P. M. Rabinovych, Human and civil rights in the Constitution of Ukraine (before the interpretation of the original constitutional provisions), Kharkiv: Pravo 1997 p. 56

<sup>62</sup> Y. S. Shemshuchenko, Selected, Kyiv, Yurydychna Dumka 2005 p. 529

<sup>63</sup> V. V. Chumak, Tasks and principles of activity of police of Latvia and Ukraine: the comparative legal analysis. Osori Academy. Proceedings of the Academy of the Ministry of Internal Affairs of the Republic of Tajikistan. 2015. № 4 (28) p. 29–33

<sup>64</sup> V. V. Chumak, Organization of the State Bureau of Investigation: world experience and national model. Scientific Bulletin of Dnipropetrovsk State University of Internal Affairs. 2018. № 4. p. 116–121

<sup>65</sup> V. V. Chumak, Tasks of the police in the police law of modern states. Bulletin of Luhansk State University of Internal Affairs named after EA Didorenko. 2016. № 2, p. 220–228

<sup>66</sup> Charter of the United Nations // Wikipedia - the free encyclopedia. URL: [https://uk.wikisource.org/wiki/%D0%A1%D1%82%D0%B0%D1%82%D1%83%D1%82\\_%D0%9E%D1%80%D0%B3%D0%B0%D0%BD%D1%96%D0%B7%D0%B0%D1%86%D1%96%D1%97\\_%D0%9E%D0%B1%27%D1%94%D0%B4%D0%BD%D0%B0%D0%BD%D0%B8%D1%85\\_%D0%9D%D0%B0%D1%86%D1%96%D0%B9](https://uk.wikisource.org/wiki/%D0%A1%D1%82%D0%B0%D1%82%D1%83%D1%82_%D0%9E%D1%80%D0%B3%D0%B0%D0%BD%D1%96%D0%B7%D0%B0%D1%86%D1%96%D1%97_%D0%9E%D0%B1%27%D1%94%D0%B4%D0%BD%D0%B0%D0%BD%D0%B8%D1%85_%D0%9D%D0%B0%D1%86%D1%96%D0%B9) (17.12.2020).

<sup>67</sup> O. F. Skakun, Theory of State and Law. Kharkiv: Konsum, 2000, p. 704 p

<sup>68</sup> M. N. Marchenko, Problems of the theory of the state and law, Prospekt 2001, p. 756

<sup>69</sup> Theory of Law and the State / ed. G.N. Manova, BEK 1995, p. 256

position of VV Samokhvalov, who argues that the general concept of legality can be adequately understood only as a unity of four requirements of legality, which are: the rule of law, the rule of law, the law and the reality of law<sup>70</sup>.

The legality of the expressed property of the right to resist arbitrariness in the process of regulating social relations, as well as the consolidation of those forms of ownership that correspond to the achieved level of development of the productive forces of society.<sup>71</sup> Legality is based on a certain mechanism of regulation, which is inherent in legal relations, is provided by the possibility of applying the mechanism of state coercion. However, it should be borne in mind that the latter is carried out by entities that are also endowed with relevant responsibilities. However, legality cannot be based only on coercion (physical or psychological), its origins are the interests and needs of people, and more specifically - the rights of the subjects of legal relations, the use of which always depends on the performance of other parties' legal obligations. Legitimacy should be seen as a specific social phenomenon that determines the priority of law in the relationship between government and the individual. Transformation of justice into legality and its implementation is the main task to be solved by any government.<sup>72</sup>

Thus, given the above, we can conclude that the practical implementation of the principle of legality in the police has a direct consequence of law and order in civil society, the effective implementation of tasks and functions entrusted to the police.<sup>73</sup>

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4. The next principle that deserves attention is the principle of humanism, which is distinguished as independent in many institutions of police law. S.P. Pogrebnyak emphasizes the formation, beginning in the second half of the twentieth century, of a firm belief that positive law must meet certain moral standards - justice, equality, freedom, humanism, and others. These principles are reflected in the constitutions and international acts, which indicates a kind of "convergence" of natural and positive law, thus disappearing the basis for a sharp conflict between these schools of law in assessing the legal nature of certain rules.<sup>75</sup> Continuing this position, MV Kostytsky argues that humanism in law affirms the value of the human person, human existence, dignity, rights, freedoms of every person.<sup>76</sup>

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<sup>70</sup> V. V. Samokhvalov, Principles and requirements of legality as a guarantee of its justice. State and law, 2001. ed. 12, p. 11–29

<sup>71</sup> L. S. Yavich, The essence of law, Publisher LGU, 1985, p. 207

<sup>72</sup> M. Papiev, Civil society: myth, reality or chance? // Mirror of the week. 2007. № 41 (670), October, p. 3

<sup>73</sup> V. V. Chumak, Principles of Georgian police activity: administrative and legal aspect. Scientific Bulletin of the International Humanities University. 2015. № 15. p. 95–97.

<sup>74</sup> V. V. Chumak, European principles of police activity and prospects of their use in Ukraine. *Legea si Viata: international. scientific-practical legal journal*. 2015. № 10/3. p. 81–85

<sup>75</sup> S. P. Pogrebnyak, Fundamental principles of law, Kharkiv, 2009, p. 433

<sup>76</sup> M. V. Kostytsky, Humanism of law as a manifestation of higher (space) laws in society // Principles of humanism and rule of law as a condition for the development of democratic, social, legal state (in memory of Professor VV Kopeychikov), Kyiv: KNUVS, 2009, p. 13–15

That is, due to the implementation and observance of this principle, the police, in the performance of its duties under the law, determines the most optimal, effective and, most importantly, proportionate police measure to achieve the goal set by this measure. The principle of humanism is manifested in the guarantees of the inviolability of the person. Thus, it can be argued that the principle of humanism in the police is a modern trend of ensuring and developing the rights and freedoms of citizens.

5. With regard to the police directly, the principle of openness and transparency for Ukrainian legislation, compared to Georgian and Baltic law, is a novelty. It is believed that Finland has a long tradition in the field of legislation on the principle of openness, because in 1766 the country applied the Swedish Law On Access to Public Information. The Law on Access to Official Documents has been in force in the country since 1951, and the Law on Openness of Government Activities has been in force since 1999, according to which the administration is open to external scrutiny, and transparency means that public scrutiny of public officials power is visible through. Sweden was the first country to enshrine this constitutional principle in its law. It is also worth noting that the US President's Memorandum to the Heads of Executive Departments and Transparency and Open Government Agencies of January 21, 2009 stated that government should be transparent. Transparency enhances accountability and provides citizens with information about the body's activities. Information held by the federal government is a national asset. It is necessary to provide citizens with quick and convenient access to relevant data. Executive departments and agencies need to use new technologies to post decisions and information about their activities on the Internet. Public feedback should be required to identify the information that is most useful to the public.<sup>77</sup> The principles of openness and transparency in the activities of public authorities are increasingly enshrined at the level of international legal acts. In accordance with Part 2 of Art. 6 of the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters, ratified by the Law of Ukraine of July 6, 1999 № 832-XIV, the public should receive information adequately, timely and effectively, depending on the circumstances. public announcement or individually at the initial stage of the decision-making procedure.<sup>78</sup>

That is, the principle of openness and transparency in policing is the ability to involve the public in policing, to act on the basis of partnership, which later flows into the concept of «community policing». These principles are reflected in the legislation of a number of European countries in the norms of European law, the United States

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<sup>77</sup> Memorandum for the Heads of Executive Departments and Agencies of January 21, 2009 «Transparency and Open Government» // Federal Register. 2009. Vol. 74. № 15. January 26. p. 4685–4686

<sup>78</sup> Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters: ratified by the Law of Ukraine of 06.07.1999 № 832-XIV // Official Gazette of Ukraine. 2010. № 3. art. 1191

and Ukraine, did not escape the consolidation of the above principle and the legislation of Georgia with the Baltic countries.

6. An equally important principle of police activity is the principle of democracy, the essence of which lies in the indirect relationship between the state and the citizen, state bodies, such as the police and civil society institutions. Democracy is a common law principle, a sign of a democratic state, where all citizens are equal in their rights, no forms of discrimination are allowed, and the activities of authorized public authorities are carried out on behalf of the state and in accordance with the law.

Let us define that the principle of democracy in policing is the guiding idea that determines the effective solution of the problems of ensuring fundamental rights to civil liberties, combating crime, ensuring public order and public safety, which, in turn, determines public control and accountability of the latter.

7. The principle of political neutrality deserves special attention, the essence of which is the prohibition for police officers to be members of the political stratum, in the prohibition to be a member of political parties, the prohibition to participate in such parties and openly express their views on politicians. Political neutrality is sometimes referred to as the principle of «political non-partisanship» of the police.

This list is not exhaustive, it varies depending on the legal system, as well as legislative recognition in the relevant special legislation governing the activities of police bodies. As a result, it should be noted that the member states of the European Union define the principles of policing somewhat differently, which later became known as "special principles" in relation to the general ones - they are European and apply to all, without exception, EU member states with the exception of Ukraine and Georgia.

Thus, we believe that the system of European principles of policing should be divided into: common law (legality; rule of law; respect for the rights and freedoms of citizens; humanism; depoliticization; separation of powers; democracy) and special European principles (political neutrality; accountability; interaction with civil society institutions). society and public authorities; determining the level of service standards and their publication; informativeness and publicity; selection and consultation; assistance and courtesy; error correction; optimal service within the funds spent).

In turn, the assessment of Section II «Principles of Police Activity" of the Law of Ukraine «On the National Police» gives grounds to conclude that the list of current principles of police activity of Ukraine should be supplemented as follows: determining the level of service standards; selection and consultation; help and courtesy; error correction; optimal service within the funds spent under Articles 12-1, 12-2, 12-3, 12-4, 12-5, respectively.

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# Problematic issues of preventive activities of agencies and units of the National Police to resist and prevent bullying

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## Summary

The article analyzes the ratio of such definitions as "prevention" and "preventive activity", contributes a detailed legal analysis of each of them. It is noted that these notions are characterized by scientific analogies with such legal categories as "prevention", "precaution" and "averting". Preventive activity is defined as defined as the activity of public authorities to implement task and function complex, serve prevention, precaution and averting of disturbances of law norms in different spheres of public life of the state.

It is noted that a special place in the mechanism of preventive activities of the state to avert and counteract disturbances of constitutional rights and freedoms of human and citizen, including children, is taken by law-enforcement agencies, specifically the National Police of Ukraine.

It has been noted that the units of the National Police, which are entrusted by the legislator with the duty to counteract and avert bullying, are the Juvenile Prevention Units, the Patrol Police and the Local Police Inspector Department.

**Key words:** prevention, preventive activity, National Police, bullying, children, minors, bullying, juvenile prevention.

According to article 3 of the Constitution of Ukraine, the human being, his life and health, honor and dignity, inviolability and safety are accepted in Ukraine as the highest social value. Human rights and freedoms and their guarantees determine the content and orientation of the state's activity. The State is responsible to the human for its activity.

It is an incontestable truth that the foundation for the development of a modern system of protection of human and civil rights and freedoms in any state is the level of its attitude toward children. The mentioned factor is an indicator of the progressiveness of a state, as well as the civilization and humanity of its society.

In this regard, a special role in the functioning of public authorities and administration is played by a mechanism for protecting and ensuring the rights of children and minors, the development and implementation of which is complicated by the specifics of the age consent, physical and mental condition of children. Taking note of the fact that in recent years our country has chosen a steady way to European integration, which has led to significant progress in this area, but at the same time it

has to be said that the current system of protection and enforcement of children's rights in Ukraine still remains at an inappropriate level. If we consider all this, the actuality of the topic of the dissertation research is out of question, while the chosen problem in reality, requires new doctrinal and conceptual approaches to its solution.

We consider logical to begin setting the bottom line and features of the preventive activities of the bodies and units of the National Police of Ukraine concerning the averting and counteraction to bullying from the characteristics of the conceptual apparatus and definition of theoretical aspects of these legal categories.

Laying stress on the fact that the legal analysis of such definitions as "prevention" and "preventive activity" is characterized by the multidimensionality of scientific thoughts and approaches. Also, a point of establishing the bottom line of these definitions are certain doctrinal analogies with such legal categories as "prevention", "precaution " and "averting", which, quite often, are noticed by the identity of wording.

This particular feature is indicated in her dissertation by Y. A. Lakiychuk, who notes that directly in the law, as a rule, under prevention is understood a system of measures focused on preventing crimes.<sup>79</sup> Also, the author, analyzing the views of different scientists on the issues of the studied emphasizes the place of prevention in law. It turns up in the prevention of behavior of physical and legal bodies, diverging from the norm, preventing the occurrence of negative consequences that can be foreknown in advance. Gel A.P. draws attention to the fact that this term is not used in the current Ukrainian legislation, but it is used in theory.<sup>80</sup> For her turn, S. Povolotskaya notes that in the domestic legal literature began to be widely used the foreign term of "prevention", which combines all the concepts associated with the "prevention of offenses", that denotes the activity of prevention, precaution, averting of offenses. The scientist notes that the introduction of this universal term allowed foreign scientists to avoid the "struggle" between the terms of "prevention" and "precaution" of offenses, which still exists in the native legal literature.<sup>81</sup>

Analyzing the above-mentioned opinions of scientists, the author noted a certain obsolescence of scientific approaches that offer to compare synonymously the definitions of "prevention", "averting" and "precaution " with the concept of "prevention". This position can be justified in the prism of the overall goal of these categories, agreeing in this with the considerations of Y. A. Lakiychuk, who emphasizes that prevention and averting are focused on preventing the occurrence of different negative events, while the author calls prevention an abstract category, which includes strategic, long-term oriented measures. Prevention, in its turn, is characterized by the

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<sup>79</sup> Lakiichuk Y., *Administrative and Legal Support for Preventive Activities of the Police*: Thesis. Cand. Sc.: 12.00.07. Kyiv, 2019. <http://elar.naiu.kiev.ua/jspui/handle/123456789/14708>

<sup>80</sup> Lakiichuk Y., *Administrative and Legal Support for Preventive Activities of the Police*: Thesis. Cand. Sc.: 12.00.07. Kyiv, 2019. <http://elar.naiu.kiev.ua/jspui/handle/123456789/14708>

<sup>81</sup> Povolotska S., *Activities of law enforcement agencies for the prevention of juvenile delinquency*: Thesis. Cand. Sc. Kharkiv, 2005.

application of more specific practical and tactical actions. At the same time, prevention intends to sustain the results of prevention and averting, that is, is aimed at eradicating the conditions under which the relevant negative factors in general can occur.<sup>82</sup> Focusing on the above statements we can state that the above legal definitions are characterized by a certain interweaving of content, but, at the same time, they cannot be permutable. Appealing to the above, it should be noted that prevention in the complex is the external embodiment of the above legal definitions. Based on this position and summarizing the views of scientists in this regard, the author proposes to define preventive activity as the activity of public authorities to implement a set of tasks and functions that serve to prevent, take precautions and avert disturbances of law in different spheres of public life of the state.

We must agree with E. V. Zozulya, who notes that a special place in the mechanism of preventive activity of the state to prevent and counter violations of constitutional rights and freedoms of human and citizen, including children, is occupied by law enforcement agencies.<sup>83</sup>

After the establishment of the National Police of Ukraine in 2015, the functional requirements and principles of this law enforcement agency have changed cardinally, in the implementation of its main powers it began to focus on the international progressive standards and approaches to the police of developed countries in Europe and the world. Today the national police have worked their way of a transformation up from a punitive agency of an out-of-date Soviet legal paradigm to the modern European-style law enforcement body, the main vector of which is to create the conditions in the society that can contribute to the prevention and exclusion of forming of unlawful behavior in a person.

Specifically, the police bodies that the legislator has delegated the right to use a wide instrumentation of administrative impact, which finds its expression in the application of clearly regulated by law actions, which are called preventive police measures. We can note that the current legislation does not contain this definition, article 31 of the Law of Ukraine "About the National Police" only provides a range of them.<sup>84</sup> After the implementation of the Law of Ukraine "About the National Police" prevention (expository- preventive activity) and intervention (application of legitimate coercive measures) are recognized as strategic directions of police activity.<sup>85</sup>

It should be noted that today preventive work with children (juvenile prevention) is one of the most important challenges for the units of the National Police of Ukraine.

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<sup>82</sup> Lakiichuk Y., Administrative and Legal Support for Preventive Activities of the Police: Thesis. Cand. Sc.: 12.00.07. Kyiv, 2019. <http://elar.naiu.kiev.ua/jspui/handle/123456789/14708>

<sup>83</sup> Zozulia Y., Organizational and legal bases of activity of the National Police of Ukraine concerning protection and maintenance of the rights of the child. Law Journal of Donbass. 2019. № 2 p. 150-157

<sup>84</sup> Law of Ukraine "On the National Police" of 02.07.2015 № 580-VIII. <https://zakon.rada.gov.ua/laws/show/580-19>

<sup>85</sup> Didyk N., Preventive function of the police patrol. Bulletin of Luhansk State University of Internal Affairs named after E.O. Didorenko. 2016. № 2 p. 188, 194

This is due to the rapid spread of modern information and communication technologies, their insinuation into all spheres of public life, the emergence of new trends among young people (increase of suicide groups in social networks, extreme selfies, etc.), the large number of orphans and children raised in families that are registered with the police, or in families with difficult life circumstances, children from settlements on the firing line (separation line), children-settlers from the temporary occupied territories of Donetsk and Luhansk regions.<sup>86</sup> For the purpose of overcoming the consequences of the above-mentioned negative phenomena and to prevent them in the future, in December 2017 the Instruction on the organization of juvenile prevention units of the National Police of Ukraine was approved by the order of the Ministry of Internal Affairs of Ukraine, which became a new stage of progressing the mechanism of protection of rights and legitimate interests of children and minors. Without changing the vectors of its predecessor (criminal police for children), focused on the protection and maintenance of children's rights and freedoms, still we must state that the reformatting of the main directions of this subdivision's work has been significant, because the mission of the state is to constantly expand and deepen the content of legislation in the sphere of children's rights protection.

Summarizing the content of the Instruction on the organization of the work of juvenile prevention units of the National Police of Ukraine, approved by the order of the Ministry of Internal Affairs of Ukraine from 19.12.2017 № 1044 we can take note that the range of tasks and powers of these units to counteract and prevent bullying is quite significant, but the main ones are:

- preventive activities focused on obviating children from committing criminal and administrative offenses, identifying the reasons and conditions that contribute to it, taking measures within your competence to dismiss them.
- keeping preventive records of children prone to committing offences and carrying out individual preventive measures with them.
- taking measures to prevent child neglect, including the implementation of police concern of minors etc.<sup>87</sup>

An important role in the mechanism of preventive activity of the National Police to prevent and counteract bullying is also played by the Local Police Officers Department and the Patrol Police Department. Employees of these units are involved in maintaining public safety in the areas where educational institutions are located, conducting preventive conversations with children from the "law-enforcement risk zone" and their parents or persons, who do duty for them, documenting relevant offences and bringing perpetrators to responsibility.

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<sup>86</sup> Shvets D. Improving the quality of training of employees of juvenile prevention units as a necessary prerequisite for the protection of children's rights and freedoms. *Scientific Journal. Kharkiv*, 2019, p. 29–31

<sup>87</sup> Act of the Ministry of Internal Affairs "About the statement of the Instruction on the organization of work of divisions of juvenile prevention of National police of Ukraine" of 19.12.2017 № 1044

Researching the features and specifics of preventive activities of the National Police units to resist bullying, we should also pay attention to such form as cyberbullying, which, despite the ambiguity of legislation, in recent years has a steady increasing tendency, but is ignored by lawmakers. The statutory assigned definition of bullying establishes that it can be actions that consist of psychological, physical, economic and sexual abuse, including the use of electronic communications. At the same time, it is not quite understandable what exactly the legislator meant by the construction of "electronic communication", as well as whether, for example, "disliking" a video or photo in social networks will be characterized as bullying, and if so, which algorithm of police actions in this case will be effective.

To summarize, we state that recent changes in the current legislation have brought the problem of bullying to a new level of recognition and the need to address existing gaps on the part of both academics and law enforcement employees. Unfavorable social and economic situation in the country and significant shortcomings in the moral and ethical education of children and minors have led to an increase in the number of cases of deliberate abuse of older and stronger of smaller and weaker members of educational institutions. The role of the National Police units in the mechanism of preventive action against bullying and harassment cannot be reduced only to taking a child on the preventive accountability. For this purpose it is extremely necessary to consolidate the efforts of scientists, police officers, representatives of public authorities and the public to develop a set of preventive and educational measures focused on preventing manifestations of this shameful phenomenon in modern society in general and in the children's environment in particular.

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# Function of the Cabinet of Ministers of Ukraine in the field of scientific and technical activity

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## Summary

The article provides an analysis of the functions of the Cabinet of Ministers of Ukraine in the field of scientific and scientific-technical activities. The basis of their classification is the division of functions of public administration bodies into general, special, auxiliary, social-organizational and internal-organizational, accepted in the literature. It is noted that the functional orientation of the Government is both general (organization, planning, coordination, control, work with staff) and special - there are functions that reveal the specifics of its management activities in science and technology and are implemented through its powers in this area . According to the results of the study, it is established that in the field of scientific and scientific-technical activities the Cabinet of Ministers of Ukraine performs general and auxiliary functions: organization, planning, forecasting, coordination, state regulation, control, organization of work with staff. It is established that the functions of the Cabinet of Ministers of Ukraine in the field of scientific and scientific-technical activities should be referred to the category of special. These include the functions of: social security for researchers; property management of subjects of scientific and scientific-technical activity of the state form of ownership; financial support of scientific and scientific and technical activities; planning and programming of directions of development of science and technology; infrastructure management of scientific and scientific-technical objects; staffing of public administration bodies in the field of lower level science and technology and scientific institutions.

**Key words:** functions of public administration, Cabinet of Ministers of Ukraine, scientific and scientific-technical activity.

Function as a concept is defined by the Great Explanatory Dictionary of the modern Ukrainian language as a phenomenon that depends on another phenomenon, is a form of its manifestation and changes according to its changes; work of someone, something, duty, circle of activity of someone, something<sup>88</sup>.

The management function is seen as part of management activities, "the real impact as a result of which the controlled component becomes stable, maintained in

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<sup>88</sup> Bousel V., Great explanatory dictionary of modern Ukrainian language. Perun, Kyiv (2005)

a certain state or transformed into a new quality"<sup>89</sup>. Ukrainian specialists classify management functions depending on the following criteria:

1. Depending on the direction and place of influence: a) socio-organizational (influence of state bodies on the objects of management), b) internal organizational (management within the state administration).

2. The content, nature and extent of influence:

a) general or basic, which are characteristic of any management process (organization, planning, forecasting, regulation, coordination, control);

b) special or specialized (characterize the characteristics of a particular subject or object of management, due to the specifics of the field of management or management activities);

c) auxiliary (contribute to the implementation of general and special functions).

According to the criterion of meeting needs, ancillary functions are classified into the following groups:

a) in the goal-setting organization - forecasting, strategic and current planning;

b) in the necessary resources - financing, logistics, transport services, incentives, labor resources, staffing; c) in order, coherence in actions - management, coordination, organization, control, etc.;

d) in the constant improvement of the management system - organization, diagnosis<sup>90</sup>.

It is worth considering the main content of most of these functions in accordance with the activities of the Cabinet of Ministers of Ukraine in the field of scientific and scientific-technical activities, noting that its functional focus is both general (organization, planning, coordination, control, work with staff) and special - there are functions that reveal the specifics of the management activities of the Government in the field of scientific and scientific-technical activities and are implemented through its powers in this area.

The function of the organization provides and promotes the creation and reorganization of management bodies, the formation of the structure of the management staff, management units, the establishment of relationships between management structures, the creation of organizational mechanisms in the areas of management; establishes relationships between managers and managed systems. An organization is a function whose main purpose is to form systems that manage and are managed<sup>91</sup>.

In accordance with paragraph 9 of Article 116 of the Constitution of Ukraine, paragraph 9, the Cabinet of Ministers of Ukraine directs and coordinates the work of ministries, other authorities, paragraph 9-1 – forms, reorganizes and liquidates ministries and other central executive bodies, paragraph 9-2 – appoints and dismisses

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<sup>89</sup> Atamanchuk G., Ensuring the rationality of public administration. Moscow. 1990. p. 73.

<sup>90</sup> Bityak Y., Administrative law: Manual, Kharkiv, 2000. p. 93.

<sup>91</sup> Lebid N., Administrative Law and Procedure, finance law, information law. Kharkiv, 2004. p. 24.

on the proposal of the Prime Minister of Ukraine heads of central executive bodies that are not members of the Cabinet of Ministers of Ukraine.

The planning function of the Cabinet of Ministers of Ukraine is considered in most scientific papers as a function of state planning and one of the main, it is to determine the purpose, directions, objectives, means of implementing certain processes (social, economic, political, cultural, etc.), program development, by which the goal must be achieved.

The objects of planning of the Cabinet of Ministers of Ukraine are:

1) state planning (preparation and submission to the Verkhovna Rada of Ukraine of the Program of Activities of the Cabinet of Ministers of Ukraine, including in the field of scientific and scientific-technical activities (Article 11 of the Law of Ukraine "On the Cabinet of Ministers of Ukraine"); "Development of national programs of scientific and technical development, as well as the development, approval and implementation of other state target programs, such as the State target program for the development of research infrastructures in Ukraine until 2026). Through state programs is the implementation of state policy. A separate direction of state planning in the field of scientific and scientific-technical activity should be noted the activity of development and submission for approval by the Verkhovna Rada of Ukraine of bills, thus implementing the government's right of legislative initiative..

2) administrative planning of the Cabinet of Ministers includes: planning of the Cabinet of Ministers of Ukraine (planning of government meetings, control over the activities of public administration bodies, rule-making activities in accordance with the draft law plan, which is formed annually by the ministries and other central executive bodies); planning the activities of executive bodies and local self-government in terms of delegated powers. An example of scientific (scientific and technical) programs is the State Program for Forecasting Scientific and Technological Development for 2008-2012, approved by the Resolution of the Cabinet of Ministers of Ukraine of September 11, 2007 No. 1118.

Along with this, it should be noted the negative trend in terms of state planning and forecasting of scientific and scientific-technical development in Ukraine. Currently, there is only one state program that provides for applied research and development and research in the field of civil protection and fire safety, the Program for the cessation of production and use of ozone-depleting substances for 2004-2030, approved by the Cabinet of Ministers of Ukraine of March 4, 2004 № 256. This requires intensification of state policy in this direction in the near future, which provides for the development and approval of programs for the development of science and technology in various fields for the coming years.

The coordination function ensures the coordination of the activities of governing bodies, their officials, heads of other administrative structures and bodies of state power and local self-government. The analysis of the government's coordination policy indicates its external (outside the system of executive bodies) and internal

structural nature (regarding the regulation of relations in the system of executive bodies), the activities of the Government and its officials are coordinated. The external coordination activities of the Cabinet of Ministers of Ukraine include ensuring, in accordance with the Law on International Treaties, the resolution of issues concerning the conclusion and implementation of international treaties of Ukraine (paragraph 4, part 1 of Article 20 of the Law of Ukraine "On the Cabinet of Ministers of Ukraine"). In the field of scientific and scientific-technical activities, this applies, for example, to such documents as the Agreement between Ukraine and the European Community on scientific and technological cooperation of 04.07.2002<sup>92</sup>.

Internal coordination activities are formalized in Part 1 of Art. 2 of the Law of Ukraine "On the Cabinet of Ministers of Ukraine", according to which the Government directs and coordinates the work of ministries and other executive bodies, monitors their activities, including in the field of scientific and scientific-technical activities. Coordination influence is directed on the activity of those executive bodies that manage the sphere of science and technology at the lower level, they include: the Ministry of Education and Science of Ukraine, the Ministry of Health, the Ministry of Justice of Ukraine, the Ministry of Defense of Ukraine and the Ministry of Internal Affairs of Ukraine; Cabinet of Ministers of the Autonomous Republic of Crimea, local state administrations, etc.

The coordination of the current activities of the Government with the authorities is carried out by the relevant services. Thus, the coordination of the Government's activities with the Parliament is carried out by the Directorate for Interaction with the Verkhovna Rada of Ukraine.

In the field of scientific and scientific-technical activities in Ukraine, the Cabinet of Ministers of Ukraine implements the functions of state regulation by defining certain rules of conduct and activities in specific regulations, through the establishment of management procedures (certification, licensing, taxation, registration, etc.), control mechanism, coordination activities, formulation of management tasks, etc.). With the help of the regulatory function is the direct management of science and technology. Regulated management processes operate in a given state and in accordance with established goals. Particular attention is paid to operational regulation to ensure optimal planned results.

Characterizing the relationship between the Cabinet of Ministers of Ukraine and the executive branch and other controlled bodies, we can talk about their regulatory (by the Government), as the features inherent in regulatory relations have an identity with those that arise between the above entities. .

The control function of the Cabinet of Ministers of Ukraine in the field of scientific and scientific-technical activity occupies an important place. The control function is characterized in the legal literature as universal for the entire management system, as

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<sup>92</sup> Agreement between Ukraine and the European Union about scientific and technological cooperation. URL: [https://zakon.rada.gov.ua/laws/show/994\\_194#Text](https://zakon.rada.gov.ua/laws/show/994_194#Text)

it provides the governing body with information about the actual state of performance of tasks.

A. B. Duda notes that the control function of the Cabinet of Ministers of Ukraine as a stage of the management cycle is to record and correct deviations from the planned in the process of implementing the management decision<sup>93</sup>. Control is an integral function of state power, ensures the effectiveness of state tasks of state power.

An important function of the Cabinet of Ministers of Ukraine is the organization of work with the staff, which includes training, selection and placement, staff rotation, retraining, training, encouragement and imposition of penalties.

Last but not least is the function of information support of activities in the field of science and technology. The function of information support is to collect, process and evaluate information, which is carried out at all stages of the process of making and implementing government decisions. Information and analytical support of the Cabinet of Ministers of Ukraine, in particular for the exercise of powers in the field of scientific and scientific-technical activities, in accordance with Art. 50 of the Law of Ukraine "On the Cabinet of Ministers of Ukraine" is implemented by the Secretariat of the Cabinet of Ministers of Ukraine. In particular, it provides the Government with information on the status of implementation of decisions on the management of science and technology adopted at meetings of the Cabinet of Ministers of Ukraine, and on the status of consideration in parliament of bills submitted by the Government on these issues. Its structure includes the Department of Communications, the Department of Information and Public Relations, the Department of Information Technology and Security. An important means of obtaining the information necessary for making informed decisions of the Government in the field of scientific and scientific-technical activities is monitoring carried out by the Department of Monitoring and Control of the Secretariat of the Cabinet of Ministers of Ukraine.

Special functions of the Cabinet of Ministers of Ukraine are divided into types depending on the spheres of government (there are functions of public administration in the administrative-political, economic, social and humanitarian spheres). The special functions of the Cabinet of Ministers of Ukraine are numerous and diverse, they reflect the peculiarities of the interaction of specific subjects and objects of public administration, in contrast to the general functions that are related to the processes of public administration<sup>94</sup>.

The functions of the Cabinet of Ministers of Ukraine in the field of scientific and scientific-technical activities should be referred to the category of special. In the proposed classification, they belong to the group of functions of the humanitarian sphere. This classification group also includes the proper functioning and development

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<sup>93</sup> Duda A., Improving the functions and structure of the Cabinet of Ministers of Ukraine during the period of administrative reform. Kyiv, 2001. p. 75.

<sup>94</sup> Osaulenko S., Administrative and legal status of the Cabinet of Ministers of Ukraine, Administrative Law and Procedure, finance law, information law. Odessa, 2010. p. 103.

of education and culture. Thanks to them, the constitutional right of every citizen to receive a certain level of education, involvement in cultural heritage, scientific activities, etc. is realized.

Our study of the powers of the Cabinet of Ministers of Ukraine in the field of scientific and scientific-technical activities also allows us to identify certain types of functions of the Government in this area at the level of special. These include:

- social security of researchers;
- property management of subjects of scientific and scientific-technical activity of the state form of ownership;
- financial support of scientific and scientific and technical activities;
- planning and programming of directions of development of science and technology;
- infrastructure management of scientific and scientific-technical facilities;
- staffing of public administration bodies in the field of lower level science and technology and scientific institutions.

The function of social security is realized through the implementation by the Government of the following powers: 1) determines the conditions of remuneration of employees of state research institutions financed from the state budget; 2) approves the duration of the annual leave of the researcher; 3) determines the amount of scholarships for graduate students, associate professors and doctoral students enrolled in studies by state order; 4) determine the amount of the lifetime fee for full members (academics) and corresponding members of the National Academy of Sciences of Ukraine and national branch academies of sciences; 5) determines the list of categories of scientific (scientific and pedagogical) employees who may be provided with office accommodation, etc.

The function of property management of subjects of scientific and scientific-technical activity of the state form of ownership is realized through the following powers of the Government:

- 1) decides on the transfer of objects of the property complex of national branch academies of sciences to the sphere of management of other bodies authorized to manage state property into communal ownership, as well as on the transfer of objects of communal property to state ownership with their subsequent assignment to the property complex of national branch academies of sciences; 2) determines the procedure for alienation of real estate of the National Academy of Sciences of Ukraine and national branch academies of sciences and organizations referred to their jurisdiction, etc.

The function of financial support of scientific and scientific-technical activity is expressed in the presence of the following powers: 1) approves the procedure for using the funds of the National Research Fund of Ukraine on the basis of proposals of the National Council of Ukraine for Science and Technology; 2) establishes grants and awards of the Cabinet of Ministers of Ukraine in the field of scientific and scientific-

technical activity and determines the procedure for their provision; 3) approves the procedure for the use of budget programs to promote the development of production-oriented research institutions for the implementation of their innovation and investment projects; 4) establish the procedure for crediting state scientific institutions with their own revenues received from payment for services provided by them in accordance with the main activity, charitable assistance, grants; 5) approve the Procedure for competitive selection and financing by the National Research Fund of Ukraine of projects for the implementation of research and development, etc.

Function of planning and programming of directions of development of science and technology:

1) approves state target scientific and scientific and technical programs, ensures their development and implementation; 2) prepares and submits to the Verkhovna Rada of Ukraine proposals on strategic priority areas of innovation and approves medium-term priority areas of innovation at the national and sectoral levels; 3) considers proposals for strategic priority areas and their forecast and analytical justification; 4) approve the proposals of strategic priority directions and their substantiation submitted by the central body of executive power, which ensures the formation of the state policy in the field of innovations, and submit them to the Verkhovna Rada of Ukraine in the form of draft laws; 5) approves the Procedure for preparation of proposals on strategic priority areas, etc.

The function of infrastructure management of scientific and scientific-technical facilities is expressed in the fact that the Cabinet of Ministers of Ukraine:

1) determines the procedure for the formation, reorganization and liquidation of state scientific institutions, including those under the jurisdiction of national branch academies of sciences; 2) approve the procedure for conducting state certification of scientific institutions and institutions of higher education in terms of their scientific (scientific and technical) activities;

3) approve the regulations on the State Register of Scientific Institutions;

4) approves the Standard Regulations on the Supervisory Board of a state scientific institution, etc.

The function of staffing of state governing bodies in the field of lower level science and technology and scientific institutions is that the Cabinet of Ministers of Ukraine:

1) approves the personnel of the National Council of Ukraine for the Development of Science and Technology; 2) approves the Chairman of the National Research Fund of Ukraine;

3) approves the Model Regulations on the procedure for holding a competition to fill vacant scientific positions of a state scientific institution; 4) approve the Methodical recommendations on the peculiarities of the election of the head of the state scientific institution and the standard form of the contract with the head of the state scientific institution; 5) determines the procedure for competitive selection and appointment of

the head of state commercial enterprises and state-owned enterprises belonging to scientific institutions, etc.

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# Human rights guaranteeing as the priority in the activities of police agencies in Ukraine

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## Summary

The emphasis has been placed on the importance of guaranteeing the rights and freedoms of citizens in the activities of police agencies, preventing the commission of illegal actions by both police officers and against police officers. The author has characterized the content of the information subsystem for the registration of detainees in the information and telecommunication system “Information Portal of the National Police of Ukraine” (“CUSTODY RECORDS”). The main aspects related to the functioning of the information subsystem for the registration of detainees in the information and telecommunication system “Information Portal of the National Police of Ukraine” have been revealed. It has been emphasized that such a system will significantly reduce the number of undocumented detentions, their manipulations; will assist to resolve certain disputes and conflict situations, to avoid unfounded accusations of police officers of committing illegal acts, and to avoid torture.

The peculiarities of training inspectors on human rights issues have been revealed. It has been established that the special emphasis in the course of such training is placed on the importance of compliance with human rights standards (both national and international), security issues in relation to police officers and detainees, the balance of privacy and security. Particular attention has been paid to the organization of interview work: practical work with the electronic database, the use of all software cards, starting from registration of the detainee, his movements, food, all the events that happen to him during his stay in the police station. The author has revealed the content of the updated algorithms of actions of patrol police officers, inspectors of the duty service, investigators.

**Key words:** human rights, police officers, Custody records, police training.

An important prerequisite for the efficiency of protecting the rights and freedoms of citizens is the development and implementation of an effective mechanism for their protection and defense. It is possible to achieve this by observing and guaranteeing human rights and fundamental freedoms as the key value in the activity of the agencies within the Ministry of Internal Affairs; by implementing the functions of the agencies of the Ministry of Internal Affairs in accordance with human needs; by

ensuring close cooperation with local communities and society in the whole<sup>95</sup>. Thus, the main duty of the state is to ensure the rights and freedoms of citizens, which actually determines the direction of all public authorities' activities without exception, especially law enforcement agencies. The adoption of the National Strategy in the Field of Human Rights and the Strategy of Sustainable Development "Ukraine – 2020" in 2015 confirms the desire of our state to acquire the status of a truly legal and democratic country. The provisions of the indicated regulatory legal acts determine the orientation of our state to unite society around understanding the value of human rights and freedoms, which are protected on the basis of equality and non-discrimination<sup>96</sup>, increasing the level of protection of human rights and freedoms, and the interests of society and the state from unlawful encroachments<sup>97</sup>. In this regard, special attention should be paid to quality training of law enforcement officers in specialized higher educational institutions, acquainting them with the key principles of protection and defense of the rights and freedoms of citizens, considering the specifics of a particular law enforcement agency. Such training must consider both amendments in the national legislation and consider the positive experience of foreign countries in organizing the process of police training and the functioning of police agencies, focusing their activities on the real guaranteeing human rights and freedoms.

Given the current stage of updating approaches to the organization of police agencies and units, it is important to ensure the observance of citizens' rights within police activities, to prevent the commission of illegal actions by both police officers and against police officers. Many citizens apply to police stations every day, and the activities of police officers in this regard should be aimed at guaranteeing the rights of those citizens who have applied to the police station for assistance, as well as those citizens who are in police stations as detainees. Unfortunately, written records of police detention used by police agencies are not able to fully ensure the collection, accumulation and analysis of such information. Besides, it should be noted that recently there has been a significant increase in reports of police accusations of wrongdoing against detainees, and the refusal of police officers to aid citizens in need. Given that it is sometimes very difficult to prove the truth or falsity of such allegations (since there is currently no system for recording the actions of police officers and citizens in police stations), there is an urgent need to take police action to a qualitatively new level, ensuring its real transparency and accountability through the introduction of an effective mechanism for monitoring the stay of persons in police premises.

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<sup>95</sup> The order of the Cabinet of Ministers of Ukraine "Strategy for the development of the departments of the Ministry of Internal Affairs of Ukraine for the period up to 2020" of 15.11.2017, № 1023

<sup>96</sup> Decree of the President of Ukraine "National Strategy in the Field of Human Rights" of 25.08.2015 № 501/2015

<sup>97</sup> Decree of the President of Ukraine "Strategy of Sustainable Development "Ukraine – 2020" of 12.01.2015 № 5/2015

The Human Rights Department of the National Police of Ukraine has a crucial role within the system of police agencies that should directly control the process of guaranteeing fundamental human rights and freedoms while using police measures, ensuring detainees rights kept in detention centers, ensuring counteraction and prevention of domestic violence and gender-based violence, ensuring human rights in the field of personal data protection<sup>98</sup>. The information subsystem of registration of detainees the information and telecommunication system “Information Portal of the National Police of Ukraine” (hereinafter – the information subsystem “Custody Records”) is currently being actively introduced into the activities of police agencies and stations at the initiative of this Department. The main purpose of this system is to create conditions for the implementation of internationally recognized standards for the protection of the rights of detainees. The main steps in this direction should be the conduction of a mandatory interview with a detainee immediately after the delivery to the police station, ensuring electronic recording of all actions against the detainee (recording, accumulation, storage of information on the movement of the person in specially designated police premises), creation of opportunities for operative search for the information on the detained persons who are (were) in police station from the moment of their actual detention. Thus, the information contained on the server of the information subsystem “Custody Records” refers to events related to the detention of persons suspected of committing an offense by authorized persons of the police agencies.

It is assumed that the functioning of the information subsystem “Custody Records” will create conditions to increase the standards of protecting the rights of detainees and police officers, by:

- reducing the burden on police officers involved in dealing with detainees;
- protection of the rights of police officers against false accusations of wrongful acts against detainees; implementation of remote external control over the observance of the rights of detainees by the authorized persons of the Human Rights Department of the National Police of Ukraine;
- electronic recording of all actions against the detained person from the moment of his/her actual detention until his/her placement in the pre-trial detention center or release from custody;
- introduction of obligatory interrogation of detainees and the police officers who carried out the detention on the circumstances and grounds for detention;
- ensuring control over the observance of the rights of detainees and prevention of contacts with him by persons who do not have the appropriate authority;
- implementation of automated notification of free secondary legal aid centers about the fact of detention of a person;

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<sup>98</sup> Department of Human Rights of the National Police of Ukraine. <https://www.npu.gov.ua/about/struktura/struktura/upravlinnya-zabezpechennya-prav-lyudini>

- automated informing of responsible persons about the expiration of the detention term of the detainee;
- receiving a report: on the conditions of detention, treatment and protection of the rights of detainees, the state of health during their stay in the police agencies (units)<sup>99</sup>.

The introduction of the “Custody Records” will ensure the creation of a single electronic file for each detainee, record of all aspects related to detention, compliance with basic guarantees provided to detainees, will increase the standards of protection of police officers rights against possible false accusations of wrongdoing. In addition, the creation of an electronic file for each detainee (reasons and grounds for detention, data on investigative actions), the information subsystem will accumulate video recording of all actions that took place in police stations, as well as information from police officers’ cameras. Thus, it should be noted that video and audio recording of police actions should take place immediately after the grounds for detention. As a result, it will significantly reduce the number of unrecorded detentions, as well as their manipulation, will assist to resolve certain disputes and conflict situations. Besides, it will avoid unfounded accusations of police misconduct, as well as tortures, which, unfortunately, still occur within the police activities.

Besides, the introduction of the indicated information subsystem allows police officers to carry out remote surveillance through remote video surveillance systems, i.e. to verify the compliance with the rights of detainees, as well as consideration of their complaints.

As part of the functioning of the information subsystem “Custody Records” it is planned to update the algorithms of actions of patrol police officers, inspectors of the duty service, investigators. It is also planned to make staff changes in the structure of police stations and to hold police positions responsible for detainees in the police unit and guarantee human rights (“Custody” officers). Before making the relevant organizational and staffing changes, it is assumed that their powers will be performed by inspectors of the duty service.

An important prerequisite for the effective functioning of the information subsystem “Custody Records” is the training of police officers who will directly work with the system. Thus, the Police Training Department at Kharkiv National University of Internal Affairs was re-equipped in order to ensure the functioning of the information subsystem for the registration of detainees in the information and telecommunication system “Information Portal of the National Police of Ukraine” “Custody Records”.

Several measures have been taken at Kharkiv National University of Internal Affairs in order to establish police training center with the “Custody Records” system and

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<sup>99</sup> Bezpalova O., Perspective directions of Custody records system introduction in the educational process of Kharkiv National University of Internal Affairs: International scientific-practical conference. Kharkiv National University of Internal Affairs. Kharkiv, 2020. p. 86-88

standards for dealing with the detainees. The training system of human rights inspectors includes several blocks:

1) theoretical block containing information on the purpose of the system, the role and tasks of the human rights inspector, human rights standards both national and international, security issues in relation to the police officer and the detainee, the balance of privacy and security issues, work with sensitive data, primarily medical information, but it may also include personal information from a person's private life that cannot be disclosed;

2) special block – work on interviews, which is an important element of the system and, accordingly, the training of human rights inspectors. There is practical work with the electronic database, the use of all software cards within the framework of this block, starting from the registration of the detainee, his movements, food, all events that happen to him during his stay in the police station, medical card, how to enter it, how to store this sensitive information. Issues related to the detainee's correspondence and belongings are also studied. And, of course, a workshop on interviews: how to conduct it properly, how to set a person to communicate with the inspector about information on the circumstances of the detention, not about the process of guilt of the detainee, but about possible human rights violations against the detainee by police officers;

3) special issues related to first aid training (police response to crisis situations, where it is necessary to act quickly in order to save the life of a detainee, all other optional issues that may be interesting to future human rights inspectors).

During the training of human rights inspectors, key attention is paid to the issues of filling in the tables contained in the information subsystem "Custody Records": "Detention"; "Eyewitnesses of detention"; "Photo images"; "Police officer's interviews"; "Interrogation of a detainee"; "Detainee's card"; "Movement of a person"; "Recording a person"; "Conducting a medical examination"; "Food"; "Informing RCFSLA (Regional Center for Free Secondary Legal Aid)". It is possible to fill in these tables and save the data entered in them due to the fact that the computers located in the "Police Training Station" are connected to the IPNI server via the ECMT network in the "Custody Records" subsystem.

In addition, as part of the training, students get acquainted with specific features: (a) remote external control over the observance of the rights of detainees by the authorized persons of the Human Rights Department of the National Police of Ukraine; (b) electronic recording of all actions against the detained person from the moment of his/her actual detention until his/her placement in the pre-trial detention center or release from custody; (c) interviewing the detainee and the police officer who made the detention about the circumstances and grounds for the detention; (d) procedures for notifying the centers for the provision of free secondary legal aid of the fact of the detention; (e) informing the responsible persons about the expiration of the detention of the detained person, etc.

As a result of the training, human rights inspectors will be able to: (a) create a single electronic file for each detainee; (b) record all aspects related to the detention; (c) ensure the compliance with the basic guarantees provided to detainees; (d) accumulate video recording of all actions that took place in police units, as well as information from police officers' cameras. To this end, special attention during the training should be paid to the need for continuous video and audio recording of police actions immediately after the grounds for the detention. This necessity is due to the fact that as a result it will significantly reduce the number of unrecorded detentions, manipulations, resolve certain disputes and conflict situations, avoid unfounded accusations of police misconduct, and avoid tortures, which, unfortunately, still take place in police activities.

It should be noted that not only those police officers who will work directly with the information subsystem "Custody Records", but also students of advanced training of all categories of police officers and cadets can get acquainted with this subsystem within the educational process. This will create the preconditions for timely acquaintance of cadets and students with the rules of working with the information subsystem, the tasks for which they operate, and the results that can be achieved while its operation. As a result, both cadets and students of advanced training courses will have in advance and gain the necessary set of knowledge on the importance of guaranteeing the rights of citizens in policing, including the compliance with standards of observing the rights of detainees.

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# Judgment mediation: essence and types

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## Summary

In the article the author explored the legal nature, essence and features of adjudication mediation as an alternative form of dispute resolution, as well as described its varieties. Describing the features of adjudication mediation, the author emphasizes that it: is proposed by the judge to the parties after they go to court, but before the start of the trial on the merits; it is recommended to the parties by the judge after the opening of proceedings in the case; the parties themselves come to the conclusion that the mediation procedure has already been used during the court proceedings; the precondition for its appointment is a procedural document in the form of a relevant court decision. It is established that adjudication mediation can exist in two models in the context of structuring in the content of the classical trial: integrated adjudication mediation (German model) and non-integrated adjudication mediation (Dutch model). The first model is to some extent directly reflected in the procedural legislation of Ukraine. rules of application of each of the given types of adjudication.

These considerations made it possible to formulate proposals for current legislation and the draft Law on Mediation, the implementation of which will clear the legal framework for the existence of this legal institution and ensure the existence of a more effective mechanism for protecting human rights and freedoms.

**Key words:** mediation, adjudication mediation, alternative form of dispute resolution, court proceedings, court decision.

Among the scientists who to some extent studied the nature of mediation should be noted such as: P. Bartusyak, L. Burova, L. Galupova, G. Goncharova, N. Mazaraki, A. Novosad, G. Ogrenchuk, O. Senyk, O. Spector, T. Shinkar, T. Tsuvina, V. Yakovlev, I. Yasinovsky and others. However, these studies considered the place of mediation among other alternative forms of dispute resolution or were devoted to its use in conflict resolution in the field of relevant public or private relations, such as administrative law, criminal law or intellectual property, housing relations, labor disputes. etc. In connection with the inclusion in the procedural legislation of the normative basis for the existence of so-called adjudication mediation, as well as the formation of the basic principles of mediation as an alternative form of dispute

resolution in the next draft Law on Mediation of 19.05.2020 № 3504<sup>100</sup>, Today there is a need to study the features of this type of mediation, taking into account the models already developed by the world community and the available research of this phenomenon in terms of its differentiation,

In this regard, the purpose of this article is to determine the legal nature and essence of the so-called adjudication mediation, as a consequence, outlining its features in comparison with classical mediation and other forms of alternative dispute resolution, citing its varieties given the world experience and prospects domestic social and legal reality.

The general humanization of all spheres of public life is manifested in the corresponding transformations of socio-economic and legal institutions. The issue of resolving conflict situations in social life has been, is and will be relevant in the human community, which is related to the nature of the individual. In addition, the degree of involvement in the resolution of conflicts directly in society through the mechanisms of legislative, executive or judicial power during the existence of mankind has changed. Given the determination of man with his rights and freedoms in international and national law today, the direct participation of the state in any of these forms is increasingly meaningless, in the first place is the model of self-sufficient society, which seeks to create conditions for human dignity. which person. Following the reasoning of the famous philosopher Emmanuel Kant in a self-sufficient society, its members themselves determine the limits of their behavior and seek to understand the problems and preconditions for conflict situations, as a consequence to come to a compromise solution.

All the above was a prerequisite for reforming the procedures for dispute resolution in a particular area of public relations with the participation of public authorities and individuals. For Ukraine, the classic dispute resolution procedure is litigation or litigation, depending on the jurisdiction of such cases. In order to solve a number of organizational, economic, legal, humanitarian problems for our country is characterized by the formation of certain alternatives to the judicial form of dispute resolution, including: negotiations, arbitration, arbitration. This fully echoes the declared progress of our country in implementing the Action Plan for Ukraine of the Council of Europe for 2018-2021, approved by the Committee of Ministers of the Council of Europe on February 21, 2018, where promoting alternative dispute resolution is one of the priorities in ensuring justice. The latest achievement in this area is the attempt to standardize the mediation procedure as a self-sufficient structure for resolving a dispute without the participation of third parties. And, although some will object in the context of the above understanding of mediation as

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<sup>100</sup> Draft Law on Mediation: dated 19.05.2020 № 3504. URL: [http://w1.c1.rada.gov.ua/pls/zweb2/webproc4\\_1?pf3511=68877](http://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=68877) (access date: 17.05.2021).

a way of alternative dispute resolution, yet the nature of this phenomenon lies precisely in the passive role of the mediator.

Mediation by its nature has a number of features that distinguish it from the above phenomena, such as: along with the mediator, the parties to the procedure are equal in the range of variations of possible behavior, they have a dispositive model of behavior without any defects in the will, each of participants in the mediation procedure, including the mediator, are distinguished by their property independence. Comparison of this with the provisions of Art. 1 of the Civil Code of Ukraine (hereinafter - the Central Committee of Ukraine) indicates nothing more than the civil nature of such relations. Moreover, it is generally accepted that the basic principles of the mediation procedure include: voluntariness, confidentiality, equality of all subjects, neutrality, independence, good faith, cooperation of the parties. The above is fully reproduced in Art. 3 of the Civil Code of Ukraine on the principles on which the construction of civil law is based, which reinforces the above reasoning, and has a response in scientific developments<sup>101</sup>.

The steps of introduction of mediation technologies are clearly traced in the French Civil Procedure Code, the German Law "On Support to Mediation and Other Forms of Out-of-Court Conflict Resolution", the Romanian Law "On Mediation in Civil Disputes", the Laws on Mediation in Belarus, Bulgaria and Kazakhstan. Directive 2008/52 / EC of the European Parliament and of the Council on certain aspects of mediation in civil and commercial matters, UNCITRAL Model Law on International Commercial Conciliation (2002), Recommendations of the Committee of Ministers of the Council of Europe on Family Mediation (1998) are unified international regulations aimed at regulating mediation procedures, which are implemented, including in the legislation of Ukraine. In particular, among the first steps in this area is the adoption of the order of the Ministry of Social Policy of Ukraine from 17.08.2016 № 892 "On approval of the State standard of social mediation service", the joint order of the Ministry of Justice of Ukraine and the Prosecutor General's Office from 21.01.2019 № 172/5 / 10 "On the implementation of the pilot project" Recovery Program for juveniles suspected of committing a crime """, as well as a set of procedural legislation that introduces elements of active (adjudicative) mediation in the domestic legal field with the participation of a judge, such as the head 4 of Section III of the Civil Procedure Code of Ukraine (hereinafter - the CPC of Ukraine).

Since mediation is a construction of mediation, it is related to such phenomena as moderation, negotiation, representation. Its purpose is to settle the dispute on a parity basis, ie to invent such a minimum common multiple for the common interests of the parties, which would remove a significant part of the root cause of the conflict. The allocation of so-called active or adjudication mediation is a need of the time, which is justified by the possibility of sometimes imperative-dispositive way to offer the parties

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<sup>101</sup> Novosad A., Soyka Y., Semenkov N. Problems of mediation as an alternative form of dispute resolution with the participation of a judge or lawyer. 2019. Volume 30 (69). № 2. pp. 56-60.

to the dispute to resolve the conflict in a simplified form. This construction is fully consistent with the mentality and legal culture of Ukrainian society, which is still on the way to developing self-sufficient levers to resolve certain problems, conflicts, conflicts without the participation of state institutions.

Of course, the very name of this type of mediation procedure contradicts its essence, as the perception of mediation as an alternative form of dispute resolution creates the preconditions for distinguishing the classical court process from other forms of dispute resolution. Accordingly, the formulation in the literature of mediation as a procedure for resolving a conflict with the mediator's participation does not correspond to the nature of adjudication mediation, which is sometimes called active mediation, as opposed to classical passive mediation in terms of mediator's participation.<sup>102</sup>

The above division of the mediation procedure is proposed to be carried out on the basis of its integration into the structure of the classical court process, which provides for the settlement of disputes.<sup>103</sup> Obviously, it is more appropriate to formulate such a criterion as the inclusion in the structure of the classical process of the stage of adjudication. At the same time, a more appropriate criterion for dividing the mediation procedure in such circumstances could be the special legal status of a mediator, which in adjudication mediation under Ukrainian procedural law is a judge who differs slightly from the classic mediator, as well as the limits and content of such person's behavior. directly through mediation.

When characterizing adjudication mediation, it is necessary to indicate the following characteristics. It is not an alternative to the judicial form of resolving the dispute on the merits, as it is considered as a component of the procedural form of consideration of the case in court. The judge assumes the authority of a mediator, which does not ensure the implementation of the principle of dispositive mediation procedure when choosing a mediator, although there are opinions in the literature on the possibility of involving a third person instead of a judge, which contradicts the CPC of Ukraine. to argue with the procedural form is useless.

According to the Code of Civil Procedure of Ukraine, within this type of mediation, the following properties of this form of dispute resolution are manifested: 2) meetings are held both jointly with the parties to the process and separately in separate (closed) forms; 3) the judge offers options for resolving the dispute on the example of judicial practice in similar disputes, as well as other possible ways of peaceful settlement of the dispute, so such mediation has signs of active; 4) the judge, however, does not assess the evidence, and also has no right to provide legal advice and recommendations to the parties; 5) there is no traditional for the procedural form

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<sup>102</sup> Mazaraki N. Mediation in Ukraine: problems of theory and practice. Foreign trade: economics, finance, law. 2016. № 1. p. 93–94.

<sup>103</sup> Yakovlev VV Judicial and extrajudicial mediation: main features. Collection of scientific works of Kharkiv National Pedagogical University named after GS Skovoroda "LAW". 2017. Issue 26. p.143–144

technical support of meetings in the framework of mediation and no protocol of procedural action is kept; 6) the terms of mediation within the CPC of Ukraine are limited to thirty days and cannot be extended; 7) only the plaintiff and the defendant in the relevant civil case may be parties to mediation; 8) the resolving mediation agreement for this type of mediation is embodied in the settlement agreement as a procedural document.

The above construction of out-of-court mediation in the literature is still characterized as integrated, inheriting the German model<sup>104</sup>. It is fair to say that, in addition to the above, the legislation of some countries offers another type of adjudication mediation, which arises and is offered to the parties to the dispute after the opening of proceedings in a classic trial. An example of such mediation is mediation, which is reflected in the legislation of the Netherlands. Such a mediation procedure is not integrated, as it is not considered at the appropriate stage of the classical process, but is proposed for consideration by the parties as an alternative to judicial protection. After this mediation, a mediation agreement is concluded, and the proceedings in the case are closed without the adoption of a separate amicable agreement, as would have happened in the previous version of the court mediation. In fact, this mediation procedure is fully identified with the classic passive mediation, except that it: 1) is offered by the judge to the parties after they go to court, but before the trial; 2) it is recommended to the parties by the judge after the opening of proceedings in the case within the process; 3) the parties themselves come to the conclusion about the action of the mediation procedure already during the court proceedings<sup>105</sup>.

Of course, these types of adjudication should be reflected in a universal legal act designed to regulate mediation as a kind of alternative form of dispute resolution. Thus, in the draft Law "On Mediation" dated 19.05.2020 № 3504 it would be appropriate to make such editorial changes.

First, paragraph 4) of Part 1 of Article 1 shall be submitted as follows: 4) mediation - a voluntary, extrajudicial or adjudication, confidential, structured procedure, during which the parties with the help of a mediator (mediators) or a judge (in adjudication mediation) try to resolve the conflict (dispute) through negotiations.

Judicial mediation is a type of mediation, which is determined by a court decision in the relevant proceedings after the opening of the proceedings and can take place both directly with the participation of a judge in the court (integrated) and outside the court (non-integrated).

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<sup>104</sup> Tsuvina T. Introduction of the institute of adjudication mediation as a perspective direction of reforming the civil procedural legislation of Ukraine. Kyiv, 2017. p. 196–197.

<sup>105</sup> Bartusyak P. Judicial mediation: the experience of the Netherlands. Chernivtsi Law School: website. URL: <http://surl.li/wdrz> (access date: 17.05.2021).

Secondly, paragraph 7) of Part 1 of Article 1 shall be supplemented with the following paragraph:

"The rules for conducting integrated court mediation are determined by administrative, civil and commercial procedural legislation, depending on the subject matter of the dispute. The rules for conducting non-integrated adjudication mediation meet the requirements of this Law. "

Accordingly, the provisions on adjudication mediation should be transformed into procedural legislation, in particular on the example of the CPC. This can be demonstrated by making the following changes to Section III "Claims".

First, the following changes need to be made in Chapter 3 "Preparatory Proceedings". Item 2 of part 2 of Art. 197 GIC to submit in edition:

"2) finds out whether the parties wish to conclude an amicable agreement, refer the case to an arbitration court, apply to a mediator for mediation (adjudication not integrated mediation) or apply to a court for settlement of a dispute with a judge (adjunctive integrated mediation)".

Secondly, the title of Chapter 4 should be submitted in the form: "Settlement of a dispute with the participation of a judge (integrated court mediation)".

Thus, adjudication mediation has the right to exist in its diversity, where the main connection is with the already initiated trial, and an important distinguishing feature - ensuring the main purpose of this procedure - to create conditions for dispute resolution as an alternative to classical proceedings, regardless of actions of the court aimed at resolving the case on the merits.

Judicial mediation by its nature has certain characteristics, namely: 1) it is offered by the judge to the parties after their appeal to the court, but before the beginning of the court proceedings on the merits; 2) it is recommended to the parties by the judge after the opening of proceedings in the case within the process; 3) the parties themselves come to the conclusion about the use of mediation procedure already during the court proceedings; 4) a precondition for its appointment is a procedural document in the form of a relevant court decision. There are two types of adjudication mediation: integrated directly into the relevant trial or not integrated.

Integrated adjudication mediates meet the following criteria: 1) it is appointed and terminated according to the procedural document of the court - by a decision; 2) meetings are held both jointly with the parties to the process and separately in separate (closed) forms; 3) the judge offers options for resolving the dispute on the example of judicial practice in similar disputes, as well as other possible ways of peaceful settlement of the dispute, so such mediation has signs of active; 4) the judge, however, does not assess the evidence, and also has no right to provide legal advice and recommendations to the parties; 5) there is no traditional for the procedural form technical support of meetings in the framework of mediation and no protocol of procedural action is kept; 6) the terms of mediation within the CPC of Ukraine are limited to thirty days and cannot be extended; 7) only the plaintiff and the defendant

in the relevant civil case may be parties to mediation; 8) the resolving mediation agreement for this type of mediation is embodied in the settlement agreement as a procedural document. Signs of non-integrated adjudication mediation are more in line with the classical mediation procedure.

The rules for the application of integrated adjudication mediation are provided by the relevant sectoral procedural legislation, and not integrated mediation - defined in accordance with the general rules of classical mediation. These considerations are reflected in the content of the proposed proposals to the current procedural legislation and the draft Law "On Mediation".

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# Importance of legal language for the stability of legislation

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## Summary

The author of the article has studied the essence of legal language and has defined the role of legal terminology as a necessary element of the proper functioning of legal language. It has been noted that the power of language is of particular importance for legislation since there are no legal concepts outside the language. On this basis, it has been argued that law is related to language, because legal concepts exist only in language and can be perceived only through language. At the same time, it has been noted that language cannot fully explain the law, since the scope of the law exceeds any single explanation and any single reason. Language is only one factor among the variety, and all these individual factors may be weakened by the general nature of all people. However, it has been also emphasized that positive law without a clear linguistic expression cannot fully positively influence the legal awareness of individuals in society. It is the reason why legal terminology is used in the texts of regulatory acts in order to comply with the rules of formal certainty. It has been noted that terminology plays a leading role in the functioning of legal language. The emphasis has been placed on the fact that the concepts rooted in the national legal system are subordinated to the moral values that prevail in a particular society in a certain period of time. As a result, it has been emphasized that the exact and clear expression of the text of a regulatory legal act in language is necessary for a clear understanding of the essence of this legal act in order to accurately and consistently perform the tasks set by legislation.

**Key words:** law, language, legal language, terminology, legal terminology, legislation, legal systems, legal concepts.

The study of legal language is the cornerstone of the present time, because law without language will be dead. Legal language is characterized by a set of certain linguistic and stylistic parameters, which also serve as requirements for modern legal text: formality, clarity, accuracy, unambiguity, completeness of content, logical sequence, argumentation, clarity of presentation, instructive and informative (directive) nature of legal prescriptions, general nature, strict standardization at all language levels, a high degree of standardization (terminology and syntactic constructions: established inversions, formulas, clichés), stylistic homogeneity,

neutrality (emotionlessness), traditionalism (stability) of expression means, lack of individual authorial features. That is why the study of legal language and the peculiarities of legal terminology is a topical issue of the present day.

The research of legal language is constantly in the field of view of both domestic (N. Artykutsa, K. Bieliakov, O. Balynska, S. Zarkhina, M. Liubchenko, M. Sheremet) and foreign researchers (Alex Kasonde, Alexander Lorz, Frances Olsen, Peter Sandrini, Dieter Stein, Stanisław Goźdź-Roszkowski, Iwona Witczak-Plisiecka) and many others. As we can see, the research of legal language is gaining further relevance at the international level. At the same time, a number of issues of general theoretical orientation related to legal language and legal terminology need to be clarified and refined.

The study of legal language is in many ways similar to the study of a new language. It is primarily due to the fact that words and phrases may seem unfamiliar and difficult to remember. At the same time, it is important to understand their meaning and use them properly in order to perform their basic legal functions. It is also worth noting that the difficulty lies in the possibility of new ways of using familiar words and phrases. For example, the word court in the legal sense is not only used to denote the judicial branch of power or the place for settling legal disputes. This term is often used to refer to a particular judge and the relevant administrative staff involved in a particular case. The term court can also mean all judges in a particular district<sup>106</sup>. As we can see, language and law are intertwined: law is expressed through language, in particular through its own specifics, which are characterized by special categories and concepts and can significantly differ between individual legal systems<sup>107</sup>. This confirms the relevance of the research of legal terminology as an important element of legal language's functioning.

We face the statement in the scientific literature that terminology and phraseology are key features of legal discourses and central aspects of professional practice and research in the field of jurisprudence. Legal terms express different ways of structuring abstract legal knowledge between language and jurisdiction<sup>108</sup>.

Legislation is based on the text, the law is unique in its complete dependence on language: legislators develop a special language to encode the law in the text, which judges, lawyers, jurists and other professionals can later interpret by identifying, analyzing and deciphering possible linguistic variations and loopholes, hidden between

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<sup>106</sup> Legal Terminology. – Available at: <https://www.icslearn.ca/~media/files/pdf/samplelessons/465-legal-transcriptionist-diploma.pdf?la=en>

<sup>107</sup> Chiocchetti E., Ralli N. Legal terminology and lesser used languages: the case of mòcheno. *Research in Language*. 2011. Vol. 9.1. p. 137. URL: [https://www.academia.edu/5789565/Special\\_Issue\\_on\\_Legal\\_Terminology\\_Approaches\\_and\\_Applications](https://www.academia.edu/5789565/Special_Issue_on_Legal_Terminology_Approaches_and_Applications)

<sup>108</sup> Ramos F. P. Translating legal terminology and phraseology: between inter-systemic incongruity and multilingual harmonization. *Perspectives: Studies in Translation Theory and Practice*. 2021. Vol. 29. pp. 175-183. – Available at: <https://www.tandfonline.com/doi/full/10.1080/0907676X.2021.1849940>

the lines. Terms, structure and even punctuation are the subject matter of the analysis, commenting, interpretation and rethinking<sup>109</sup>.

The creative and comprehensible power of language is of particular importance for legislation. There are almost no legal concepts outside the language. At least positive law is related to language because legal concepts exist only in language and can be perceived only through language. The law is expressed in a “verum dicere” and is associated with “jurisdiction”<sup>110</sup>. That is why the exact and clear expression of the text of a regulatory legal act in language is necessary for a clear understanding of the essence of the law.

The structure of language plays an important role in determining our thinking, it may well be that a particular language can only express certain legal ideas and that the boundaries of our particular language are the limits of our legal considerations. The legal norm is implanted in another language context; the linguistic dynamics of language can move it in an unexpected direction<sup>111</sup>.

The language cannot definitely explain the law in full, since the scope of the law exceeds any single explanation and any single reason. Language is only one factor among many, and all these individual factors may well be weakened by the general nature of all people<sup>112</sup>. The correlation between language and law is not only about lawyers, it is also important for anyone who wants to know more about the functioning of law in general. This becomes apparent when we consider Chomsky’s theory of the deep structure of human languages. According to Chomsky, this deep structure of language is genetically transmitted. The issue that immediately arises is whether such deep structures can be found in the law. If language has a genetic structure, the same is applied to the law, at least in part, because of the influence of language on the law. The genetic structure of a language is then passed on to the law. This hypothesis can tell us something about the power of law on human behavior and why the law is observed<sup>113</sup>.

It is reasonable to assume that legal language tries to correspond to our internal structures. Language is meant to impress us. As the rhythm of the music invites us to imitate, as the sound of drums makes the soldier march, then legal language due to its structure, its rhythm and sound, stimulates us to internalize the law. Language uses

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<sup>109</sup> Campos M. A., Isani S. Aspects of Language and the Law: Exploring Further Avenues. *Alicante Journal of English Studies*. 2015. № 28. p. 5. URL:

[https://www.academia.edu/27997928/Language\\_and\\_the\\_Law\\_special\\_issue\\_Alicante\\_Journal\\_of\\_English\\_Studies\\_no\\_28\\_email\\_work\\_card=view-paper](https://www.academia.edu/27997928/Language_and_the_Law_special_issue_Alicante_Journal_of_English_Studies_no_28_email_work_card=view-paper)

<sup>110</sup> Grossfield B., Language and the Law. *Journal of Air Law and Commerce*. 1985. V. 50. I. 4. p. 797. – Available at: <https://core.ac.uk/download/pdf/147638084.pdf>

<sup>111</sup> Grossfield B., Language and the Law. *Journal of Air Law and Commerce*. 1985. V. 50. I. 4. p. 801. – Available at: <https://core.ac.uk/download/pdf/147638084.pdf>

<sup>112</sup> Grossfield B. Language and the Law. *Journal of Air Law and Commerce*. 1985. V. 50. I. 4. pp. 801-802. – Available at: <https://core.ac.uk/download/pdf/147638084.pdf>

<sup>113</sup> Grossfield B. Language and the Law. *Journal of Air Law and Commerce*. 1985. V. 50. I. 4. p. 802. – Available at: <https://core.ac.uk/download/pdf/147638084.pdf>

genetic and cultural sensitivity for the purposes of the law. We obey the law voluntarily; the law is obeyed not because we must obey it, but because we want to do it. Instead of the external order, it forms the internal order<sup>114</sup>.

The law can be effective only if it is voluntarily complied with through an internal incentive. The law that does not correspond to the linguistic sensitivity of our society is not considered as “our law”, but as something foreign. Positive law without favorable language cannot create legal awareness. Then the “language” and “law” become central to modern legal systems, as well as to the functioning and development of legal cultures. The “magic” of a language continues to be a central pillar of law. It is a decisive factor in the legal organization of our society<sup>115</sup>.

In order to comply with the rules of formal certainty in the texts of regulatory legal acts, legal terminology is used. This terminology plays a leading role in the functioning of legal language. Legal terminology is rooted in national legal systems. The conceptual meaning of terms as a general criterion of comparative analysis: therefore, we talk about legal concepts and ignore, at the moment, the term or linguistic representation of concepts<sup>116</sup>, which concern the proper functioning of legal language.

Legal concepts are formed by abstracting common features from a large number of cases. Thus, a “contract” is a legal concept abstracted from various cases of legal relations, which are called contracts. A group of real or possible real-life situations is usually described after a long discussion with the public, politicians, legal advisers, legislators, etc., that should be the object to legislation in order to regulate human interaction (civil law) or control human behavior (criminal law). Most legal concepts come from such a process, e.g. dismissal, rent, murder, theft, etc.

Concepts rooted in the national legal system are subordinated to the moral values that prevail in this particular society over a period of time. Besides, every rule, every law is the result of political debate and decision-making process: society consciously chooses the basis on which its members will live together. It is in the interests of legislators to adopt provisions to ensure that the rules are followed, thus fulfilling their purpose. This would force legislators to strive for the most accurate definitions to ensure that this particular situation will always be managed as they have chosen. However, they cannot predict how society will be developed with its moral values<sup>117</sup>, which contributes to the development of legal terminology and the emergence of new categories.

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<sup>114</sup> Sandrini P. Legal Terminology. Some Aspects for a New Methodology. – Available at:

[https://www.researchgate.net/publication/258106581\\_Legal\\_Terminology\\_Some\\_Aspects\\_for\\_a\\_New\\_Methodology](https://www.researchgate.net/publication/258106581_Legal_Terminology_Some_Aspects_for_a_New_Methodology)

<sup>115</sup> Grossfield B. Language and the Law. *Journal of Air Law and Commerce*. 1985. V. 50. I. 4. p. 803. – Available at:

<https://core.ac.uk/download/pdf/147638084.pdf>

<sup>116</sup> Sandrini P. Legal Terminology. Some Aspects for a New Methodology. – Available at:

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<sup>117</sup> Sandrini P. Legal Terminology. Some Aspects for a New Methodology. – Available at:

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Legal concepts are mainly: 1) come from a system of moral values; 2) refer to specific “real life situations” within a particular society; 3) contain the provisions on how to resolve these situations. Legal concepts must leave room for the interpretation of laws and the adaptation of norms to new or changed social and moral conditions. For the fair and equitable application of laws and equal treatment of citizens, judges must have a certain range of freedom in the application of abstract norms to specific cases, which may significantly differ. On the other hand, if this freedom becomes too deep, there will be uncertainty about the application of laws, and citizens will not know what to expect from the administration of justice.

In addition, the extended definition of the legal concept can be significantly changed by applying the principle of analogy, i.e. extending the applicability of the norm to other cases not provided by the law. Therefore, legal concepts cannot be adequately described by intentional or extensional definitions. The process of applying law and concepts requires the interpretation of texts – a task for which each legal system has developed its own rules of interpretation and application, which lead to the fact that legal concepts are reinterpreted by judges, legislators or scholars. All these aspects contribute to the fact that legal concepts are subject to a certain degree of uncertainty, and therefore, legal definitions are open definitions<sup>118</sup>.

Legal terms that form different legal systems cannot be equivalent, unless they are the result of a complete identity of moral values, legal provisions, rules of interpretation and forms of application of laws – but again they mean the same legal framework.

Legal terminology cannot be reduced to the search for identical concepts in two or more legal systems, simply because it will lead to a fruitless discussion about when and where conceptual equivalence is possible. A new methodology is focused on cases of partial or relative equivalence of superimposed characteristics. To achieve this, we must abandon the concept of equivalence in favor of a more flexible comparative approach. The difference is the assumption that legal concepts as part of the national system of laws are fundamentally different in various legal systems and that only a comparative approach is possible; there is no establishment of equivalence relations.

The first thing to do is to record and describe legal concepts in their natural environment. This has two consequences: first, the concept should not be considered as separate elements, but as part of a system built on the relationship between its components, and secondly, that the information provided is always based on the national legal system, where the concept belongs to.

The description of legal concepts begins with a single concept but takes into account all the relationships that this particular concept has with its surrounding

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<sup>118</sup> Sandrini P. Legal Terminology. Some Aspects for a New Methodology. – Available at: [https://www.researchgate.net/publication/258106581\\_Legal\\_Terminology\\_Some\\_Aspects\\_for\\_a\\_New\\_Methodology](https://www.researchgate.net/publication/258106581_Legal_Terminology_Some_Aspects_for_a_New_Methodology)

concepts, i.e. with all the concepts that contribute to a special legal framework designed to regulate or provide a legal basis for a particular aspect of real life<sup>119</sup>.

It should be also emphasized that legal terminology should focus on the elements of a legal solution to one real-life problem, although terminographic research may cover more than one legal solution for a wider subject area. This focus on one specific legal order is important for suggesting a set of consistent concepts rather than individual subject matters. It would be easy to combine the terminology of several such legal settings or related settings into a larger terminographic product. Terminology should cover small and very specific subject areas to achieve high quality. It would be difficult to conduct terminographic research on criminal or labor law; we should rather start with specific areas of these disciplines, such as, for example, protection against dismissal or immigration crimes, etc. At the second stage, they can be expanded by including other specific topics, and such small glossaries can be combined to provide larger collections covering a broader subject area, such as criminal law. But it is extremely necessary to maintain a systematic aspect of concepts that contribute to the same purpose<sup>120</sup>.

Taking into account the above, we must note: 1) accurate and clear expression of the text of a regulatory legal act in language is necessary for a clear understanding of the essence of this legal act in order to accurately and consistently perform the tasks set by law; 2) legal language must clearly comply with the linguistic rules of presenting the text of a regulatory legal act; 3) “language and law” in modern globalized society acquire central meaning for modern legal systems, as well as for the functioning and development of legal cultures; 4) the peculiarity of legal terminology is its rooting in national legal systems; 5) the implementation of law norms requires the interpretation of texts – a task for which each legal system has developed its own rules of interpretation and application, which leads to the fact that legal concepts are reinterpreted by judges, legislators or scholars.

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<sup>119</sup> Sandrini P. Legal Terminology. Some Aspects for a New Methodology. – Available at: [https://www.researchgate.net/publication/258106581\\_Legal\\_Terminology\\_Some\\_Aspects\\_for\\_a\\_New\\_Methodology](https://www.researchgate.net/publication/258106581_Legal_Terminology_Some_Aspects_for_a_New_Methodology)

<sup>120</sup> Sandrini P. Legal Terminology. Some Aspects for a New Methodology. – Available at: [https://www.researchgate.net/publication/258106581\\_Legal\\_Terminology\\_Some\\_Aspects\\_for\\_a\\_New\\_Methodology](https://www.researchgate.net/publication/258106581_Legal_Terminology_Some_Aspects_for_a_New_Methodology)

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# System of Forensic Investigation of Documents

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## Summary

The author of the paper has provided the study of the problems of forensic document science as a branch of criminalistics technique. Analysis of the statistics of the Prosecutor General's Office of Ukraine for 2020 gives grounds to claim that illegal actions committed with the use of forged documents currently account for a significant percentage within criminal system of Ukraine. Analysis of similar data for the previous five years confirms the fact that the number of crimes and misdemeanors committed with the usage of forged documents is rapidly growing. The author of the paper has substantiated that such growth is the result of acceleration in scientific and technical developments on new types of storage medium, and hence new types of their counterfeits. Thus, we examine both the document as a material carrier of information in the form of letters, numbers, symbols or other signs during the investigation of crimes and the information itself, its content and essence. The author of the article has provided characteristics of the system of forensic document science of Ukraine. It has been noted that we distinguish three parts of the system of domestic forensic document science – forensic affiliation science, handwriting and forensic examination of documents. The author has also provided the definition of the content of the subject matter of forensic document science as the activities of authorized agencies and persons for a comprehensive examination of documents and information that is important for the investigation of a crime or for its prevention.

**Key words:** criminalistics technique, document research, forensic and technical examination of documents.

There is a tendency in the modern world on increase of the number of crimes committed with the usage of documents. Crimes in the sphere of legalization of money and other valuables illegally obtained, illegal credit and financial operations, fictitious entrepreneurship, in the sphere of taxation, etc. are quite rapidly growing. A significant number of crimes is committed with the usage of forged documents, their production and implementation. The process of production, modification, destruction and use of documents for criminal purposes is inextricably linked with the development of public relations and the rapid growth of the role of scientific and technological progress. The emergence of new types of information necessitated the search for new types of storage mediums of such information and its transmission. In particular, electronic documents are widely used in all spheres of public relations – applications for providing various administrative services, documents on education,

offers and acceptances, preliminary agreements, etc. According to the data of the official website of the Prosecutor General's Office of Ukraine, a significant number of crimes were committed with the usage of documents for the period from January to November 2020. In particular, theft, misappropriation, extortion of documents, stamps, seals, possession<sup>121</sup> by fraud or abuse of official status or their damage (the Art. 357 of the Criminal Code of Ukraine – hereinafter the CC of Ukraine) – 1956 criminal offenses; forgery of documents, seals, stamps and forms, sale or use of forged documents, seals, stamps (the Art. 358 of the CC of Ukraine) – 7222 misdemeanors and 6046 crimes; official forgery (the Art. 366 of the CC of Ukraine) – 6255 criminal offenses. The above official statistical data demonstrates a significant number of crimes involving the use of various documents. The study and research of the document itself, as well as the information contained there in order to further investigate the crime and clarify the true circumstances of the criminal case is the main essence of forensic document science. Based on the results of the conducted study, the author forms the system of methodological recommendations, rules, techniques; introduces various information, accounting and search databases, which are widely used in practice by law enforcement officers. It is often the work with documents that becomes an important and key element in the investigation of crimes. The study of documents assists to establish data on the peculiarities of the document, time and method of its production; the originality of the text or document or the presence of changes, forgeries, erasures is determined; the author of the document or the person who made it is established, etc. All this gives grounds to assert the relevance of this chosen topic and the feasibility of research in this area.

The continuous development of science and technology, in particular significant progress in the use of printing and office equipment, is the factor that enriches criminalistics and its certain branches with new methods and ways of studying documents and other physical evidence. In addition to practical significance, they are of considerable interest to science. Thus, some aspects of our research have been the subject matter of scientific research by such scholars as Budziievskiy M. Yu., Voloshyn O. H., Vorobei O. V., Honhalo S. I., Kohutych I. I., Saltevskeyi M. V. and others.

The purpose of this article is to define the concept of forensic document science and its system; to study the experience of conducting documentary examinations, as well as the use of various methods and standards to research the document as a material object and its content.

Starting the research of the system of forensic document science it is primarily necessary to determine the content of this legal category.

Document science is a separate science, the tasks of which are to study the properties and characteristics of documents, as well as their functional purpose. In other words, the achievements of this science are the primary basis for theoretical

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<sup>121</sup> The report on criminal offenses in the country, Nov, 2020. Prosecutor General's Office of Ukraine. <https://old.gp.gov.ua/ua/stst2011.html>

provisions of criminalistics technique, which on their basis forms special methods, practices and techniques for studying and researching various documents and texts.

The term “document” is characterized by ambiguity, because each person invests in this concept own meaning, primarily based on knowledge, life experience and field of activity. However, for the purposes of the research according to the chosen by us issues, we support the position of the above scholar on the feasibility of using the encyclopedic definition of the concept of “document”, according to which the information with details in the form of a text, sound or image is recorded on a tangible medium that allows to identify it<sup>122</sup>.

The document as a kind of evidence is characterized by the fact that the information contained there is presented in the form of letters, numbers, symbols. Thus, forensic document science is of a complex nature, because not only the document as a material object is subject to research, but also the information in the form of certain signs that it contains. Forensic document science, according to some scholars, is a branch of criminalistics technique, which embodies the system of knowledge about general provisions of forensic document science, forensic research of documents, manuscripts and texts.

Others define forensic document science as a traditional branch of criminalistics technique that studies written language and its patterns, handwriting, traces of creation or production of documents, making changes to them or even destruction, and that develops tools and methods for examining documents – physical evidence<sup>123</sup>.

In our opinion, it is rather complete definition, according to which forensic document science is a branch of criminalistics technique that studies the basics of writing and handwriting, technologies that assist to make documents, seals and stamps, methods of forgery of these items, as well as scientifically sound principles for the detection, expert research and use of information obtained from documents while investigating crimes, [2]<sup>124</sup>. Forensic document science is a branch (or synonymous categories “section” or “element” are used) of criminalistics technique along with forensic photography (forensic cinematography) and video recording, trasology, weapons science or forensic ballistics, habitoscopy (identification of a person by appearance), phonoscopy (examination of sound traces), odorology (examination of traces of odors), forensic examination of substances, materials and products, forensic registration. We would like to emphasize at once that criminalistics is not a static science, it in the whole or its individual legal institutions are developed and changed along with social relations. New branches in the system of criminalistics technique

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<sup>122</sup> Sezonov V. Genesis of forensic research of documents as a branch of forensic technology. Law and Safety. 2020. № 3. p. 133-140

<sup>123</sup> Chelysheva O., Sotnikov K., Criminalistics: Educational and methodical manual, Saint Petersburg. 2017.p. 839

<sup>124</sup> Sezonov V. Genesis of forensic research of documents as a branch of forensic technology. Law and Safety. 2020. № 3. p. 133-140

appear under the influence of the latter, in particular, polygraph science, entomology, etc., and existing ones are modified. There is no doubt that forensic document science is an independent element in the system of criminalistics technique, and therefore it has an independent subject matter of legal regulation, which is inherent only in this element. There are currently several points of view on this issue. Thus, the subject matter of forensic document science can be recognized as the activities of scholars in the field of criminalistics or law enforcement officers, the essence of which is to study documents in order to identify information that has forensic significance. According to other scholars, the subject matter of forensic document science should be considered patterns that are manifested in the compilation, creation, production of various documents; formation of specific features of handwriting and writing, the influence of external factors on them; patterns associated with the action of substances directly on the document and its content, as well as those associated with the detection of such actions<sup>125</sup>. I. I. Kohutych provides a rather laconic definition of the concept of the subject matter of forensic document science, although too general, in our opinion. Thus, the author offers to understand the above legal category of studying the patterns of production and operation of various documents that fall into the field of criminal justice<sup>126</sup>.

Separate elements or functional parts are distinguished in the system of forensic document science. Modern science singles out three regularly placed structural parts: forensic authorship, forensic handwriting, technical and forensic examination of documents<sup>127</sup>.

Let's briefly consider each of these elements. Forensic authorship is somewhat different from other functional parts of document science, because it is based on the achievements of linguistics, grammar, phraseology and other areas of knowledge about writing, as well as takes into account the system of knowledge of linguistic behavior, which allows identifying the author of a document or text in order to detect a crime or its prevention. Forensic handwriting as a structural part of forensic document science, studies the patterns of formation and development of handwriting, develops technical and forensic tools, techniques and methods of working with documents to establish the circumstances of the document's production, its author or executor to investigate or prevent crimes and establish the true circumstances of the case. Technical and forensic examination of documents is a functional element in the system of forensic document science, which studies the patterns of information's origin related to the method of production of documents, making changes and

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<sup>125</sup> Biryukov V., *The Forensic Documentation: Educational and methodical manual*. K. 2007.p. 332

<sup>126</sup> Kohutych I., *Methodological aspect of graphology as a branch of forensic knowledge*. *Criminalistics and Forensics*. 2018. № 63. p. 204-218

<sup>127</sup> Biryukov V., *The Forensic Documentation: Educational and methodical manual*. K. 2007.p. 332

corrections to documents, as well as indicate the tools and materials used for this purpose.

It should be noted that the terms “forensic examination of documents” and “technical and forensic examination of documents” are quite often used as synonymous concepts<sup>128</sup>, but we believe that these categories are correlated as general and separate, because the subject matter of the latter is the technical aspect of the production or modification of the document. This study among the studies in the field of forensic document science has a large number of types of examinations. Thus, the following expert studies are most often used: forms of documents, including damaged and torn; the technical aspect of the text of the document; signatures that are probably made in a technical way; typewritten texts; imprints of seals and stamps; photographs and other material elements on documents; determining the lost content of documents, including burned. International experience in the field of forensic document science demonstrates that its elements are identical to those that exist in the domestic forensic science, and examination of documents is carried out in accordance with approved standards.

The conducted study of forensic document science indicates that despite the large number of scientific studies in this area and the systematic application of the legal institution of forensic document science in practice, there are still many issues that need improvement or even additional research. In particular, issues related to the development of special methodological provision for documenting the content of forensic research, development of standard samples of documents, which should record the facts, as well as should reflect the results and consequences of certain actions remain unresolved.

The ways, means and methods of examining documents and information within criminal proceedings are the subject matter of forensic document science in order to determine the authors, the originality, specific features of production or writing, as well as other circumstances relevant to the investigation and to establish the truth.

Having analyzed the scientific points of view of modern scholars, we can determine that the system of forensic document science includes forensic study of texts, technical and forensic examination of documents. It should be also emphasized that forensic document science as a legal category has a dual legal nature, because it is, on the one hand, the system of knowledge about document science, and on the other – criminalistics technique.

Summarizing the above, we believe that forensic document science should be understood as a branch of criminalistics technique that studies the concept and content of documents, methods of their production, the practice of their use for criminal purposes, as well as the activities of scholars, criminal law experts and other authorized persons on collecting, studying and evaluating documents in order to

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<sup>128</sup> Knyazkov A., *Criminalistics: methodical manual*. Tomsk: TML-Press, 2017. p. 1128

investigate the committed illegal actions (crimes or misdemeanors) and prevent them. The main purpose of forensic examination of documents is a comprehensive study of specific features, methods, means and techniques of making a document, making changes or its destruction, which is of key forensic importance. It should be noted that the study of the system of forensic document science is difficult to overestimate both for science and for practical activities in the field of criminalistics. The results of the conducted study can be used for further research on this issue, to teach a course in criminalistics in high school, during the preparation of textbooks and scientific manuals, guidelines for law students and law enforcement officers. Some of the conclusions, approaches and provisions set out in this paper may be of interest to forensic experts, medical investigators and other persons working in the field of forensic research and can also be used in the preparation of relevant bills and regulatory legal acts.

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