HUMAN RIGHTS AND PUBLIC ADMINISTRATION

◎ EUROPEAN DIMENSIONS OF LAW SERIES ◎

Angel Kanchev University of Ruse

2022

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C O N T E N T

PREFACE

The purpose of this book is to present achievements in human rights law research by scientists of the Ukraine and Bulgaria. Cooperation between the Yuriy Fedkovich Chernivtsi National University and the Angel Kanchev University of Ruse has its decades of development, deepening and strengthening. One of the results of these fruitful efforts are the books of the "European Dimensions of Law Series".

The current issue of this series is dedicated to the topic of human rights. Authors are scientists and readers from several higher education institutions – Zaporizhzhia National University, Chernivtsi National University, Ukrainian State Tax University and University of Ruse. The subject is reviewed from different perspectives – state governance, taxation, local government, administrative coercion, migration, terrorism and criminality, psychiatry.

All the texts are reviewed and corrected but there are still remainings of the original manuscripts. Some word forms are intentionally left because they present original ideas of the authors. However, every author bears legal responsibility for scientific correctness and ethics.

The aim of this issue is to draw the attention to various aspects of human rights problems and to contribute to the approaches applied to resolve these problems.

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LIFESTYLE MONITORING AS A LEVER OF INFLUENCE ON THE REALIZATION OF AN INDIVIDUAL'S RIGHT TO PUBLIC SERVICE

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The right of a person to public service is quite logical to consider in the aspect of division of his/her rights depending on the mechanism of their realization [the mechanism of realization of individual freedom and the nature of obligations in this context of the state [1, p. 466] as a "mixed" right, because it in fact combines the features of positive law and negative law. If the former involves active assistance from the state (in this case, from the whole public authority) in its implementation, providing a reliable mechanism for protecting this right and preventing any violation of it by others (third party), the latter is on the contrary associated with non-interference of the state in the realization of the relevant law.

Analysis of the legislation of Ukraine allows us to state with confidence that the right of a person to public service is closely related to active, positive actions of the state, which is reflected in the legal definition of public service in general, entry terms, promotion and termination of it, creating organizational-legal and functional aspects of the implementation of such a right by a person. And such state's actions are systemic, positive, mobile (with an emphasis on the needs of the time and the challenges of state-building and the right to create). This can be confirmed by radical changes in the procedure for admitting a person to public service, and modification of the organizational aspect of the existence of public service in Ukraine as a whole. In particular, the right of a person to public service is one of the types of relative right of a person, the implementation of which in the

modern conditions of informatization of public administration in Ukraine depends on many factors, including the "language exam" on the level of proficiency of a person in the state language, which a civil servant is obliged to use in his/her professional activity, the procedural principles of which have been significantly modified recently. The presence of language and communicative competencies is the key to successful performance of his/her professional duties by a public servant, and the mandatory use of the state language in the performance of his/her official duties is one of his/her main responsibilities (Article 8 of the Law of Ukraine "On Civil service ", which forms its legal status). That is why the legislator clearly defined his/her position on the requirements for individuals applying for public service, highlighting among the general requirements "fluency in the state language" (Article 20 of the Law of Ukraine "On Civil Service"). It should be noted that the legal consolidation of the obligatory "connection of a person with the state language" is also characteristic of the legislation on public service in different countries of the world, but the "nature of such connection" is different. For example, in Kazakhstan the legislator defined as such the following requirement: "the knowledge of the state language", in Lithuania, Estonia, Georgia, Moldova it is "a good command of the state language", in Latvia - "fluency in the state language", in Canada “high level of proficiency of the state language”, etc. Comparing the provisions of domestic and foreign legislation, it can be argued that Ukraine has implemented a "rather complicated model of connecting a person with the state language", which provides the establishment of not only such a "connection", but also "the level of such a connection", not only the availability of language and communicative competencies of a person, but also their level for the use of the state language in the performance of official duties in the service of the public interest. That is why a person applying for a public service position is obliged, along with other documents for participation in the competition, to submit a document confirming the level of fluency in the state language. In fact, the admission of a person to participate in a competition for a public service position, also depends on the availability of such a document as a result of the procedure of confirmation of an individual's level of proficiency in the state language. The modern model of the latter is a

person's language proficiency exam ("language exam"), the legal basis of which is determined by the Procedure for state language proficiency exams, approved by the Cabinet of Ministers of Ukraine dated 14.04.2021 № 409. The presence of a certificate of fluency in the state language (two levels - C1 and C2) as confirmation of successful completion of the exam is obligatory to admit a person to participate in the competition for public service, admission to public service, and therefore "language exam" plays the role of a "filter" of admission to public service not only capable but also worthy individuals to serve the public interest.

We should not forget about the radical revision of the legal basis for wages of public servants, including the amount of bonuses, supplement, official salary, procedures for annual evaluation of the performance of public servants in order to adequately encourage them (including the awarding of individuals in the case of obtaining an excellent result based on the results of such an assessment), bringing to disciplinary, administrative, material responsibility, revision of the standardized limit of a person's stay in public service in order to establish the institution of mentoring and exchange of professional experience between different generations of public servants. Indeed, this list can be extended further and active positive actions can be stated as a result of fulfilling the positive obligations of the state to ensure the realization of the right of a person to public service.

At the same time, the implementation of this right is logically connected with the negative obligations of the state, non-interference (to some extent) of the latter in the implementation of this right. Undoubtedly, the very name of the law indicates a close "connection" of law with the public sphere and, of course, this connection leads to the activation of state participation in ensuring the implementation of such a right by an individual, because it is related to the implementation and protection of public interest. And it is quite logical that the state cannot "move away" from the sphere of realization of this right and active participation in realization of this right. However, the state also carries out completely opposite (negative) obligations in relation to this right. Agreeing in general with the statement that "at the present stage... the realization of any individual's right to some extent requires the supporting activities of the state, so that the

distinction between negative and positive rights has rather theoretical meaning" [1, p. 467], however, it is worthwhile to shift the emphasis of attention, first of all, to the matter of the state's obligations in the realization of the right to public service to single out the elements of negative law in it. Because its implementation is connected with negative (primarily, focused on preventing the impediment to implementation) state's obligation. Among such negative obligations of the state to exercise the right of a person to public service can be mentioned the so-called "anti-corruption restrictions", including restrictions on the combination of the professional activities of the employee with other kinds of activities (as a lever to prevent the growth of "business" and "public service", a lever to eliminate the preconditions for" distraction "of the person from the basic responsibilities of serving the public interest), restrictions regarding cooperation of relatives in order to prevent bias, while performance of individual's official duties, elimination of a conflict of interest in the professional performance of a person, etc.

Thus, in particular, the legislator determined the circle of close people, with regard to whom he/she introduced prohibitions regarding joint public service of relatives. The analysis of thematic sources allows to allocate the adjacent thematic conceptual series which is used for designation of the corresponding people, namely: "close relatives", "family members", "close people", "blood relatives", "people as close as possible to the public servant "," People in respect of whom the public servant has formed maximum trust "," relatives "," distant relatives ", etc. Despite all their predominantly doctrinal diversity, the legislator nevertheless uses the unified term "close people". Thus, in particular, in the Law of Ukraine "On Civil Service", outlining the range of "basic" terms, among the latter the legislator identifies "relatives" (Article 1) and clarifies that the term is used in the sense defined by the Law of Ukraine "On Prevention of Corruption" (Part 2, Article 1 of the Law). This should be assessed positively, since the two "basic" focused on the regulation of public service relations legislative acts are "connected" by the unified term "close people", which eliminates the preconditions for different subjective interpretation of terms. Law of Ukraine "On Prevention of Corruption" in Art. 1 "definition of terms" establishes the definition of "close people" and at the same time fixes its relationship

with "family members", consolidating both the definition of the latter and eliminating any grounds for claiming their identification. Thus, in particular, close people for public service relations are considered to be “family members referred to in Part 1 of Art. 3 of the relevant Act, as well as husband, wife, father, mother, stepfather, stepmother, son, daughter, stepson, stepdaughter, brother and cousin, sister and cousin, brother and sister of the wife (husband), nephew, niece, native uncle, aunt, grandfather, grandmother, great-grandfather, great-grandmother, grandson, granddaughter, great-grandson, great-granddaughter, son-in-law, daughter-in-law and mother-in-law, father and mother of wife (husband) son (daughter), adoptive parent, guardian is under the guardianship or care of the specified subject (p. “a "of Part 1 of Article 1 of the Law). Noting that "family members" are only one of the types of "relatives" in paragraph 16-18 p. 1 Art. 1 of the same Law establishes the definition of "family members" as "... a) a person who is married to a subject specified in Part 1 of Art. 3 of the Law, and the children of the specified subject until they reach the age of majority - regardless of cohabitation with the subject; b) any people who live together, are connected by common life, have mutual rights and obligations with the subject specified in Part 1 of Art. 3 of the Law (except for people whose mutual rights and obligations are not of a family nature), including people who live together but are not married”(Part 1, Article 1 of the Law). All in all, the analysis of the proposed official normative definitions suggests that the legislator tried not only to regulate the relationship between "family members" and "relatives" as part and whole, but also, using the generalizing term "relatives", to propose a definition that would allow to cover as much as possible the list of features that would characterize "... family or other ties with a person authorized to perform the functions of state or local government" [2, p. 26], "... blood and (or) formal-legal ties" [6, p. 19]. It is important to note that there must be appropriate features, and the forms of their manifestation must be consistent with the normatively established options, and not just any single fact "[3, p. 329]. These features determine the "close" to the public servant nature of the relationship with a particular person, the "value" of the latter for the public servant. Not only the fact of blood family relations (close, distant, etc.), non-blood family relations (half-brothers, stepfather,

stepson, stepdaughter, etc.), but also other (marriage, adoption, guardianship, care, etc.) relations and determine " "close" relations with a public servant, the "interest" of these people in the relevant relations, the "importance" of the latter for them. Defining a fairly wide range of people who can be considered "close people" in public service relations, the legislator actually emphasized their characteristics (or one or more depending on the type of "close people "), which determine their "special" " character In relation to a public servant ," special trust "[8, p. 42], "value character" [8, p. 42], which will indicate "the importance of life, health, well-being of the person concerned for a public servant in the current circumstances" [8, p. 42].

Is the choice of term successful? Is its content successful? Answering the first question, we can definitely say “yes”. The phrase "close people" is collective and involves a combination of two components: "close" and "people ". If the second component indicates who such people are, the first component indicates the special nature of the relationship with the public official. Paying attention to the fact that not only family relations (first of all, blood relationship), marital relations should determine the "special" nature of the relations of these people with a public servant, it is justified to use the component " people " and not "relatives", family members ", etc. The term "people" is a generalization and covers all the diversity of those who may be "valuable", "important", "special" to a public servant. As for the other component, namely "close", it is also possible to consider as the good choice, because etymological analysis allows us to highlight the "feature" of such people for a public servant, which will distinguish them from all the variety of others ("own", "close"), "As close as possible", etc.).

Regarding the content, it is worth noting the following. The normatively established definition of "close people " has always been in the circle of critical analysis of legal scholars: in relation to "excessive complexity, lexical and syntactic inconsistency, extreme burden of perception" [6, p. 17], "defects" of the proposed filling options, due to which outside the standardization remained persons who can be considered "close people " [8, p. 38-42] and so on. It should be noted that the modified normative definition of "close people " after amendments to the Law of Ukraine "On Prevention of Corruption" in

accordance with the Law of Ukraine of 02.10. In 2019, “On Amendments to Certain Legislative Acts of Ukraine Concerning Ensuring the Effectiveness of the Institutional Mechanism for Preventing Corruption” was substantially updated, including terms of eliminating some substantive defects in the list of those people who can be considered "close people ", although it is unfortunately impossible to consider this properly today (absolutely definite approach in the list of such people, unfortunately, leaves out of regulation those who by their characteristics may well be considered "close people" in relation to the public servant). Positively assessing in general the genesis of the desire of legislation to unify the terminological conceptual apparatus and the practice of its interpretation due to its substantive certainty, at the same time it is appropriate to take a balanced approach to choosing criteria for identifying people as "Relatives" of the realities of rule-making and law enforcement. At the same time, it is quite logical to use the so-called "Combined" version of the definition of "close people", which involves a simultaneous combination of several approaches to formulating the components of this definition and focusing on the resource of several criteria, which let us cover its uniqueness and eliminate the prerequisites for its constant renewal including the field of public service relations.

Seeing the "special" nature of the public servant's relationship with them, the potential for corruption-causing influence on him, as well as "feedback" from the latter, which may create preconditions for conflict of interest, namely public, to ensure the implementation and protection of civil servant, and the private interests of both the civil servant and his "relatives", it is logical that the principles of participation of the latter in public service relations, "involvement" in public service require its standardization to eliminate the preconditions for "corrosive" impact on public service. Conditionally, we can distinguish several public service relations, to varying degrees, which may be related to the "close people" of the public servant. These are: a) relations that involve their participation and connection with public service activities (conflict of interest and ways to prevent and resolve it, restrictions on the joint work of relatives, etc.); b) relationships for which such participation is possible and not directly related to the professional activity of the public servant (for example, restrictions on the receipt of gifts by public

servants with simultaneous permission to receive the latter from "relatives"). If the former provide for the standardization of the principles of appropriate participation, primarily with the use of prohibitions and restrictions (although there are exceptions), the latter, on the contrary, are governed by prescriptions of a permitting nature. They can also be divided into: a) those that provide certain "preferential" options for existence (exceptions) with an emphasis on the specifics of the sphere; b) those that do not provide for such exceptions. It is also quite possible to distinguish "potential" public-service relations with the participation of "relatives" and those relationships that already exist, as well as, by the way, relations with "active" participation of relevant persons (for example, joint work of "relatives" in mountain settlements) and with their "passive" involvement (for example, the indication of information in the declaration by a person authorized to use the function of state or local government, lifestyle monitoring, etc.).

With an emphasis on the "complex" content of the definition of "close persons", it is possible to talk about the allocation of relations involving a variety of "close people " (for instance, restrictions on joint work), as well as relations involving only certain types of "close people ". Monitoring the lifestyle of public servants can be given as an example. The participation of "close people" in public service relations does not fully ensure compliance with mandatory requirements for subordination and control, and therefore not fully ensures compliance with all fundamental requirements of public service, its resources are implemented. A public servant cannot perform his / her duties objectively and impartially, which causes a "defect" in his / her public service activities. The "special" nature of the relationship between a civil servant and "relatives" should be subordinated to the "priority" nature of public service relations.

Under such conditions, such relations should be regulated with an emphasis on the resource of "subordination" and "control" and exclude their direct implementation. It is the direct subordination and control that determine in such relations the preconditions for the "special" influence of the subjects, including and corruption-causing, and hence "corrosion" of public service in general. That is why it is quite logical and justified to regulate the requirements for "direct management", "direct control" for public service activities, as well as restrictions on

joint work of relatives and prevention and settlement of conflicts of public and private interests (as a concept broader than "Joint work of close persons" [3, p. 324]), compliance with the requirements of financial control in terms of declaring income, expenses of "close persons", etc. Recognizing the fact that "close people" are not the "basic" subject of public service relations, the legislator at the same time does not underestimate their "special" relationship (and mutual) with the civil servant, fixing "filters" possible negative impact on the professional activities of the latter.

Thus, in particular, Art. 32 of the Law of Ukraine "On Civil Service" fixes restrictions on the appointment of a person "who will be directly subordinate to a close person or to whom close persons will be directly subordinated" (Part 1 of Article 32 of the Law). At the same time, the same legislative act enshrines the official definition of "immediate supervisor" (Part 1, Article 2 of the Law) as "the closest manager to whom the employee is directly subordinated" (Part 1, Article 2 of the Law), namely "direct relations". Organizational or legal dependence (without intermediate links) "[2, p. 19], which may pose a "threat" to the "purity" of public service in the case of public service relations with the participation of "relatives". It should also be noted that the emphasis should be not only on "direct subordination" or "direct subordination" (Part 1 of Article 1 of the Law of Ukraine "On Prevention of Corruption"), but also, as already noted, control, which should be divided in relation to public service relations with the participation of "relatives", on: "direct" ("implies that the immediate supervisor has the authority to control in accordance with official duties" [8, p. 38]) and "general" (general). "Control of all employees to the head, regardless of direct subordination" [8, p. 39]), which is directly related to conflicts of interest in the public service. That is why it is quite justified to regulate the provisions directly related to restrictions on joint work of relatives (Article 27 of the Law of Ukraine "On Prevention of Corruption"), with their distribution of actual and potential public service relations, and possible exceptions. 3 Part 1 of Article 27 of the same Law) on the general provision and provisions on the prevention and settlement of conflicts of interest (Article 28 of the same Law), focused not only on the fact of direct subordination, but also control (including general) in public service relations with the participation of "relatives" as a "filter"

of possible corruption-causing influence of the relevant relations on the "purity" of public service. Unfortunately, the analysis of law enforcement practice shows the diversity of interpretation of these provisions of the current anti-corruption "basic" legislation and the frequent cases of erroneous identification of direct subordination and control (for example, staffing, incentives for civil servants, etc.), and therefore the orientation of public employees to meet the private interests of "relatives".

Which, undoubtedly determines the need to clarify the provisions of current legislation in terms of supplementing the thematic "basic" conceptual series, fixing the norm-definition of "direct and general control", detailing the provisions of Art. 27 of the Law of Ukraine "On Prevention of Corruption" in terms of the relationship between the relevant restrictions and conflicts of interest [3, p. 268-269]. In this sense, it is appropriate that "the exceptions provided for in Part 1 of Art. 27 of the Law of Ukraine "On Prevention of Corruption" relate to only one type of conflict of interest... - joint work of relatives, and do not apply to the restrictions provided for in Section V of the relevant Law. Thus, people working in rural (mountain) settlements may be directly subordinated to their relatives, but this does not mean that bonuses or other improvements in the situation of relatives are allowed "[3, p. 325]. That is why the clarification of the provisions of Art. 27 of the relevant Law on the relationship of control as a race for joint work of "relatives" will help unify the interpretation and application of relevant regulations in preventing the corruption-causing impact of "relatives" on the "purity" of public service activities. Relations with the so-called "Passive" involvement of "close people" are also characterized by the regulation of "filters" of their corruption-causing influence on the public service activities of the authorized person. Thus, in particular, it is quite logical to prevent such influence due to compliance with the requirements of financial control by public servants, including and regarding the relevant persons and responsibility for their violation (Article 172 6 of the Administrative Code of Ukraine), conducting a full verification of the declaration, monitoring the lifestyle of a public servant and certain types of his "relatives", etc. In addition, such impossibility is "bilateral": both "for loved ones" and "for loved ones".

However, the oversaturation of the relevant legal provisions that enshrine the above-mentioned "filters", evaluative concepts, which in turn form the basis for their diverse interpretation and application (as has been repeatedly mentioned [10]), significantly reduce the value of such "filters" and thus determine the corruption-causing impact of the participation of "relatives" on the public service professional activity of the person. Moreover, the scattered principles of using such filters in numerous different legal acts, including and contradictory in content, as well as the active interpretive activities of anti-corruption actors in all its manifestations, further complicates the situation related to the identification of the relevant impact of the participation of "relatives" on public service. In order to normalize the principles of participation (both real and potential) of "close people " in public service relations, it is important to: a) prevent the "connection" of their participation with the professional activities of public servants (subordination and control); b) unification of the thematic conceptual apparatus; c) unification and systematization of the principles of participation of "relatives" for any kind of public service relations; d) introduction of additional "filters" to prevent the impact of "special" relationships on the professional activities of public servants (admission to the service, the requirements of financial control, liability for non-compliance); e) minimization of "privileged" (exceptional) cases of participation of "close persons" in public service relations in compliance with the general requirements of direct subordination and control (direct and general).

It is possible to mention one of the "innovative" anti-corruption measures, the lever of anti-corruption prevention - monitoring the lifestyle of public servants, which is associated with the negative obligations of the state (withholding in the exercise of public administration interference in the exercise of this right, from creating obstacles to the exercise of such right, etc.).

It is quite possible to combine the consideration of this issue with the emphasis on the right of a person to public service as a relative right (according to the criterion of the possibility of legitimate restriction). Undoubtedly, the realization of this right is associated with a certain "intervention" by the state, and therefore the intervention and negative obligations of the state should be combined and considered simultaneously in the context of using the resource of anti-corruption

measure - monitoring the lifestyle of public officials. In the updated "format" after amendments to the anti-corruption legislation, and especially to the "basic" Law of Ukraine "On Prevention of Corruption" in December 2020, monitoring the lifestyle of public servants not only retained its leading place among anti-corruption measures, but also in modified form "strengthened" its position among anti-corruption tools. Despite the lack of a norm-definition directly dedicated to monitoring the lifestyle of public servants, the legislator nevertheless highlighted his position on the understanding of this measure, its essence and purpose in the "basic" anti-corruption legislation. Yes, such a measure is unsystematic, because it provides for selectivity in the application, however, there are no criteria for selectivity, which determined the grounds for its application. The legislator enshrines, and the NAPC in the bylaw duplicates that this measure is used to establish compliance with the standard of living of public servants and members of his family property and income of these persons, as stated in the declaration of the civil servant. Thus, the position of the legislator to highlight the purpose of this measure, its "binding" to the declaration of a public servant, to information about the available property and income of the civil servant and his family members is clearly visible.

However, the declaration itself is not enough to use the lifestyle monitoring resource as an anti-corruption measure. In order to carry out such an event, information must be available that contains information on the inconsistency of the declared property and income with the standard of living of the above-mentioned persons. Therefore, information about the discrepancy between the declared information and the real way of life may be the basis for NAPC interference in the life of a public servant and members of his family. There are a lot of questions about this. So, is lifestyle monitoring related to a person's right to public service? An analysis of the current legislation shows that the application of this measure is possible only in relation to a special entity - a public servant and members of his family.

The latter come into the field of view of the NAPC only due to their "attachment" to a public servant. Civil servants are obliged to declare their property and income, and monitoring is possible in terms of comparing the information of the declaration and the real way of life of a public servant. Thus, the "link" between lifestyle monitoring and a

person's right to public service is available. It can be clarified that there is a "connection" with the realization of a person's right to public service. The next question is: does the monitoring of the way of life involve the commission of certain actions by persons (bodies) authorized by the state? Thus, in case of receiving information about the discrepancy between the information in the declaration and the real way of life of the public servant and members of his family, the NAPC may monitor in order to determine such compliance or discrepancy. Information obtained from individuals or legal entities, from the media or from "other open sources" may to some extent indicate compliance or non-compliance. Therefore, obtaining such information is the basis for monitoring the lifestyle in order to finally clarify the issue and obtain an answer as to whether or not it corresponds to the real state of affairs. It is gratifying that the legislator lists possible sources of information, but the phrase "other open sources" significantly expands the scope of such information, creating preconditions for different interpretations and applications of this provision. On the one hand, it is quite logical to provide ample opportunities to obtain such information to prevent any possible corruption in the activities of public officials, including and with the involvement of their family members. At the same time, on the other hand, it is necessary to eliminate any evaluation provisions in determining the grounds for possible state intervention in the exercise of a person's right to public service.

Thus, the analysis of the relevant legal provisions of the current legislation of Ukraine allows us to state that the legislator singles out the monitoring of the lifestyle of public servants and normatively specifies its "basic" features, including: a) "selectivity"; b) a special subject of implementation, which is the NAPC; c) special subjects to which the application takes place (persons authorized to perform tasks of the state or local self-government, members of their family); d) target direction - “in order to establish compliance of their standard of living with the property available to them and their family members and the income received by them in accordance with the declaration” (Part 1 of Article 51 of the Law); e) standardized procedure, detailed in NAPC acts; f) comprehensive content, which involves a combination of data verification, using different sources, monitoring the livelihood of individuals; g) restriction by guaranteed "limits" of interference with the

right to privacy of personal and family life of persons "... should not provide for excessive interference..." (Part 3 of Article 51 of the Law); h) variability of consequences (including full verification of the declaration, notification of specially authorized entities in the field of anti-corruption). It has been repeatedly stated that it is erroneous to equate the monitoring of the lifestyle of the persons concerned with the verification of these persons' declarations (Article 48 of the Law) and the full verification of declarations (Article 50 of the same Law), as the legislator in various articles of the "basic" legislative act, and consolidating their relationship: with the inspection during the "office" study as part of the relevant monitoring and with the full inspection as a possible consequence of monitoring "in case of non-compliance with the declared property and income... "(Part 4 of Article 51 of the Law).

Moreover, the presence of “field research” (“visual observation” [4, p. 9]) distinguishes monitoring from verification, which confirms the expediency of choosing the word “monitoring” to denote this anti-corruption tool to focus on behavioral observation, lifestyle, property of a person, and not only the processing of certain information from registers, databases, etc. "[6, p. 48]. It is this “unique” combination of “office” (“documentary”) and “field” (“live”, “visual”) aspects that determines the resource of monitoring the lifestyle of the persons concerned, which in turn provides for the multiplicity and diversity of tools is quite common in the domestic administrative and legal science, which determines its use in scientific, educational, methodological industry sources) for its implementation. It is quite logical that it is logical to use access to various state registers, official databases to obtain information in order to compare it with the information specified in the declarations. Moreover, it is clear that the observation of "movement" of people, "of a house or property outside the house," of things worn by "a person or members of his family" [6, p. 403], is carried out using a variety of means of photography, video and other recording.

It is through their use that information becomes known both before the start of the monitoring and during the relevant procedure, which may either indicate the conformity of the declared data on the standard of living and life of their family members or indicate their inconsistency. It is no coincidence that the legislator has established that monitoring is carried out “on the basis of information received from individuals and

legal entities, as well as from the media and other relevant sources of information containing information about the inconsistency of living standards of declared property and income "(Part 2 of Article 51 of the Law), and also provided for the possibility of access to such information by the NAPC as a subject of relevant monitoring during the actual use of its resources (Article 11 of the Law).

However, there are some problematic issues in the actual implementation of "operational and investigative activities and pre-trial investigation of the NAPC, which is not a law enforcement agency" [6, p. 408]. However, the main emphasis should still be placed on the fact that when conducting a "desk study" as a component of monitoring, the NAPC uses as a toolkit access to various information resources contained in official registers, databases. And the "complication" of the tools of this component of monitoring is considered appropriate in terms of implementing innovative methods of combating corruption in all its manifestations in Ukraine, informatization of public administration. The specificity of the right of a person to public service is related to the efforts of the state, focused not only on creating conditions for its implementation (conditions, procedures, organizational support, etc.), but also efforts aimed at ensuring its meaningful implementation and protection of public interest in the process of professional service and the impossibility of any use of such service to satisfy one's private interests. This confirms the thesis that the right of public service is "connected" with the efforts of the state, including and efforts of a restrictive nature. That is, this right is relative, because it involves government intervention in its implementation.

However, monitoring as one of the external manifestations of such an intervention or "lever of influence" is not arbitrary, depending on the discretion of the representative of the state. Restricted or relative law provides for the possibility of state interference in its implementation, if: such interference is legal, legitimate (pursues a legitimate aim), necessary in society and proportional, anti-discriminatory. Given these features of the relative right of the individual and their analysis in "binding" to the individual's right to public service and the use of lifestyle monitoring during its implementation, the following can be noted: interference in the implementation of this right, legal, because

the principles are enshrined in current legislation. Indeed, there may be some "quality defects" on these grounds, but it is the consolidation of possible restrictions that is taking place.

Such an intervention has a legitimate purpose - to establish compliance with the property and income of a public servant and the real way of life, in order to eliminate the preconditions for the use of public service by a person to satisfy his private interests, timely response to facts such use. The application of such an anti-corruption measure is provided for any public official in the event of receiving such information, without any exceptions, priorities, "links" to the type of service, body, position, category, etc. This indicates the absence of any discriminatory principles in its application.

Finally, the application of lifestyle monitoring of a person in the exercise of his or her right to public service is not a total, comprehensive interference with a person's private life and professional life. In fact, we are talking about the "parallelism" of a person's professional activity, private life, and monitoring. The legislator does not provide for the suspension of a person's public service (of any form) and, even if such a discrepancy is found, the relevant right is not suspended, although there are grounds for another anti-corruption measure - full verification of the civil servant's declaration. In addition, there is a provision, the content of which indicates the proportionality of the application of this measure as a basis for such activities - "... without undue interference in the private and private life of the person. Undoubtedly, the assessment of "excessive" creates the preconditions for its various interpretations and applications, which is a "defect of quality" of the legislation [7, p. 58], however, it can be considered as an example of normalizing the "balance" in the use of the resource of monitoring the lifestyle of public servants with an emphasis on the relationship between private and public interests. All this indicates that the right of a person to public service is a relative right, a right that provides for the possibility (subject to these principles) of state intervention in its implementation, and the direction of such intervention to eliminate preconditions for using this right to satisfy public interests, to respond in a timely manner to the identified facts of such use and their impact on the "corrosion" of public service), which in its content is "negative" (does not provide some positive promotion of

such a right, additional assistance, benefits, benefits, etc.), and therefore, in combination with the obligations of the state on legislative, organizational, legal, functional, procedural assistance (which significantly predominate in volume and therefore are dominant) allows us to argue that the right of a person to public service is "mixed" on the mechanism of its implementation), with the possibility of using the resource and "negative" obligations, one of the external manifestations of which is quite It is possible to consider monitoring of a way of life of the public servant as the lever of anti-corruption influence on realization of the specified right of the person.

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GOVERNANCE OF HUMAN RIGHTS BY MEANS OF ADMINISTRATIVE LAW

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For the first time the concept of "human rights" with classification characteristics is formalized in the "Declaration of Human and Civil Rights" of 1789. Later the Declaration has gained importance as a world historical document to establish the legal parameters of individual human rights. Along with it, the important milestones in the evolution of their content are the English Grand Charter of Liberties (1215), the English Bill of Rights (1689) and the American Bill of Rights (1791). In 1922, the International Federation for Human Rights (FIDH) was established, the world's first international human rights organization.

In the late 1970s, Karel Vasak, a French jurist of Czech descent, the first Secretary-General of the International Institute of Human Rights in Strasbourg, proposed the concept of generations of human rights [1]. In its content, it’s clear the scientist's desire to connect the generations of human rights with the three slogans of the French Revolution - freedom, equality and brotherhood.

The main meaning of the use of the term and concept of "generation" in the practice of systematization of human rights is explained by the desire on a philosophical and historical basis: a) to form in the totality of all human rights classification groups depending on their legal nature; b) to prove the evolutionary nature of their development; c) to promote the legally correct definition of human rights functions; d) in their assessment to exclude the possibility of

seeing the dominance of some rights over others; e) demonstrate the integrative nature of the relationship between them.

The first generation of rights and freedoms according to the Vasak concept - is the unconditional pursuit of human free self-realization in society and the state. They are natural and inalienable, are legislative and non-legislative; they are not created by law, but only officially recognized, concretized and protected. These rights ensure human freedom in society. These include the right to life; the right to liberty and security of person, privacy, including housing and correspondence; respect for personal dignity, honor and good name; the right to own property.

The second generation of rights and freedoms is fundamentally different from the first. They were established in the form of international legal standards and guarantees for a certain material prosperity, not just a free life. These are socio-economic rights. These include: the right to work, so to obtain guaranteed work with payment not lower than the minimum set by the state; right for rest, so for working hours not exceeding the established duration, paid vacations and days of weekly rest; right of the safe working conditions; right of the strike; right of the protection against unemployment; right of the social security and social insurance; right of the state support of the family, motherhood and childhood; right of the education.

The third generation of rights and freedoms mediates relations between social communities, primarily ethnic ones. These are collective rights that do not belong to individuals, but to their stable, historically formed communities, and which are realized not individually but together.

Vasak defines them as solidarity rights, which are exercised not by an individual, but by society (collective, community, association). They are, firstly, not limited to the simple sum of the individual rights of its members, and secondly, they are not some new rights of individuals. They are characterized by qualitatively new properties that are formed by the goals and interests of each individual collective entity.

Such rights are conditioned by the obvious and necessary solidarity of the people and can be realized only with the participation of all subjects of social relations (individual and collective, state and municipal) at the national and international levels. Thus, these are the

rights of societies, peoples, national minorities, which have a supranational, supranational and supraclassic nature.

These include the right of peace, the right of the development, the heritage of civilization, the public domain, traditions, and the right to communicate, which is linked to the concept of a new international information order.

Vasak's idea of generations of human rights was further developed in the researches of followers. The fourth, fifth, and sixth generations of human rights began to take shape. Today there is no consensus on their content and place in the human rights system. However, there is reason to present them as follows.

The fourth generation are rights that require public protection by the state. Actions to protect them are mandatory for public administration and are legally formalized in interstate agreements, protocols, pacts and other legal documents. An important feature of ensuring this group of rights is the presence (organization and implementation) of international and regional monitoring of the process of state implementation of obligations to protect them. Such rights include: the right of the protection from man-made threats, threats from experiments in the fields of biotechnology, medicine, energy, crop production, animal husbandry and others.

The fifth generation are somatic (from the Greek "Soma" - the body) human rights. These are the rights of the independent dispose of one's body: to carry out its "modernization", "restoration", "fundamental reconstruction", to change the functional capabilities of the organism and to expand them with technical-aggregate or medicinal means. This includes the right to die, organ transplantation, sex change, homosexual contact, the right of the artificial reproduction, sterilization, abortion, cloning, drug or psychotropic substance use.

Sixth generation. According to some researchers, it is advisable to distinguish the independent generation of divine human rights. They believe that divine rights and freedoms are the foundation of all other rights and freedoms, as they cover not only man and our world, but also the universe. These are the right to Faith, love of God, unity with the Creator.

Thus, the rights and freedoms of man and citizen are universal legal guarantees that protect individuals and groups from the actions

of the state, restrict fundamental freedoms and diminish the dignity of the human person. Their distinctive feature is that they are guaranteed by international law, enjoy legal protection, emphasize the dignity of the human person, impose responsibilities on the state, are universal, equal and interdependent, and cannot be revoked or limited.

The concept of generations of human rights has become an important factor in the development of Ukrainian administrative law since 1991. The Concept of Administrative Reform in Ukraine became a concentrated expression of its influence [2] and the Concept of Administrative Law [3].

Systematically interconnected, they formed a new paradigm for the development of administrative law, its subject (relations), institutions, relations with other branches of law.

First of all, they outlined the most important promising areas of research in the field of administrative law in the format of a new ideology of executive power and local self-government (as activities to ensure the rights and freedoms of citizens, public and public services); focused the vector of research efforts: a) on the delimitation of public administration and other management activities; b) determination in the subject of administrative law of relations of administrative proceedings, administrative liability, administrative services; c) the expediency of establishing administrative liability of legal entities.

Having received official recognition and support from administrative scholars, they effectively ended the days of domination of the Soviet concept of administrative law in its purely state-administrative nature and gave its followers the role of the marginals of the administrative and legal space.

According to the concept, in the new paradigm of these relations "man - state", the state is assigned the functions of a kind of "service center" to serve the interests of the individual and other actors in civil society. Thus, human and civil rights are shifting to a dominant position in the priorities of administrative and legal support of the public sphere.

To achieve this result, the Concept of Administrative Reform provided for radical transformations of the state apparatus, legislation and administrative law doctrine.

The need to revise the doctrinal provisions of administrative law is due, at least, to the following needs. First, it is the need to theoretically comprehend the new realities of legal reality (the revival of the institution of private property, a new essence of local self-government, the emergence of public service, the legalization of business).

Secondly, to play the role of a regulator that will a) legally ensure the dominance of human rights in its relations with public authorities and b) harmonize these relations through a system of administrative and legal means.

The emergence of a new administrative - legal doctrine was greatly facilitated by overcoming the management dogma of defining the essence of this branch of law and the gradual transition to its understanding as an area that is genetically related to the practice of protecting the rights of citizens [4].

In this process, at least three stages are quite prominent. At the first stage, knowledge of administrative law and its subject is based on the traditions of the Soviet law school. Therefore, administrative law is defined as a legal companion of public administration, and its subject as a relationship that arises in the implementation of public administration.

The second stage is characterized by the fact that the accumulation of knowledge about administrative law occurs in the context of radical changes in the social and economic spheres and the formation of other in its content social relations. Legal understanding of the new laws of social development leads to a new understanding of the role of law in mediating relations between the state and the citizen.

Thus, objective circumstances force the reform of administrative law. They require to determine its place and clarify the role of theoretical and normative services in the creation of civil society, the rule of law, ensuring human and civil rights.

After some time, it becomes clear that the solution of problems that have arisen is not possible without rethinking and updating the subject of this area of law. In our opinion, two theoretical conclusions that were made in the development of the ideas of the Concept of Administrative Reform in Ukraine were of fundamental importance for the renewal of the concept of the subject of administrative law.

First, it is the conclusion that administrative law cannot develop as a monocentric branch, so as such a branch that has a single system-forming normative center, and secondly, the conclusion that administrative law is a right of poly-structuring.

These conclusions became the starting point in further studies of the structure of administrative law from the standpoint of human and civil rights. An important result of this work was, first, the perception of Ukrainian administrative law as an independent system-forming component of its subject relations, which arise on the initiative of entities that do not have power (before they were considered an organic part of administrative relations). In Ukrainian administrative and legal theory and practice, they were called first service relations, and then administrative service relations; secondly, received a theoretical justification as part of the subject of administrative law relations arising in the field of administrative proceedings. Later they were regulated in the Code of Administrative Procedure of Ukraine [5].

Thus, at the second stage of development of knowledge about the subject of administrative law, the following becomes clear: first, the subject of administrative law includes not only public administration relations, but also other administrative relations. Their combination forms a relationship of public administration; secondly, in addition to management, it includes relations that arise in the administration of justice in the form of administrative proceedings. This is the relationship of responsibility of the subjects of power for illegal acts; thirdly, it includes the relationship of liability for violation of established rules - the relationship of administrative liability or administrative-tort relationship; fourthly, the subject of administrative law includes relations arising on the initiative of entities who do not have the authority to apply to public administration bodies (reordination relations). Hereinafter, they are called "service" relations, relations of public or administrative services.

The third stage is the generalization and systematization of theoretical and empirical data, the use of a systematic approach as a method of studying the accumulated material. The central issue at this stage was to determine the presence or absence in the aggregate of structural components of the subject of administrative law of integrative qualities.

Its fundamental importance is due to the fact that the lack of such qualities made this set a conglomerate formation. In fact, it questioned their unity, and hence the existence of the subject in a new format. The presence of integrative qualities unequivocally testified that this set is a system and has every reason to be considered as a subject of law.

In this regard, it should be noted that in Soviet legal doctrine, the subject of administrative law is represented by a systemic entity. Researchers have proved the integrative nature of the interaction of its components on the basis of the following features: a) all relations of the subject - are the same type of relationship, b) all relations of the subject - are relations of power and subordination, c) all relations of the subject public administration.

None of the above integration features is found in the set of new structural components of the subject of modern Ukrainian administrative law. The relations of administrative services and the relations of responsibility cannot be called the same. Nor are they relations of power and subordination. Not all relations of the updated subject arise as a result of public administration.

The set of relations, which in the updated dimension are governed by administrative law, turn into a system, and hence into the subject of the industry, other factors. This is the category of "public administration" and the category of "relations of administrative obligations".

"Public administration" already actually occupies a place that in Soviet administrative law belonged to the category of "public administration". Today, scientific understanding and further development of the theory of public administration is one of the main directions of doctrinal renewal of administrative law of Ukraine. An important reason for its transformation into a modern legal branch of the European type

It is important to note that this is not a simple replacement of terms. The theory of public administration has fundamental differences from the theory of public administration, both in legal content and in social essence.

Its formation and recognition puts an end to attempts to adapt the paternalistic version of the doctrine of public administration to the doctrine of a democratic state governed by the rule of law. States where

its responsibility to man is normatively recognized, where human rights and their guarantees determine the content and direction of the state.

There are two approaches to the concept of "public administration": functional and organizational-structural.

At the functional approach it is activity of the corresponding structural formations on performance of the functions directed on realization of public interest. Such an interest in Ukrainian law is the interest of the social community, which is legalized and satisfied by the state. Thus, for example, the performance of a public administration law enforcement function means the systematic activity of all structural entities that have such a function.

In the organizational - structural approach, public administration is a set of bodies that are formed for the exercise (realization) of public power. In Ukrainian law, public authority is recognized as: a) the power of the people as direct democracy b) state power - legislative, executive, judicial, c) local self-government.

It follows that public power in Ukraine is exercised by the following bodies: first, the Verkhovna Rada of Ukraine (Parliament), the President of Ukraine (as a government institution), local councils. They exercise the power of the people, which finds expression in electoral processes; secondly, all bodies and institutions that exercise state power. For example, executive bodies, courts and others; third, all bodies and institutions that implement local self-government. For example, executive committees of local councils, public associations, bodies of self-organization of the population, etc. The above gives grounds to define public administration as a system of organizational and structural entities that have legally received authority to exercise public power.

Each of the areas of the subject of administrative law has specific means by which human and civil rights are ensured. Indicative in this dimension are the norms of the Code of Administrative Procedure of Ukraine, which allow the court to go beyond the list of subjects of decisions on satisfaction of administrative claims if necessary to ensure respect and protection of human rights, freedoms, interests and interests in public relations from violations of the law. objects of power.

The practical provision of human and civil rights is carried out by the functioning of a specific administrative and legal mechanism for the realization of citizens' rights.

This mechanism provides for the presence of interdependent elements, the interaction and functioning of which determines the effectiveness of this administrative and legal mechanism. It should be noted that the structure and the very concept of administrative and legal mechanism for exercising the rights of citizens in the executive branch are not reflected in the research of modern jurists, although this concept is often appealed by administrative law, without giving a clear definition. to the specified phenomenon. It seems to us natural and reasonable to consider this administrative-legal mechanism, abstracting from the mechanism of administrative-legal regulation, its structure.

As a result of this consistent, inseparable link in the interaction, the elements of the administrative and legal mechanism for the realization of citizens' rights in the executive branch are initially present in the mechanism (system) of administrative and legal regulation.

Thus, the following elements can be included in the administrative and legal mechanism of realization of the rights of citizens in the sphere of executive power: norms of law; acts of law enforcement; legal relations. The primary "bricks" of administrative law, the "cells" on the basis of which the industry system is formed, are administrative law. The complexity and diversity of administrative law determine a significant variety of sources of administrative law.

Norms of administrative law, first of all, regulate public relations, are formed in the sphere of activity of executive bodies and its subjects. The content of these norms provides that they act as a regulator of public relations arising in the exercise of powers by the administration of local governments and the administration of state organizations, institutions, enterprises or those where the share of state property predominates; the relations formed at the decision of bodies of the government, court, prosecutor's office of questions of selection of shots, appointment to positions of operative personnel, definition of requirements, service, responsibility of employees, other internal organizational relations of administrative character which are within

the competence of these bodies; relations arising in the field of activities of public organizations (for example,

The rules of law are the primary elements of administrative and regulatory influence on public relations in general, and in the context of public relations between the executive and citizens in the exercise of the latter's rights. It is obvious that in the system of administrative and legal regulation, as well as in the administrative and legal mechanism of realization of rights in the sphere of executive power, norms of law occupy a central place, because in their absence the whole system of administrative law will cease to exist.

As the purpose of administrative and legal norms, scientists are called to ensure proper organization and functioning of the entire system of executive power (public administration) and its individual parts, their rational interaction. It should be noted that the goal is not the only one and not even the primary one. This goal can be called rather organizational and technical. In accordance with the requirements of current legislation, the main purpose of administrative law is to create an optimal and effective system of interaction not only between the executive branch, but also between citizens and executive bodies. Moreover, the implementation of the right should be facilitated not by the efforts made by the citizen to justify and use their rights, but by the efforts of the executive branch aimed at timely recognition, full and accurate implementation, application, use,

It is fair to agree that administrative law determines a variant of proper, ie in the interests of the rule of law, the behavior of all persons and organizations acting directly in the field of public administration and performing one or another scope of its functions (eg, regional administration). or in one way or another affect the interests of this area (eg, public associations, citizens).

Administrative and legal norms, as noted by most scholars, are characterized by the following features: organizes the beginning in the system of regulation of administrative relations (ie, primarily in the executive branch); ensuring public interests; unilateral power influence on subjects of law; coercion. The last two features are at odds with the purpose and principles of law enforcement. If the application, recognition and enforcement of the law allow unilateral influence by the executive on the right holder, citizen, and as a consequence,

distortion of the principle of expression of will, then such forms of law enforcement as observance and use in their content assume one, the implementation of the law as the exclusive prerogative of citizens.

Peculiarities of administrative and legal norms are as follows: they determine the proper behavior of all persons and organizations operating in the field of public administration; establish and ensure the regime of legality and state discipline in public relations that arise in the process of public administration; administrative liability is a legal remedy against encroachment on administrative law; with the help of norms provides for the regulation of such social relations as financial, land, labor, etc.; administrative and legal norms are often established in the process of exercising executive power.

The structure of administrative law is traditional and consists of hypothesis, disposition and sanction. As a rule, norms of administrative law are classified according to the content of public relations into general and special, according to the nature of protective and regulatory, subject to regulation of substantive and procedural, subject to influence on subjects of administrative law on binding, prohibiting, permitting, stimulating and recommendatory, as well as on the territorial scale of activity, on the action in time, on the circle of persons, on the addressee.

Norms of administrative law, first of all, regulate public relations in the sphere of activity of executive bodies and its subjects. Secondly, it regulates internal organizational relations in other areas of state activity (representative bodies, prosecutors, courts); relations in the field of application of administrative penalties and other measures of administrative coercion; relations in the field of administrative justice. Norms of law within the administrative-legal mechanism of realization of the rights of citizens in the sphere of executive power, as follows from the resolution, regulate mainly social relations in the sphere of executive power, as well as the same relations concerning application, use, execution, observance and recognition of citizens' rights. However, this does not mean

The classification of legal norms of the administrative-legal mechanism of realization of rights is not given in the literature, but with a natural possibility of identification of elements with homogeneous elements of the mechanism of administrative-legal

regulation, it is possible to use the traditional classification of administrative-legal norms accepted in administrative law. Yes, we will present the distribution of law on the following grounds or types: by content, by subject of regulation, method of influence, form of order, mode of action. Classification of norms such as regulated homogeneous relations (by legal institutions) is quite convenient in connection with the consistent systematization of a large amount of normative material. The following groups of norms are distinguished: regulating the order of education, functions, tasks, structure and competence of the executive body, public administration; enshrining the basic provisions of the organization, operation and legal status of state enterprises, institutions and organizations; establishing the optimal forms and methods of implementation of the activities of executive bodies, public administration; consolidating rights, responsibilities of citizens and their public associations in the field of executive authorities; consolidating and regulating the basic provisions, principles of organization and activity of the civil service institute; regulatory means of ensuring legality and discipline in the sphere of activity of executive bodies; decisive issues of administrative jurisdiction, legal resolution of administrative disputes and conflicts, consideration of individual cases of administrative offenses and taking measures of administrative coercion, including administrative penalties; defining provisions and principles of regulation of relations between the subjects of administrative law in the economy, industry, agricultural sector, economic sphere, socio-cultural and administrative-political sphere and intersectoral management [6].

However, the problem of realization of citizens' rights is different in the dynamically developing institutions of administrative law. All these types of norms to some extent can be involved in the administrative and legal mechanism for exercising rights in the executive branch. The scale of these norms and the lack and proper systematization are additional arguments in favor of creating an institution for the realization of citizens' rights in the executive branch. The creation of a new institute can significantly facilitate the work with existing legal material in the field of law enforcement. The division of norms into material and procedural traditionally.

Administrative and legal norms by the method of behavior of the subjects of legal relations within the framework of law enforcement can be: binding, authorizing, prohibiting and stimulating. Binding norms, as well as authorizing and prohibiting, are connected with such forms of realization of the right as recognition, use, application and execution. The last two types of implementation are particularly consistent with these methods of action characteristic of administrative legal relations. The use and observance of citizens' rights correspond most to the stimulating method of influence.

The mode of action of norms involves their action in space, time and subjects of regulation.

In order of legal approximation, the content of the subject of administrative and legal mechanism for the implementation of citizens' rights in the executive branch is a set of social relations that arise in the interaction of executive bodies and citizens, their organizations, as well as in the implementation of these authorities. We cannot limit ourselves to the range of social relations that arise in the process of interaction between citizens and the executive, because the stages of realization of citizens' rights in the executive branch involve the formation of power or the will of citizens, which may occur outside these relationships. The immediate interests and rights of citizens must be taken into account, or rather determine the will and activities of the entire system of executive power, and their practical implementation. Depending on the form of realization of the right, the activity of executive bodies should be modeled as well. Enforcement presupposes direct observance of the letter of the law, both by executive bodies and by citizens and their organizations, which is a passive implementation, as the obligations to exercise the right reflected by law correspond to the right to use and apply it.

Based on the nature of the legal relationship between the executive and citizens, special attention is drawn to such a form of implementation as law enforcement. We should not forget that the regulations of the federal executive bodies - a component of the legislative system, which performs in the format of the latter integrating and consolidating role. Relevant acts, on the one hand, accumulate the provisions of acts of greater legal force, on the other hand, can be the basis for the issuance of normative legal acts of a lower level of the legal

system. These acts embody the model of a universal institution of legal regulation

The application of the law provides for the following requirements, the legislative enshrinement of which would be appropriate: compliance with the law, the optimal application of the rule, the validity and appropriateness of the rules. And as a result - harmonization and stabilization of management relations.

The effectiveness of legal regulation largely depends on the effectiveness of law enforcement acts, as the provisions of such acts permeate almost all spheres of life and cover all areas of law. Included in the mechanism of legal regulation, these acts are designed to ensure its clear operation. Such acts are characterized by a pronounced auxiliary character. Legal regulation of this type of acts is the basis of acts of greater legal force only in conjunction with it. At the same time, they can have an autonomous meaning and are sometimes the only source with which the legal regulation of individual legal relations is connected.

Law enforcement acts are an important means to achieve those goals (specific and long-term) that are before the rule of law. Thus, the law enforcer may not have any other purposes not provided by law.

Hence, the effectiveness of law enforcement acts should be measured in the same way as the effectiveness of legal norms, comparing the actually achieved result of their action with the goals of the relevant legal norms.

At the same time, it is not always possible to talk about the social effectiveness of law enforcement acts. It all depends on the norm, its content. Thus, many norms contain imperative orders that require the law enforcer to make an unequivocal decision. For example, to give leave to a minor for exactly 1 month. Here the role of the law enforcer is reduced to the passive exercise of the will of the legislator. He is not required to take a creative approach to the implementation of this norm, only its qualitative application.

Thus, the qualitative application of such norms can only ensure their legal effectiveness, but not affect their social effectiveness, the degree of achievement of social goals of norms. Law enforcement here mainly merges with such a form of law enforcement as enforcement,

with the difference that provides in the case of the issuance of a law enforcement act.

Another situation can be observed in the application of norms that give the freedom of discretion of the law enforcer (in relation to certain, dispositive norms). In this case, the results of individual regulation can significantly affect the degree of achievement of the objectives of the applicable rules, to make a contribution to the overall effectiveness of legal regulation.

Thus, specifying the punishment, expanding or limiting the interpretation of the rule, clarifying the content of rights and responsibilities of specific individuals, law enforcement decision creatively affects the social effect of legal regulation. Here there is an increase in the degree of achievement of the goal of the norm due to its most appropriate application. In this case, we can talk about the social effectiveness of law enforcement acts, and to determine it is necessary to establish the share of results that gives individual regulation (law enforcement in comparison with the purpose of the rule of law).

Speaking of normative legal acts in the field of executive power, we note that the rules of law are primary in relation to the rights of citizens, the acts of law in relation to them are secondary. Thus, speaking of their nature, we note their explanatory and orderly nature. The multiplicity of normative legal acts of executive bodies is due to the functional connection of such with acts of greater legal force, the number of relevant bodies, the breadth and dynamism of social relations included in the subject area of their activities.

The task of determining the effectiveness of a legal norm can be solved at the stage of its development. To do this, often resort to its experimental verification, staging a legal experiment. Its ultimate goal is to develop the optimal, most effective option for legal regulation.

Conducting a legal experiment involves the issuance of experimental legal norms by the competent authorities. Their action is tested on experimental objects. There are the following features of the experimental norm: it always has a limited scope, is temporary and is exploratory.

The application of legal experiment has certain limits. Thus, under no circumstances can it be allowed to allow experiments that restrict the constitutional legal and freedoms of citizens, which in the field of

experience, negatively affect their material, spiritual and other interests.

In administrative-legal relations as the main element of the mechanism of legal regulation the provisions of one or another norm of administrative law are individualized, the nature, rights, duties, functions, tasks and responsibilities of participants (subjects and objects) of administrative relations are determined.

Regarding the administrative-legal mechanism of realization of citizens' rights in the sphere of executive power, administrative-legal relations have the following features: regulate and protect public-legal interests in the sphere of activity of executive bodies; have a special state-authoritative nature, which determines the possibility of exercising the rights of citizens in the form or with the obligatory participation of the executive body; the general object of influence is the behavior of subjects in relation to law enforcement (may include an object such as copyright or intangible object - the honor and dignity of the citizen); the relationship arises on the initiative of one of the parties, but the outcome of the relationship depends, as a rule, on the will of the owner of the subject; equality of participants in relations conditionally, and, as a rule, priority in realization of the right as, in a choice of the form of realization of the right, belongs to the authority, not the holder of rights; these legal relations have a state-authoritarian character; in essence, they are legal in relation to citizens and organizational and legal in relation to management.

Administrative legal relations include: subjects, objects and legal facts. Thus, the subjects of administrative-legal relations are the parties, on the initiative of one of which, on the basis of the rule of law or legal fact arise, change and terminate administrative-legal relations.

The object is what the legal relationship arises. In the case of legal relations arise in relation to the rights and freedoms of citizens in the executive branch. Yes, the exercise of the rights and responsibilities of the subjects associated with their behavior (legal or illegal), but may arise in connection with the harm to personal intangible assets.

Thus, the content of the legal relations of the mechanism of administrative and legal regulation and the administrative and legal mechanism of realization of citizens' rights in the sphere of executive power is different. The administrative and legal mechanism for the

realization of rights has a number of features associated with these characteristics, which affects the law enforcement process. The main feature is that the competent executive authorities can and do influence the participants in administrative and legal relations, and citizens do not have a real opportunity to influence the "behavior" of the executive branch (except for judicial influence), even when it comes to exercising their rights. It should be noted that a particularly large amount of administrative and legal relations related to lawful and illegal actions that occur between the police and citizens,

Improving the effectiveness of the mechanism for exercising the rights of citizens in the executive branch, as follows from the essence of law enforcement, is possible by optimizing each element of the mechanism, harmonizing elements between themselves and other systems, while ensuring effective legal acts.

One of the main problems of improving the effectiveness of the mechanism for exercising the rights of citizens in the executive branch is the problem of legal regulation of the status and activities of the executive branch.

In our country, the subject of increased public attention has always been and remains the executive branch. And this is understandable, because in her hands are concentrated the main levers of influence on the processes taking place. Material and financial resources, information, strict organization, mobility allow the executive branch to quickly and effectively influence the course of politics and the situation in the country. We are currently experiencing a kind of third stage - the tendency to monopolize the executive branch.

Meanwhile, the executive branch is a multifaceted phenomenon. It is one of the types of manifestations of state power and it is necessary to ensure its proper relationship with other branches of government. In addition, the executive branch is called to act independently, within its competence, defined by the Constitution and laws.

The modern constitutional system contains a number of principles and features that pose objective problems in the construction and operation of the executive system, in its modernization, it is about the duality (dualism) of the executive system. A kind of aggregate competence of executive bodies determines the place of executive power in the system of a single state power; expresses the legal powers of the

executive branch to exercise its constitutional function; contains the goals and objectives of executive activity, includes its areas, rights and responsibilities, as well as spatial, substantive and personal affiliation of executive activity. One of the tasks, given the peculiar relationship between the subjects of management, objects of management and authority, the constant change of legal means, different for different types of bodies, regulating their competence is a comprehensive regulation of the status of all executive bodies by law and other statutory acts or regulations. It is believed that such a decision will facilitate the adoption of acts, special substantive and functional decisions in industries and areas. Positive examples are Austria, which adopted the Federal Law on the Number, Competence and Structure of Federal Ministries, the United States - the President's Order "On Standards of Consumer Service by the Federal Government", England and Italy. Statutory laws and regulations set out the goals (objectives) of executive bodies, their functions and powers. In this regard, I would like to emphasize the need to create such a law and regulations, to understand the place, role, ways of realization of the right, in what predominant form this realization will be expressed in the given branch, sphere of executive power, character of mutual relations of subjects concerning a certain or prevailing form of realization of the right, whether execution, recognition, application, observance or use. Of course, these bodies have to act in those areas and areas that require special provisions and procedures, which means the competence of leaders of a special kind.

The scientific literature also suggests the need for a decisive break with the old tradition of management by the formula of "discretion and expediency" and to achieve a result where the executive branch would be engaged mainly in implementing laws, which, in fact, is the meaning of their activities. Thus, some laws remain out of the attention of the executive, others are implemented in part, and often mistakes are made in the application of their rules. Obsolete bylaws are slowly being repealed and amended and new ones are being prepared. Sometimes the order, the instruction "replaces" norms of laws that is inadmissible. Meanwhile, activities based on and in compliance with the law are not only a formal guide, but also the most important factor in optimizing management.

However, despite efforts to improve the legal regulation of the status and activities of the executive branch, the mechanisms for decision-making and their implementation have not been subjected to serious systematic analysis. First of all, it concerns vagueness in defining functions and spheres of responsibility of various administrative units, non-transparency of federal executive bodies, underestimation of modern planning and evaluation tools, excessive regulation of socio-economic processes, widespread use of illegal "shadow" mechanisms of managerial decision-making. funds and material resources. The result is the system's limited ability to perform public administration and public service functions. However, the executive branch is in no hurry to "yield" citizens in the exercise of their rights and freedoms in the sphere of their activity. "Transparency" and "customer" orientation, and "publicity" in general, seem to remain beyond the comprehension of many officials. This is evidenced by numerous facts. For example, the constitutional right of citizens to appeal to state and municipal bodies currently has no legal basis, as the procedure for reviewing citizens' appeals is legally and morally outdated.

The problem of normative-legal regulation of legal relations between executive bodies and citizens cannot be ignored. The practice is aware of cases of non-adoption of regulations in the presence of a statutory obligation to adopt them, the so-called "passive circumvention" of laws. It is obvious that failure to adopt the necessary act is no less socially dangerous and can cause significant negative consequences, and, above all, violation of citizens' rights. Based on this, it is necessary to make changes and additions to the legislation, providing for disciplinary or constitutional liability of officials (dismissal, early termination of office), as well as collegial bodies (dissolution) for these actions (inaction).

It is necessary to pay attention and some positive tendencies in questions of construction of the specified legal relations. Abroad, citizens are actively involved in administrative rule-making. For example, U.S. citizens can petition administrative agencies; participate in conferences, advisory committees, open hearings organized by the executive branch. In addition, citizens have the right to receive information on both issued and pending regulations of federal agencies.

In the United Kingdom, for example, the Courts and Investigations Act 1958 is widely openly investigated by Ministries of Land, Housing, Environment, Road Transport and other matters, affecting the interests of individuals and entire territorial groups. Implementation of the French law of 1979, which provides for

The main element of the whole democratic system is the guarantee by the rule of law of its citizens equal and free right to participate in decision-making or in the system of legitimate choice and separation of powers. From this point of view, every citizen should have a real opportunity to participate in the political process. This participation can vary from passive contemplation to high political and economic activity.

Another problem on the way to improving the administrative and legal mechanism for the implementation of citizens' rights in the executive branch is the problem of optimizing the elements of the legal relationship.

The executive bodies are obliged to create the necessary legal, organizational, material and other conditions in order to provide citizens with opportunities to exercise their constitutional rights and freedoms. The same applies to the responsibilities of citizens, which correspond to the rights and responsibilities of the executive branch. As you know, the administrative and legal status of citizens is the most important component of the general legal status, which has a large legislative basis. The administrative and legal status of a citizen includes a set of rights and responsibilities enshrined in the rules of administrative law and guarantees the implementation of these rights and responsibilities, including their protection by law and protection mechanism by state and local governments. It should be noted here that not all rights and responsibilities of citizens derive from its constitutional and legal status.

Turning directly to the relationship of citizens' rights with the functions of the executive, we note that the executive bodies perform the functions entrusted to the state as a whole. Thus, both the state and the executive, along with economic, political, social, perform the function of ensuring the rights and freedoms of man and citizen, the establishment of law and order. The executive branch also has specific functions: protection of public order, public safety, regulatory and

administrative, operational and executive, rule-making, jurisdictional, with which the function of observance and protection of human and civil rights and freedoms is somehow connected.

As we have already noted, the institutions of administrative law are related to the implementation of rights in the field of executive. Administrative scholars are increasingly talking about the need to change traditional approaches to the study of administrative and legal institutions, which, in general, should be viewed through the prism of ensuring the rights and freedoms of man and citizen.

The study of problems in the relationship between citizens and the executive branch allows us to talk about them as a dynamic, complex and, unfortunately, poorly regulated phenomenon of legal reality. At the same time, the results of this work indicate the need for further improvement and development of the administrative and legal mechanism for the realization of citizens' rights in the executive branch.

The administrative and legal mechanism for the realization of citizens' rights is a key element in the national system of ensuring and protecting civil rights. Based on the analysis of the current state of implementation of rights in the executive branch, we can draw the following conclusion: the effectiveness of the administrative and legal mechanism for exercising the rights and freedoms of citizens depends not only on the perfection of administrative legislation in the executive branch, but also on a number of "vicious" stereotypes that have developed in the relationship of the structure of state power with the citizens of our country. It is also necessary to take into account the conditions of legal and non-legal nature of the development of these legal relations, control and responsibility for the transformation of which should be assumed by the state in the person of government officials to citizens.

Today, an active scientific and practical search for effective tools for the convergence of standards of the European administrative space plays an important role in the implementation of human-centered principles in domestic administrative law.

Thus, rethinking of the place and role of human and civil rights in public life, normative recognition of their highest social value, which

determines the content of the state, has become a basic platform for the evolution of administrative law of Ukraine [7].

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OVERVIEW OF DOCTRINAL STUDIES OF THE HUMAN RIGHTS PHENOMENON IN UKRAINE

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Considering the problematic issues related to human rights that have emerged, reflected in national philosophical thought, political views and enshrined in the legal prescriptions of the state, which occurred in the territory of Ukraine, from our point of view, it is appropriate to study the genesis of human rights in the modern existence of Ukrainian society and its state. To be specific, the purpose of this article is to deeply explore the subject matter of transforming and adapting the historical and world doctrine of human rights in Ukraine as a social, political-state formation, i.e. to investigate how the objectification of human rights in civil-political and legal life of Ukrainian society and its state was carried out.

In the modern period of development of Ukrainian society and the nation-state, it is probably no longer necessary to prove the necessity and importance of the institution of human rights in the life of any citizen of each state. The choice of the path of intensive adaptation of Ukrainian society into the world community, after the events of 1991, and integration into the European Community found its legal origin in the Basic Law of the Ukrainian state, its Constitution and current legislation, which presupposes strict adherence to a fixed course.

While immersing into the historical overview of research related to the implementation of the idea, theory, doctrine, concept and institute of human rights in the Ukrainian reality, we must first consider the

achievements of the world community in developing standards and universalisation of human rights, as well as their use in the legal field of nation-states. Therefore, while studying these issues, it is crucial to consider how scholars approach the objectification of human rights in society's civil, political and legal life, the state in general, and at the national level in particular.

'Great explanatory dictionary of the modern Ukrainian language' interprets the word 'objectification' as 'objectifying'. This, in idealist philosophy, is the transformation of the subjective content of consciousness into an entity independent of consciousness, the embodiment of something in objective forms, images [1, p.635].

In the political and legal life of society and state, it is vital to consider the fact that the beginning of objectification of everything that belongs to an individual from birth and everything that an individual has earned concerning oneself during the development of civilisation takes its origins from the mental mastery of people of the idea that we are integral parts of the natural environment in which we are born and live, i.e. from the moment of 'humanisation of man' as a biological being into a socially significant individual [2, p.128].

It is noted in the scientific literature, and we must agree that 'humanisation of man' is an issue which is now one of the most vital in the development of society [3, p.7], including Ukrainian, at the current stage of its formation. Additionally, it should be mentioned that a human being is born as a biological organism, above all, but he acquires a 'special grade' after being formed as a personality. This is a measure of social status in man, i.e. a measure of his inclusion in social practice [4, p.72]. As S. Slyvka notes, the essence of the problem of 'humanisation of man' is a possible reorientation of the individual's education, which is hidden not in his physical actions, but, above all, in his spiritual, intellectual activity [5, p.128].

While examining and exploring this topic, we must proceed from the fact that a man, being an active earthly being, is called to enrich his inner world, thus ensuring livelihood and free will. In other words, a man must assert the human "I". According to V. Bachynin, the human "I" is a single concept, but at the same time, it is multidimensional. This versatility is manifested in three leading anthropological incarnations: vital, social, spiritual. Each of these

incarnations manifests itself in its way in the legal space [6, p.249]. Consequently, according to scientists, a person simultaneously embodies three "I", three types of mentality, three karmas, three types of needs. Thereupon, these hypostases make it possible to trace, respectively, three ways of 'humanisation of man':

- "**vitality" (from the Latin vita - life)** primarily involves providing people with the necessary material values and specific benefits. These are essentially the most basic needs that do not usually require much intellectual effort. All necessary for vitality supports a person's physical health and provides a natural state of existence, a mood of life. It is everything essential for a person's natural comfort in the form of a set of material goods;

- "**sociality**", which is manifested in the realisation of human abilities in society, in the chance to know oneself in community, while looking at yourself from the outside, should allow a person to understand who one is [7, p.130]. Sociality is formed in a person's relationships with other people, and the arsenal of these relationships is diverse. In this process, it is crucial that the social "I" is aware of its interdependence with the corporate "WE", able to obey it, put its needs, when necessary, first, and be ready for self-dissolution in this "WE" [8, p.254];

- **As noted by scientists, "spirituality"** has the most significant importance [9, p.131]. A spiritual person is a person who is aware of the self-worth of the inner world, its uniqueness and at the same time involvement in the universal principles of existence, which are universal values. The spiritual "I" is characterized by an elevated mindset, sensitive and effective conscience, free will, moral and metaphysical intuition. Nevertheless, the spiritual "I" does not allow one's own will to turn into permissiveness because it always correlates its motives with the universal ideals of good, justice, truth, beauty [10, p.256]. According to V. Onyschenko, spirituality has always acted as a principle of self-improvement, human self-understanding, transcendence to higher values and other reasonable values of the individual's constitution, knowledge, and mentality [11, p.8].

The process of "humanisation of man" is aimed primarily at healing the human soul, which acts (should act) as the only source of action. Considering the well-known anthropological triad (body, soul, spirit)

and comparing the spiritual and the corporeal, we should pay tribute to the supremacy of the spirit over the body and the importance of thoughts and feelings over action due to human attitude to the world through mental effort. Consequently, as noted by scientists, the active state of mind, the human soul, and its mental dynamics determine the direction of the process of "humanisation of man" [12, p.132].

"Humanisation of man" is nothing but its socialisation; it, as a phenomenon of existence, is a multifaceted and complex process of transformation of man from a biological being into a social one. First of all, socialisation is seen as a process of personality development. Its main directions correspond to fundamental areas of human activity, including cognitive, professional, emotional, sensory, interpersonal, behavioural, moral [13, p.253].

Considering this process from the standpoint of scientific justification, we see that the contribution to understanding the nature and mechanisms of socialisation made philosophers, sociologists, social psychologists, educators, representatives of other sciences and specialities [14, p.253]. From our standpoint, a significant contribution to the study of the process of human socialisation, its "humanisation", and its justification should be attributed to legal science.

A study of the scientific literature on the objectification of human rights in the civil, political and legal life of society and state shows that such a phenomenon as "human rights" in the public-state community as a social being has passed such transformational stages (types, forms). Its origin is associated with forming the "idea" of human rights in human consciousness. This idea further substantiates the idea of human rights in the "theory" that substantiates the scientific approach to such a phenomenon in practice. In search of answers to the questions related to this topic, thinkers at a particular stage of human development create systematic guiding approaches in the form of "concepts" to determine the nature, essence, content and the scope of human rights, which in turn puts the need to develop "doctrinal" approaches to the introduction of the "institution of human rights" in the human community and its consolidation in the legal field of society, state.

The idea of shaping fundamental human rights did not arise by itself. It arose from the need for a social environment to protect people

from the influence of "power in general" and "state power" in particular. Some researchers have focused on those rights that oblige "rulers" to refrain from specific actions against subordinates.

Multiple pieces of research have shown that the evolution of the concept of "human rights" from natural to positive has been considered by many scientists over the centuries. This process is the subject matter of theoretical reflection in our time. Moreover, in the works of scholars on such a socio-political and legal existence of society as the "institution of human rights", they often conclude that "human rights" is nothing more than moral requirements for "government" and not just rights of people from birth or specific opportunities that a person needs for existence and development [15, p.19-20; p.78; p.35-38]. Human rights in this category are usually called fundamental freedoms. They result from ideas about the preconditions for a dignified existence of people, so human rights in this sense serve primarily as a guide for the legislator.

The specific nature of human rights, which is an essential prerequisite for human development, affects the relationship between man and the state and the relationship between people themselves. Although the primary goal of human rights remains to establish rules governing the relationship between the individual and the state, some of them are important in the relationship between the people themselves. In this aspect, the government must refrain from human rights violations and protect people and citizens from encroachment by other people and their groups.

It is impossible to get an idea of the concept, essence and content of human rights without researching the history of the origin and development of the very idea of human rights. L. Bogoraz and A. Daniel conducted a rather substantial study on this issue in their scientific work "Freedom. Equality. Human rights" [16, p.8].

Speaking of the formation of the idea of human rights, we should note that the word "idea" is of Greek origin and originates from "idea", which means form. Idea is a concept that reflects the natural connections and relationships of objective reality and which is the basis of a process of human creativity (artistic, scientific, socio-historical, etc.), so it is nothing more than the basic principle of worldview, beliefs, opinion about something, reasoning about something [17, p.292]. In

the new dictionary of foreign words, the word "idea" is defined as a word of Greek origin and interpreted as a concept that reflects reality in human consciousness and expresses attitude to the world, the basic principle of worldview, beliefs and thoughts, reasoning about something, perspectives on life [18, p.275].

In the explanatory dictionary of the Ukrainian language, the word "idea" is interpreted as the highest form of knowledge of the outside world and thinking. It not only reflects the object but also directs its transformation, as well as the main idea that determines the meaning of something (from the Latin idea "concept") [19, p.159-160].

In philosophy, the idea (Greek idea - literally: "what is seen", reflection) is a philosophical term that denotes "content", "meaning", "essence" and is closely related to the categories of thought and being [20, p. 158].

The definition of the concept of an idea is not given directly in the legal reference literature, but lawyers use it quite accurately.

Human rights, which have belonged to man since birth in the philosophical and political-legal sense, as the idea of their belonging to man, first found its meaning in the mental activity of educators of ancient times. In our opinion, the authors of an actual scientific work edited by E. Lukashkova, "Human Rights" [21, p.12-90], about the origin of the idea of "human rights", prove this quite thoroughly, from the standpoint of jurisprudence in Soviet times. In the era of antiquity, such domestic scholars as A. Kolodiy A. Oliynyk in the textbook "Rights of Man and Citizen in Ukraine" [22 p.9-75] and their textbook "Rights, Freedoms and Obligations" of Human and Citizen Relations in Ukraine" [23, p.28-80] explored the issue of human rights, as well as P. Rabinovych and M. Havronyuk in the textbook "Human and Civil Rights" [24, p.23-26], A. Oliynyk in the monograph "Constitutional-legal mechanism for ensuring fundamental freedoms of man and citizen in Ukraine" [25, p.26-64], the authors of the monograph "Protection of the rights, freedoms and legitimate interests of citizens of Ukraine in the process of law enforcement" [26, p.8-48]. Moreover, these issues were thoroughly researched in the textbook "Human and Civil Rights and Freedoms" by A. Pazenok [27, p.6-7] and in scientific articles by P. Rabinovych [28, p.94-96], O. Kalinichenko [29, p.21 -24], M. Antonovich [30, p.16-20]. Overall, this topic is discussed in the

works of other domestic scientists [31] and scientific works of foreign researchers, too [32].

Having crystallised the idea of "human rights", which is an attribute of a society, educators came to the need for logical generalisation of social practice, based on deep insight into the essence of the phenomenon under study and from the standpoint of its generalisation that brought them to explain such a phenomenon of social life as "human rights". In other words, they developed the theory of human rights, which is one of the main components of the legal science. It concentrates a system of views on the nature of their origin and substantiates their nature and manifestation in society. Following the path of human community development and searching for acceptable forms of human coexistence in their natural and social environment, thinkers of that time developed and substantiated the theory of human rights as a scientific-worldview category in the human community.

Research of the theory of human rights should be based on the general definition of the word "theory", which in the dictionary interpretation originated as having its roots in [Greek theoria - consideration, research] - a system of generalised knowledge, explanation of certain phenomena or the same set of generalised provisions that form a science or its branch, as well as a set of rules of some art, skill, etc. or a system of views on any issue or abstract knowledge, reasoning based on reality [33, p. 667]. Thus, the term "theory" is a system of fundamental ideas in a field of knowledge which is formed by a logical generalisation of experience social practice, based on deep penetration into the essence of the phenomenon and reveals its patterns and essential connections of reality generalised provisions that constitute a particular science or branch of science or generalised principles of a particular science, as well as abstract knowledge of these principles [34, p. 471; 716; 753]. In legal dictionaries, the word theory has not received its interpretation. They give the concept of the theory of state and law. In this regard, we see that the theory of human rights as a science of human rights is based on ideas of human rights and explores the general and specific laws of human rights. It uses a particular system of views based on generalised knowledge of nature and the content of human rights, the rationale for their emergence, the

stages of their development and analysis of them at the present stage of development of society, the international community, the state.

With the development of civilisation, theoretical achievements began to be reflected in formulating concepts of such a social phenomenon as "human rights".

The concept [French. conception, lat. conceptio - perception] is a system of views, understanding of certain phenomena, processes, a set of evidence during the construction of scientific theory, or it is a single, defining idea, the view of a researcher (scientist) [35, p. 381]. In the explanatory dictionary of the Ukrainian language, the concept of Latin conceptio is nothing but a system of interconnected views on a particular phenomenon [36, p.193]. So the concept is an appropriate way of understanding, interpreting quantitative phenomena, the basic vision of a particular phenomenon, the leading idea for their coverage; the constructive principle of different types of activity; system of evidence of a certain position, system of views on a phenomenon, worldview, beliefs. [37, p.357; 380]. In the legal reference literature, it is noted that the concept of law (from the Latvian conceptio - set, system) is a leading idea, a point of view on a legal phenomenon. It is an important tool for the development of legal science, developed by individual jurists or a team of lawyers, scholars and practitioners, and its provisions are approved in the prescribed manner, form the basis of appropriate organisational measures, legislation, decisions, etc. [38, p.339].

Understanding the phenomenon of the social existence of "human rights" is only possible through judgments about the nature and purpose of human rights, which developed in human consciousness. It can be professional or non-professional, scientific or non-scientific. The scientific understanding of the phenomenon of "human rights" is a conscious attitude to the concept denoted by the term "human rights", substantiated in a particular concept, written and published by [39, p.224]. Hence, the concept of understanding "human rights" is a written form of concrete expression of a system of legal ideas centred around a leading idea or principle, which constitute a specific way of seeing the essence and purpose of human rights and a specific direction in this field of knowledge. It is based on various general approaches and methods, which indicates the existence of

methodological pluralism, which is explained by several factors [40, p.224].

Formed as a philosophical, speculative concept, the idea of human rights in the eighteenth century became one of the main driving forces of two great revolutions, particularly in North America and on the European continent. During these revolutions in some countries, the old regime was swept away, and in others, it was forced to adapt to historical reality. Thus, the concept of human rights became the theoretical and partly legal basis for a new, democratic social order. Liberal ideology and political democracy have become a kind of "civil religion" of civilisation, and human rights have become the foundation of this new religion, which aimed to abolish the old religious beliefs [41, p.13].

If we speak of the concept of human rights, we should also mention that the study confirms the fact that the fate of civilisation, at least European, has been closely linked to the idea of freedom for two and a half thousand years. About two centuries ago, such an idea was formulated in the language of the law. The result was the concept of human rights, which formed the basis of most legal systems used in Western Europe and North America and around the globe, which later spread to many other regions. The essence of implementing the concept of human rights is that society guarantees each of its members' equal enjoyment of human rights. This is the content of civil equality [42, p.48].

The modern dominant scientific concepts of understanding human rights include natural law (liberal). The explanation of human rights is related to public consciousness, the idea of human rights is based on natural human rights. According to this concept, human rights take precedence over the state's interests. A person is already born with innate rights that the state cannot alienate. The state and the positive law (law) must protect natural human rights. The natural law concept, which emerged in the XVII-XVIII centuries and developed in the XX century, based on human rights as innate rights, became fundamental for the development of the rule of law, the formulation of international human rights standards.

Along with it, we talk about positivist conception (normative concept, which provides a form of human rights as the authoritative

creation of their state, as a system of norms outlined in laws and other regulations expressing the will of the state). Human rights are seen as a state gift, i.e. a person is directly dependent on the state and its organs. This concept is the antithesis of the rule of law. It can be argued that each of the following concepts focuses on one leading idea and, as a rule, tries to ignore a different approach to justifying the issue of human rights.

At the same time, we should pay attention to the integrated concept, which arises from the dialogue of different schools and trends in modern jurisprudence. The essence of this concept is not hidden in the mechanical combination of contradictory positions of a concept but in synthesising theoretically significant points worked out by competing scientific theories, reaching a new level of their generalisation. The integrated concept of understanding human rights provides an opportunity to know the essence and content of human rights in their unity and differentiation, in all its manifestations and relationships [43, p.225-227].

S. Shevchuk talks about such an approach to the relationship between natural law (liberal) and positivist concepts of human rights in his work "Comparative Case Law on Human Rights". He notes that in modern constitutional theory and practice, neither natural law nor positivist approaches to the origin of constitutional rights and freedoms of man and citizen are recognised in their pure form. Instead, the so-called "third way" is recognised, i.e. these rights and freedoms must be enshrined in the constitutional text for the purpose of their guarantees and legal protection, but the content of these rights cannot be determined only in the texts of laws. Furthermore, the restrictions on the exercise of these rights imposed by positive law must meet the criteria of natural law, i.e. they must not be arbitrary and must meet the criteria of reasonableness, social necessity and proportionality. The activity of constitutional courts and international jurisdictions (European Court of Human Rights) is the most adapted for their proper guarantee, contributing to the broad recognition of judicial precedent as a source of law [44, p. 45-46]. To confirm his point of view, S. Shevchuk relies on the statements of the remarkable constitutionalist of our time M. Kepeletti. The latter notes that modern constitutionalism, with its essential element — the liberal Bill of Rights

and its judicial protection — is the only realistic implementation of the values of natural law in our modern world. In this sense, our epoch is the epoch of natural law. According to him, modern constitutions, bills on the rights that make them up, and judicial control synthesize positive and natural law. They reflect the most balanced attempt of millennia to "positivise" these values, but without their absolutisation or transferring them under complete control of the inconsistent situational desires of the parliamentary majority [45, p.210].

The fundamental ideas about human rights, which are reflected in the theory of human rights, as society develops toward improving the approach to the study of its development, found expression in certain concepts. These concepts led to the buildout of certain doctrines to substantiate and further implement the idea, theory, concept of human rights in the life of society and state with the help of this phenomenon.

Doctrine [Latin doctrina – studying, doctor-teacher] is dogma, scientific or philosophical theory, system, guiding theoretical or political principle [46, p.237].

In the legal reference literature, the doctrine is (Latin doctrina-studying), science, or philosophical theory, system of views, guiding political program. [47, p.273].

O. Skakun, a domestic scholar in the theory of law, notes that legal doctrine is an act-document that contains conceptualised legal ideas, principles developed by scientists to improve legislation, which is understood (accepted) by society and supported (formalised) by the state [48, p.221]. The features of legal doctrine include the fact that legal doctrine is: a) the scientific basis of socially significant problems in our study of human rights; b) reflects logically related systems of philosophical and legal ideas and principles of the conceptual level concerning human rights; c) the dominant scientific concept, which after its official approbation can be a document of imperative (rather than declarative) nature, which corresponds to the highest level in the hierarchical system of means of regulating public and state life in the field of human rights; d) outlines the parameters of state and legal life, based on the achievements of national and world legal thought and science on human rights; e) is called to perform the function of scientific and political bases of normative-legal regulation of relations in the field of human rights; g) acquires normative consolidation, i.e.

binding in the form of messages, appeals, the main directions of state and public life, in other words, formalised, which differs from legal theory; h) is based on the support of the state, its senior officials in relation to human rights [49, p.221-222].

Legal doctrines contributed to the establishment of ancient Roman law; in particular, the Digests of the Code of Justinian contain scientifically designed conceptual ideas of prominent lawyers of the time: Papinian, Gaius, Modestin, etc., universally binding as sources of law. Legal doctrine is a direct source of law in the Anglo-American type of legal system. For instance, doctrinal sources of the Constitution of the United Kingdom, which are referred to in the courts of English common law, include "Treatise on the Laws of England" by G. Bracton (1250), "Commentaries on the Laws of England" by W. Blackston (1765), book Bejgot's "English Constitution" (1865).

In Islamic countries, legal doctrines have identified the genesis of Muslim law, which is perceived as a perfect political and legal doctrine. Nowadays, Islamic legal doctrine remains a source of law only in some Eastern countries, but in most countries in this region, the legal doctrine is a formal source of law only in some cases [50, p.222].

In Ukraine, as in several other countries, the legal doctrine is not officially recognized as a source (form) of law. However, the scientific works of legal theorists and practitioners are used to form a model of legal regulation. Apparently, O. Skakun's opinion should be supported that scholars are able and should have a more thorough influence on the development of concepts of legislative acts, provide scientific support for their adoption and form a legal doctrine, because, through legal doctrine ideas, theories, concepts of lawyers are embodied in legal prescriptions of legislative acts and become binding on all subjects of law. This is especially true concerning the implementation in the legal field of ideas, theories, concepts of human rights [51, p.222].

The formation of the institution of human rights as a state-legal category should be considered from the time when the idea grows into a theory, crystallises in concept, and becomes a doctrine on the justification of such a social phenomenon as "human rights" that began to be mentioned in written formalised documents of both normative and legal nature [51, p.848-849].

Originating in ancient times, the idea of human rights did not subside in the Middle Ages; it continued to be substantiated from different positions, in different forms and directions, both works of secular and religious authors. In this context, the development of the doctrine of human rights throughout history, it should be noted some meaningful connection, the logic of succession and moment of development in the chain of phenomena such as human rights theory, human rights concepts and at the very end of their registration in the "human rights institute" [52, pp.5-6]. First, it happened at the national level and then at the interstate (global) and regional levels.

In the legal reference literature, the word institute is interpreted as derived from Latin institutum - structure, organisation, establishment, institution and in the legal reference literature. This is a form of organisation and regulation of social relations and human activities inherent in this form of purpose, functions and means of influencing the life of society or its parts; the most common element of the social structure. In the social sciences, the term "institution" is used in the following basic meanings: a) the organisational system of relations and social norms governing a particular area of social relations (institution of law, institution of democracy, etc.); b) a procedure aimed at meeting specific needs of society; c) a unique form of human life; d) gatherings of people who, according to the division of labour, united to achieve a common goal; e) a set of roles and functions, norms and structures that ensure the realization of the interests of individuals, social groups, strata or society as a whole.

The institute is, first of all, a set of organisations, institutions, individuals who have certain means, resources and perform specific legal, social, political functions (state, court, political parties); secondly, it is a way of organising political, economic, social, legal and other activities of people through a clear division of functions.

Society is a set of institutions that meet the needs of people and are the product of their activities. In jurisprudence, the term "institution" means a set of rules governing socio-legal relations. The institute's activity is based on a clearly developed system of rules and norms, control over their implementation. Each institute corresponds to a particular social group and serves to meet its needs; if the need disappears, so does the institute. Therefore, society should be

considered a set of institutions that meet specific needs and are the product of their conscious activities.

The functions of institutions are to consolidate and reproduce social relations, integrate and cohesion of society, and regulate and exercise social control and communication. Institutions are formed in a certain historical time and provide sustainability and certainty to social processes. They provide a systematisation of basic norms and rules of conduct, selection and establishment of social values. [53, p.696-697].

In some cases, in the institute of law, the same social relations are governed by different branches of law. Then the law institute is governed not by one but by several branches of law. [54, p.696-697].

In the scientific literature, it is noted that the enshrinement of human rights and freedoms in legal documents should, according to scholars, be associated with the adoption in 1215 in England of the "Great Charter of Freedom" Officially. This document was considered the first Constitution of England. The text of this charter included articles relating to the material interests of various social groups, particularly Art. 1, 2, 9, 13, 15, 18, as well as articles reforming the state mechanism of the Kingdom of England, i.e. "constitutional" Art. 12, 14, 61 and those that establish the principles of the judicial-administrative apparatus, Art. 17, 20, 21, 39, 40. Art. 18-20; 38-40; 45, and some other charter articles.

The normative document beginning bourgeois-revolutionary legislation in England is the "Petition for Rights" of 1628. It was submitted to the king by the clergy and secular lords and communities, which were represented in parliament regarding regulating various rights and freedoms of the king's subjects. The guarantee of unlawful arrests was enshrined in the Act of May 26, 1679, on the Better Ensuring the Freedom of Subjects and the Prevention of Imprisonment Overseas (Habeas Corpus Act). This act established a complex legal mechanism that ensured the individual's rights the possibility of making a cash deposit. The "Bill of Rights" of February 13, 1689, was introduced into the Parliament of England by spiritual and secular lords and community members to stop the prevention of illegal actions against the faith and liberties of the people. In 1701, the "Act of Settlement" was adopted. The king's act instructed him to ascend the

throne, join the Church of England, and not leave England, Scotland, and Ireland without the consent of parliament. He secured control over the Privy Council the judges, and it was the duty of kings to obey the law and demand it from ministers and officials. These acts on the consolidation of human rights were adopted in England [55, p.51-54]. These documents reflect the development and content of the scope, boundaries, quality and quantity of rights of citizens (subject to the crown) in the British Empire [56, p.747].

The ideas of the human rights of the American educators, including T. Jefferson and T. Penn were reflected in the Virginia Declaration of Rights. Assessing this document, Karl Marx wrote that America was the country where the idea of a great democratic republic first arose, the first declaration of human rights was proclaimed, and the first impetus for the European revolution of the eighteenth century happened. The Virginia Declaration of Rights was the first document to proclaim and recognize human rights at the state level. The Virginia Declaration of Rights provisions were used to write the 'United States Declaration of Independence', adopted in July 1776. This document declared the equality of all on natural rights, including such as the right to life, liberty, inviolability, property, happiness and security, the right to overthrow a government that does not protect the interests of the community, the idea of sovereignty, the principle of separation of powers, the fact that the government is only a servant of the people and must act in their interests, etc. Later, the rights and freedoms of US citizens were reflected in the US Constitution, which was adopted on September 17, 1787. Still, its text did not provide a specific list of fundamental rights and freedoms of a man and a citizen. However, as early as 1789, the US Congress proposed draft amendments to consolidate citizens' political and personal rights, which in 1791 were formalized in the draft Federal Bill of Rights, which the US Congress adopted on December 15 of that year. It included ten amendments to the US Constitution and substantially supplemented it with democratic rights and freedoms, creating a legal basis for US citizens to exercise their democratic legal status. Seven of ten amendments directly affect human rights, three indirectly [57, p.747].

Simultaneously with the democratic processes on the American continent, the process of democratisation of political life in Europe

began, in particular in France, where the French "Declaration of the Rights of Man and the Citizen of 1789" played an essential role in the history of the first generation of human rights. It was adopted at the beginning of the French Revolution (1789-1794). The implementation of her ideas was carried out in three stages:

a) constitutionalist (1789-1792); b) Girondist (1792-1793); c) Jacobin (1793-1794). The Declaration proclaimed: a) people are born free and equal in rights; b) they remain such for life; c) they are enshrined inalienable natural rights to liberty, individual security, inviolability, property, resistance to oppressors and others; d) all people are equal before the law; e) consolidation of the principle of separation of powers into legislative, executive and judicial.

One of the legal documents that enshrined natural (civil and political) human rights was the Constitution of France, which was adopted on September 3, 1791. Its preamble enshrined: a) the abolition of caste privileges; b) inheritance or sale of government positions was prohibited; c) equal rights for all d) non-recognition by the law of any obligations contrary to natural human rights and the constitution. The Constitution provided such natural and civil rights as access to all positions at will and ability to perform the duties; equal distribution of taxes among citizens depending on their income; equality before the law and the court in sentencing for crimes committed, as well as guaranteed personal freedom of movement; freedom of speech; printing; thoughts; religion; freedom from censorship or any other verification of documents before printing; holding meetings and rallies unarmed and in compliance with police laws; unimpeded appeal to any bodies; property inviolability; fair damages; general public education for all, free of charge in part necessary for all people; prohibition of the legislature to issue any laws contrary to natural rights and the constitution [58, p.62-63].

In the XX century and at the beginning of the XXI century, the most vital documents that contain fundamental human rights and freedoms are: "Universal Declaration of Human Rights" which was adopted by the UN General Assembly in Paris on December 10, 1948; "International Covenant on Civil and Political Rights"; "International Covenant on Economic, Social and Cultural Rights", adopted in 1966. Together, these documents are called the International Bill of Human

Rights. The Universal Declaration of Human Rights is one of the first international instruments to proclaim a wide range of fundamental human rights and freedoms. Its preamble enshrines provisions that all nations and states must strive to implement. Declared rights and freedoms include equality, fraternity, the right to life, health, liberty and security, freedom from slavery, torture, inhuman treatment and punishment. The Declaration guarantees the recognition of the legal personality of every person, protection from any discrimination, effective restoration of rights, freedom, protection from unjustified arrests, detentions or expulsions, the right to a fair and impartial trial. No one can unreasonably interfere in personal and family life. A person is guaranteed the inviolability of home, correspondence, honour and reputation, freedom of movement, belief, thought and conscience, marriage and family formation. According to the Declaration, everyone is presumed innocent of committing a crime until the guilt is legally established and proved by a court. A person has the right to citizenship, shelter, participation in the governance of the country, peaceful assembly and association. A person is provided with the right to work, rest, a decent standard of living, including food, clothing, housing, medical care and necessary social services. The Declaration enshrines the right to education, participation in cultural life, protection of moral and material interests, such a social and international order in which the rights and freedoms can be fully exercised. Man has responsibilities to society. Other international instruments are implemented in the legislation of national countries, as they preserve the fundamental rights and freedoms of man and citizen. Among them are: conventions, covenants, reports, charters, agreements, codes, protocols, resolutions, principles, rules and other documents that reflect the rules relating to human rights [59, p.63-64].

Summing up our reflections, it is crucial to realize that they should be taken with some criticism because the material is more aimed at the post-Soviet audience, i.e. citizens who are sprouting civilised relations between man and power in national communities that seek independence to build a human society.

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COMPARATIVE STUDY OF THE INVOLUNTARY HOSPITALIZATION IN A PSYCHIATRIC HOSPITAL ACCORDING TO THE BULGARIAN LEGISLATION

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The matter of involuntary hospitalization and subsequent treatment of mentally ill patients in a psychiatric hospital is complex and multifaceted, including medical, legal and organizational aspects. This type of hospitalization is inextricably linked with the prevention of socially dangerous actions, auto-aggressive behavior, and is also aimed at increasing the level of social and psychological adaptation and legal protection of patients with mental disorders (E.I. Babushkina, 1998).

The concept of A. Kerido (1966) on primary, secondary and tertiary prevention, based on the desire to provide a unified dynamic approach to solving issues of prevention, treatment, rehabilitation and the rights of the patient in society, has become widespread. The primary prevention, according to A. Kerido, is to prevent diseases or reduce their incidence. The secondary prevention is focused on the active therapeutic effect on the pathological process. The tertiary prevention provides for the need to restore the personal and social relationships of the patient, disturbed due to the disease. The goal of tertiary prevention (designated as rehabilitation) is aimed to restore the individual and social value of the patient, to mitigate the consequences of the disease. World Health Organisation experts have proposed distinctions between medical, professional and social rehabilitation. From this point of view,

involuntary hospitalization, as a measure aimed not only at the prevention, but also at the treatment and social readaptation of the patient, incorporates elements of not only primary, but also secondary and tertiary prevention.

Involuntary hospitalization is a form of psychiatric care associated with the placement of a person suffering from a mental disorder in a psychiatric hospital against his will. In English literature, the term "involuntary commitment" is used, which literally translates as involuntary isolation. The use of this name is due to the fact that involuntary hospitalized patients have a statutory right to refuse treatment (unless they are in a mental health emergency).

One of the features of involuntary hospitalization is concerning that the accommodation of a person in a hospital without his consent is carried out before the decision of the judge and only on the basis of a doctor's opinion, which is associated with the urgency of psychiatric care. Therefore, the condition of the hospitalized must meet certain criteria, which are an indispensable condition for making a decision on hospitalization.

I. Basic concepts:

A) Criteria for the application of involuntary hospitalization - the person must be:

- mentally ill - only patients with a severe mental disorder are subject to involuntary hospitalization. According to the legal norms, a severe mental disorder is: “an illness, disease, organic brain disorder, or other condition that (1) significantly impairs thinking, perception of reality, emotional processes, or judgment; or 2) significantly disrupts behavior as reflected in recent actions.” Severe mental disorder basically corresponds to psychotic disorder;

- for a hazardous treatment to the ambient or himself - The American Psychiatric Organization (1983) specifying: 1. probability of damages caused to the ambient as "recent behavior which has caused coboy nanecenie damages caused either try again or threat of injuring him, in the near future, there is the probability the bodily injury protection or the applied violence in relation to another person or causing significant damage to the property of another person”; 2. Probability of self-harm means that, as evidenced by recent behavior,

there is a likelihood of a person inflicting significant bodily harm on himself in the near future. (Only Italy has rejected involuntary hospitalization on grounds of danger to self or others. The Italian legislation emphasizes that the focus should be on the needs of the patient and not on protecting the environment.) Or - being unable to satisfy one's basic needs (being severely disabled) means "passive danger", that is, causing harm to oneself not through suicide attempts or self-harm, but as a result of neglecting one's own interests.

In addition to this, the American Psychiatric Association (1983) proposed the introduction of a fourth criterion - the presence of "significant mental or physical degradation." As evidenced by recent behavior, this individual, in the absence of treatment, develops or persists in a severe mental, emotional, or physical disorder that significantly impairs judgment or behavior and results in a significant impairment of the previous ability to function independently."

It can be seen from the content of these criteria that compulsory assistance is provided both for the purpose of protecting the persons around the patient (in the event of an immediate danger of the patient to others), and in order to protect the patient himself, who is not aware of the need for medical intervention due to illness (if the patient is in danger for himself, inability to independently meet the basic needs of life, the deterioration of the mental state in the absence of psychiatric care). Hospitalization and examination are types of medical care, and not measures of administrative coercion.

B) The concept of danger - if the establishment of danger entails significant restrictions on freedom, this term should be precisely defined. On the one hand, the concept of "public danger" is a complex multidimensional category, the holistic use of which is the prerogative of the court, which integrates all individual aspects (dimensions) of these categories: sociological (criminological), psychological and psychopathological. Psychopathological derivation of social danger directly arising from or causally related to specific psychopathological characteristics of productive and negative symptoms, its dynamic features, as well as changes brought about by treatment. Only such a danger is the subject of psychiatry and risk assessment is possible only according to the circumstances of each individual case. On the other hand, and according to some authors (Savenko Yu.S., 2008), clinical

and forensic psychiatrists judge the danger of persons with mental disorders in general, based on their experience with completely different samples - from among patients of general psychiatry - only a probable danger; from among the patients of forensic psychiatry - all those who have already shown in practice their danger to the health and life of others. Therefore, they proceed from a completely different order of value priorities: clinical psychiatrists - from the interests of the individual; forensic psychiatrists - from the unconditional priority of society and the state.

Prof. Brooks proposed expressing danger in terms of the category of harm (according to Merriam-Webster's Dictionary of Law, 1996), analyzing its five components:

1. The nature of the harm – it can be caused either to people (physical and psychological harm) or to property; as a rule, harm to people is regarded as something more serious than harm to property. Harm can be caused not only to others, but also to oneself. In this matter is specified: - active (suicide, or self-inflicted physical harm) harm and - passive harm (gravely disabled) - passively dangerous to themselves because they cannot, due to their mental illness, adequately provide themselves with food, housing, clothing, medical care.

2. The extent of the alleged harm that the patient is likely to cause by his actions in large scale. Between the two poles (murder or suicide) there is a wide space in which the assessment of danger depends to a large extent on the system of social, political and moral values shared by the assessors themselves.

3. The proximity of the harm in time.

4. Frequency of harm.

5. The likelihood of harm (a psychiatric patient may be dangerous under some circumstances and not dangerous under others), and one must also take into account the situation and conditions that affect his probability (it is taken into account when discharged from a psychiatric hospital).

C) The standard of proof (according to Merriam-Webster's Dictionary of Law, 1996) is the level of certainty and degree of evidence required for proof in a criminal or civil process (Motov V.V., 2007). The highest standard - "beyond a reasonable doubt" - is applied in criminal

law to find a person guilty. Reasonable doubt exists when the decision maker as to the guilt of the defendant does not have an internal certainty that the person is guilty. It must be more than imaginary doubt and is often defined as "such doubt as would cause a reasonable person to hesitate before acting on an important matter". “Beyond reasonable doubt” in quantitative terms means 90-95% certainty. Intermediate standard - "clear and convincing evidence" (clear and convincing evidence) - the correctness of the decision made on the basis of this standard is estimated at 75%.

The requirement for “clear and conclusive evidence” of the validity of involuntary psychiatric hospitalization means that both criteria (mental disorder and danger to self or others) must be proven in each case with at least 75% certainty.

II. Main international legal instruments for the protection of the rights of persons with mental disorders.

Protection of the rights of these persons is carried out on the basis of several international conventions, resolutions and recommendations, the most famous of which are:

• Article 5 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, 1950;

• Recommendations of the Committee of Ministers of the Council of Europe R (83) 2 "Legal protection of persons suffering from mental disorders who are involuntarily placed in a hospital", 1983. (Council of Europe, Committee of Ministers, Recommendation No. R (83) 2 Concerning the Legal Protection of Persons Suffering from Mental Disorders Placed as Involuntary Patients);

• Council of Europe, Parliamentary Assembly, Recommendation 1235 (1994) on psychiatry and human rights No. 235 (1994) on psychiatry and human rights;

• Resolution of the General Assembly of the United Nations 46 (119) "Principles for the protection of persons with mental illness and the improvement of health care in the field of psychiatry";

• „White Paper” (Council of Europe, Steering Committee on Bioethics (CDBI). "White Paper" on the protection of the human rights and dignity of people suffering from mental disorder, especially those placed as involuntary patients in a psychiatric environment) protection

of human rights and dignity of people suffering from mental disorders, especially those subjected to involuntary hospitalization (Adopted by the Council of Europe on 03.01.2000);

• Recommendation R 10 (2004) (Council of Europe, Committee of Ministers, Recommendation Rec (2004)10 of the Committee of Ministers to member states concerning the protection of the human rights and dignity of persons with mental disorder) on the protection of human rights and the dignity of persons with mental disorders and its Explanatory Memorandum (Adopted by the Committee of Ministers of the Council of Europe on 22 September 2004).

The group of people with mental disorders is considered to be the most vulnerable in comparison with the rest of the population. These people more often than others find themselves in a situation where, due to a mental disorder, they are not able to defend their rights on their own and, therefore, may be subjected to exploitation, humiliation and some other violations of their fundamental rights. It is clear that involuntary hospitalization should be resorted to only when there are no other alternatives. At the same time, the need to apply involuntary hospitalization to people suffering from mental disorders is due to the specifics of the condition of these individuals - unpredictable behavior, a decrease in the assessment of their condition, the inability to adequately assess its severity and the need for treatment. Since hospitalization is aimed at restoring the health of a sick person, it seems undoubted that it is the primary overall objective of legislation on involuntary hospitalization:

1. Protection of the rights and interests of citizens in the provision of psychiatric care from unreasonable interference in their lives.

2. Protection of persons suffering from mental disorders from unjustified discrimination in society on the basis of a psychiatric diagnosis.

3. Protection of society from possible dangerous actions of patients.

4. Protection of physicians and other health professionals involved in the provision of mental health care.

III. Involuntary hospitalization in a psychiatric hospital in the Republic of Bulgaria.

According to the Council of Europe, involuntary psychiatric hospitalization means the admission and retention for treatment of a person suffering from a mental disorder in a hospital or other medical or appropriate institution, not at his request (Council of Europe, Committee of Ministers, Recommendation No. R (83) 2). At present, in connection with the expansion of the European Union and the inclusion of new members in it, there is a certain unification of the laws of the states of continental Europe, including in the field of mental health care, which is facilitated by uniform initial principles for building a legal system (Roman law), in which the main are laws (on the contrary, in Great Britain and in its former colonies, legislative practice is formed mainly on the basis of specific judicial precedents).

According to the recommendations of the Council of Europe, mandatory (involuntary) hospitalization of a patient in a psychiatric hospital can be carried out only in exceptional cases: when, due to his mental disorder, he poses a serious danger to himself or others. Further, the recommendations (as amended in 1994) indicate that there may be additional criteria: if the absence of hospitalization would lead to a deterioration in the mental state of the patient, or would interfere with the provision of appropriate treatment (Council of Europe, Committee of Ministers, Recommendation No. R (83) 2). Thus, the main recommended criterion for involuntary hospitalization is a danger to oneself or others, additional ones may be provided in the EU countries at the discretion of local legislators, which implies the possibility of a certain diversity in the legislative practices of these countries. In the Russian Federation, the Law "On psychiatric care and guarantees of the rights of citizens in its provision" was adopted on July 2, 1992. (currently valid and amended on 22.08.2004). In this regard, the organizational and legal aspects of involuntary hospitalization in a psychiatric hospital in the new EU member states are of interest in comparison with Russian legislation.

In the Republic of Bulgaria there is no special law on psychiatric care. The procedure for involuntary hospitalization is regulated by the norms of “Health Act” adopted on 10.08.2004. (in force since 01.01.2005), more precisely, by the norms of Chapter V, entitled

"Mental health". It consists of two sections - "Protection of mental health" and "Compulsory admission to treatment." The first section declares the legal, organizational and economic principles for the provision of psychiatric care, the rights of persons with mental disorders. It should be noted that these aspects in chapter 5 of the Bulgarian “Law on Health” are set out in a much more general form compared to the Russian law “On Psychiatric Care and Guarantees of Citizens' Rights in its Provision”. Suffice it to say that if the Russian law contains 50 articles, then Chapter 5 of the Bulgarian Health Act contains only 20. At the same time, our task did not include a complete comparative analysis of the two legislative acts, and we intended only to give the procedure for involuntary admission to a psychiatric hospital (in Bulgarian law - “mandatory placement for treatment”), which differ significantly in the legislations of the two countries. In the Russian law, the procedure and criteria for involuntary hospitalization of a person with a mental disorder in a psychiatric hospital are similar to the procedure and criteria for a psychiatric examination of a person without his consent or without the consent of his legal representative. According to Art. 29 of the Russian law, involuntary hospitalization of a person in a psychiatric hospital is justified if the mental disorder is severe and determines one of three criteria: a) his immediate danger to himself or others, or b) his helplessness, that is, his inability to independently satisfy the basic needs of life, or c) significant harm to his health due to the deterioration of his mental state, if the person is left without psychiatric care. In Bulgarian law, the notion of "Compulsory placement for treatment" applies only to persons meeting criterion "a" of the Russian law, with significantly enhanced interpretation. According to the “Health Act”, mandatory placement in treatment in the interests of the patient (section 2 of the chapter “Psychologicalily health”) are subject to persons who, due to illness, “may commit a crime that poses a danger to their loved ones, to others, to society, or seriously threatens their health.”

The only ground for involuntary (mandatory) placement in treatment is the likelihood of a crime being committed. The range of other situations requiring psychiatric intervention (outpatient or inpatient) without the consent of the patient is limited to cases where there is a need to relieve acute psychotic conditions and refer to

“emergency psychiatric care” (this is discussed in section 1 of the chapter “Mental health”). According to Bulgarian law, emergency psychiatric care is a set of medical rules and activities that apply to persons “with obvious signs of a mental disorder, when their behavior or condition poses an immediate threat to their own health or the life and health of others”, i.e. this criterion also substantially coincides with criterion “a” of Art. 29 of the Russian law. However, the Bulgarian law further states that if a person's condition requires continuation of treatment after the condition has been relieved during the provision of emergency care, the head of the medical institution decides to temporarily admit the person to the hospital for treatment for a period not exceeding 24 hours and immediately informs the patient's relatives about this. As an exception, the period may be extended once for no more than 48 hours with the permission of the district judge. Thus, a person with a mental disorder that poses a direct threat to his own health or life or the life and health of other persons can be kept in a psychiatric hospital for no more than three days, for the need for further involuntary (“mandatory”) hospitalization, the criterion of the possibility of committing a crime must already be applied that poses a danger to their loved ones, to others, to society, or seriously endangers their health. If it is necessary to make a decision on the conduct of compulsory treatment, the head of the medical institution immediately submits to the court a reasoned demand regarding this, accompanied by the opinion of the psychiatrist (the opinion is presented in writing, usually 3-4 pages of typewritten text) regarding the mental state of the person. Compulsory placement for treatment may also be requested by the prosecutor. The written opinion of the psychiatrist sets out the instructions of the prosecutor's office or the requests of relatives (or persons living with the patient), information about the patient's mental state, assesses the degree of risk of socially dangerous behavior, and makes a reasoned conclusion about the need for involuntary hospitalization.

The Health Act points out the procedure for judicial review, the terms in which it must take place, it is indicated that the patient has the right to make objections and provide evidence within 7 days. In contrast to the Russian law, which refers to the right of a person in respect of whom the issue of involuntary hospitalization is being

decided to personally participate in the judicial consideration of the issue, and if this is impossible due to mental condition, it refers to the mandatory participation of his representative, the "Law on Health" states that the court should be able to get a direct impression of his condition and the patient should be questioned personally and, if necessary, brought forcibly (the appearance of the person is ensured by the head of the medical institution). At the same time, the "Health Law" states that if a person is unable to appear in court due to his or her severe mental condition, a court session may be held in a psychiatric institution. Regardless of the place of its holding, the participation of the director or lawyer of the psychiatric institution, the psychiatrist who wrote the opinion on the need for involuntary hospitalization, the defense counsel, the prosecutor, as well as the persons on whose behalf the application was received is mandatory in the court session (in Russian law, the participation of the prosecutor, the representative the psychiatric institution applying for hospitalization and the representative of the person in respect of whom the issue of hospitalization is being decided). Further, the court appoints a forensic psychiatric examination when it establishes that the person has circumstances that lead to the possibility of committing a crime that poses a danger to their loved ones, to others, to society or seriously threatens their health, and also after listening to a psychiatrist regarding the likelihood of a mental disorder. The court determines the form of the examination - outpatient or inpatient, determines the medical institution and the expert to conduct the examination, as well as its term, which should not exceed 14 days, and appoints the next hearing on the case, which is held no later than 48 hours after the completion of the examination. In this case the court establishes that there are no circumstances suggesting the possibility of committing a crime or it is not established after hearing a psychiatrist that the person has a mental disorder, the court dismisses the case.

The first cardinal difference between the Bulgarian legislation and the Russian one is that for involuntary hospitalization of a person with a severe mental disorder, it is necessary not only that he is in direct danger to himself or others, but that he is likely to commit a crime, which brings this issue into the jurisdiction of criminal proceedings,

about as expressly stated in the law ("since this section does not contain special rules, the provisions of the code of criminal procedure should be applied"). At the same time, the establishment of the probability of committing a crime is within the competence of the court. The second significant difference is the conduct of a forensic psychiatric examination, which is appointed by the court. In addition to resolving diagnostic issues, an expert psychiatrist (these types of examinations belong to the category of individual ones) simultaneously with the examination gives an opinion on the ability of a person to express informed consent to treatment, offers treatment for a specific disease and recommends a medical institution where it can be carried out. The conclusion of a forensic psychiatric examination (usually 5-6 pages of typewritten text) must have a certain structure and content, which is regulated by the united legal provisions of both the Ministry of Justice and the Ministry of Health of the Republic of Bulgaria. In the conclusion of a forensic psychiatric examination (as well as in the written opinion of a psychiatrist discussed above on the mental state of a person), an assessment is made of the degree of risk of socially dangerous behavior due to an existing mental disorder. The degree of risk is determined using a set of criteria that are part of the Bulgarian National Standard for Psychiatry.

This standard distinguishes two categorical axes (danger to oneself and danger to others), consisting of an identical set of points for their assessment (the only difference is that in one case the probability of auto-aggression is assessed, and in the other - hetero-aggression). Each potential hazard assessment axis contains six sections:

1. psychopathological criteria (morbid manifestations at the time of examination);

2. personal changes as a result of the disease (in our study, the first two points are combined into one and the tables give a total score for them in the tables);

3. behavioral manifestations that create a danger to oneself or others, which may be a reason for involuntary hospitalization;

4. history data on aggressive behavior and offenses in the past, antisocial environment;

5. data on social factors that impede the possibility of resocialization of the examined person;

6. negative psychological manifestations at the time of the examination (hostility, explosiveness, uncriticality, lack of empathy).

These sections contain a set of items reflecting four main factors:

1. psychopathological manifestations (positive symptoms of the disease that are relevant at the time of assessment);

2. personality changes due to illness (negative symptoms and personality changes);

3. premorbid personality traits;

4. factors of the microsocial environment (including socializing and desocializing aspects). In total, the categorical axes contain 62 features.

The presence of a particular attribute is estimated at one point. Thus, their maximum number (and, consequently, the maximum risk of socially dangerous behavior) is equal to 62 points. The degree of risk is considered low with less than 20 points, medium in the range of 20 to 35 points, and high (which is the basis for involuntary hospitalization) with a total score of more than 35 points. The sum of points is indicated in the forensic psychiatric expert opinion (as well as in the written opinion of a psychiatrist), which is intended to objectify the expert assessment and serve as an additional guarantee of respect for the rights of a person with a mental disorder.

Thus, in the examination according to the "Health Act" one can see a certain analogy with other types of forensic psychiatric examinations. It should be noted that the main common feature inherent in forensic psychiatric and other expert analysis of the condition of the subjects, regardless of the particular questions that experts face in criminal or civil proceedings, is a kind of two-stage diagnostic process. The first stage, consisting of two stages (analysis and synthesis), allows us to come to the justification of the diagnosis. The second stage of the expert decision is that, on the basis of the obtained data on the nosological properties of the mental state of the subject, a comparison is made of the features of mental disorders identified in him with the positions of the psychological criterion of the relevant legal norm (Shostakovich B.V., 2004). If we draw an analogy with the forensic psychiatric examination of the accused (suspects) in the criminal process, then the expert tasks during the forensic psychiatric examination under the “Law on Health” include the substantiation and formulation of the diagnosis (an analogue of the medical criterion of the insanity formula).

It should be noted that the formula of insanity, set out in Art. 33 of the Bulgarian Criminal Code (CC) generally corresponds to that contained in art. 21 of the Russian Criminal Code with some differences. So the medical criterion of insanity in the Bulgarian Criminal Code includes mental retardation, long-term (which also includes chronic mental illness) or short-term disorder of consciousness, and the legal criterion is formulated as an inability to realize the nature or significance of the deed or to control one's actions. Returning to the "Law on Health", it corresponds to an analogue of the medical criterion:

1. patients with established serious mental disorders (psychosis or severe personality disorder) or with severe persistent mental disorders as a result of a mental illness;

2. persons with moderate, severe or profound mental retardation or vascular and senile dementia (the same categories of patients are also indicated in the indications for emergency psychiatric care).

This is another difference between the two legislations, since the Russian law does not contain a list of mental disorders or conditions under which involuntary hospitalization can be carried out, it only states that a mental disorder must be severe. Further, in the written expert opinion, the legal criterion is not formulated, since the crime has not yet been committed, but it is justified that the mental disorder diagnosed in a person “poses a direct threat to their own health or life, or the life and health of other persons”, that is, the fact of public danger is established, predicting the likelihood of a crime. The court does not consider the issue of sanity-insanity (since the crime has not yet been committed), but establishes the probability of committing a crime, which serves as the basis for “mandatory placement for treatment”, which can be seen as an analogy with a compulsory measure of a medical nature, since compulsory placement for treatment is carried out within the framework of criminal proceedings (the logic of this seems to be that "mandatory placement for treatment" is associated with a restriction of freedom, and any restriction of personal freedoms guaranteed by the constitution can only be carried out by a court of criminal jurisdiction). It should be noted that the recommendations of the Council of Europe do not clearly indicate in this regard, they only say that the decision regarding involuntary placement in a psychiatric hospital should be taken by a judge and deprivation of liberty in the

criminal sphere, apparently, should be based on other, more weighty criteria than criteria for involuntary hospitalization. At the same time, unlike medical measures applied to persons who have already committed a socially dangerous act and are recognized as insane, “mandatory placement for treatment” is of the nature of primary prevention, i.e. applies to the category of patients representing only a potential danger (the risk of committing a crime). Thus, the organizational and legal support of "mandatory placement for treatment" and involuntary hospitalization in the Republic of Bulgaria and the Russian Federation differ significantly. Thus, in the domestic psychiatric literature it is emphasized that primary prevention measures cannot be regulated by criminal law, they are fully within the competence of general network psychiatrists, whose activities are regulated by the legislation on health care (Kotov V.P., Maltseva M.M., 2004). In the Republic of Bulgaria, primary prevention measures in terms of mandatory placement for treatment are, in essence, regulated by both civil and criminal legislation.

The “Health Act” sets out the procedure for appealing against a court ruling on the appointment of an examination and the procedural nuances for its consideration. The court decides on the need for compulsory admission to treatment, determines the medical institution, as well as whether or not the person has the ability to express informed consent (which is in line with the recommendations of the Council of Europe, which propose a distinction between involuntary placement in a hospital and involuntary treatment). The court determines the duration of treatment (maximum - no more than three months), as well as the form of treatment - outpatient or inpatient. When the court determines that a person is unable to give informed consent to treatment, it issues an order for mandatory treatment and appoints a person from the circle of people close to the sick person or a representative of the public health service or a person designated by the mayor of the community at the location of the medical institution, who must express informed consent to face treatment. The following is a procedure for appealing against a court decision. It is indicated that compulsory treatment is terminated after the expiration of the prescribed period or on the basis of a decision of the district court at the location of the medical institution. Every three

months, on the basis of a forensic psychiatric examination submitted by a medical institution, the district court at the location of the institution, in an official manner, makes a decision to terminate the compulsory placement for treatment or to extend the period of compulsory placement for treatment. If the preconditions for compulsory placement and treatment cease to exist after a certain period of time, the compulsory placement and treatment may be terminated by the court at the request of the person, the prosecutor or the head of the medical institution.

Thus, it can be stated that the legislations of Bulgaria and Russia regulating the procedures for compulsory admission to treatment and involuntary hospitalization generally comply with the recommendations of the Council of Europe, although the procedure for compulsory admission to treatment and the compulsory treatment itself according to Bulgarian legislation seems to be more complicated. Therefore, in the legislations of Bulgaria and Russia, devoted to this issue, there are both certain similarities and significant differences. So, in Bulgaria, the criterion of danger to oneself or others is only an indication for emergency (emergency) psychiatric care and hospitalization without the consent of the patient for a period of not more than three days, with the sanction of a judge in civil proceedings. For compulsory placement in treatment, it is necessary for the court to establish the probability of committing a crime, which transfers the case to criminal proceedings (the decision on mandatory placement in treatment is made by the Collegium for Criminal Cases, which also makes decisions on the application of medical measures in relation to persons with mental disorders who have already committed offenses and declared insane). Thus, the procedure for compulsory admission to treatment is regulated by both civil and criminal law. Also, a significant difference is that, according to the Bulgarian "Law on Health", it is mandatory to conduct a forensic psychiatric examination with an objectified risk assessment of socially dangerous behavior in points (in Russian law, a court decision in civil proceedings is made on the basis of the conclusion of a commission of psychiatrists). The Bulgarian law also contains a list of mental disorders and conditions in which the patient may endanger himself or others and there may be a risk of committing a crime, which can be seen as a certain analogy

with the medical criterion of insanity (the Russian law only states that the mental disorder must be severe). Moreover, establishing the likelihood of a crime being committed is the prerogative of the court.

The mechanisms for extending involuntary hospitalization and mandatory placement for treatment also differ. Thus, according to Bulgarian law, compulsory treatment is extended every three months on the basis of the conclusion of a forensic psychiatric examination, while in Russian law, involuntary hospitalization is extended by the court on the basis of the conclusion of a commission of psychiatrists for the first six months monthly, then after six months, then annually). Thus, the procedure and legal mechanisms for mandatory placement for treatment (involuntary hospitalization) under the " Health Act" in the Republic of Bulgaria appear to be more complex than in the Russian Law "On Psychiatric Care and Guarantees of Citizens' Rights in its Provision".

ADMINISTRATIVE RESPONSIBILITY AND ADMINISTRATIVE COERCION: A SYNERGISTIC EFFECT OF INTERACTION

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The study notes that the institutions of administrative responsibility and administrative coercion are an interconnected set of relevant components, they are self-organized depending on the variety of basic qualities and defining properties of the relationship between them at a certain stage of civil society. As an approach to the study of administrative responsibility and administrative coercion, synergetic is important primarily for its methodological capabilities to discover the internal mechanisms of self-organization of these institutions as a system and approval of constructive directions for their further development.

It is established that administrative responsibility is a state conviction, which from the point of view of subjective law is (normative, formally defined in law, guaranteed and provided with administrative-legal coercion) legal obligation to be subjected to coercive measures in the form of administrative sanctions for administrative offenses. Administrative responsibility has the following features: external nature; applied only for the commission of an offense; associated with state coercion in the form of punitive and restorative measures; defined by law; bringing the offender to justice is carried out in a certain procedural order; prosecution is carried out by authorized state bodies and officials; the person guilty of the offense bears certain losses of material and domestic nature, which are provided by law. The functions of administrative responsibility are the purposeful influence of legal means on public relations, human behaviour, morals, legal awareness, culture in order to achieve a certain result. The educational function of administrative responsibility means to instill, influencing

the will and consciousness of the individual, respect for universally binding rules established by the state, to show that violation of these rules is a negative phenomenon that affects public life, success of an organization and finally goods of the guilty person. The preventive function of administrative responsibility is aimed at preventing administrative misconduct in the future, both by the offender and other citizens. The regulatory function of administrative responsibility is to impose prohibitions on certain actions. The punitive function of administrative responsibility is aimed at punishing the offender for an administrative offense committed by him with the application of appropriate measures and the offender feels the force of state coercion for non-compliance with the norms protected by administrative law. The restorative (compensatory) function of administrative responsibility is to restore the illegally violated rights and property benefits of the victim.

It is established that administrative coercion is a special type of state coercion, which is provided by the rules of administrative law and is a system of measures of psychological, physical and organizational influence applied to persons who commit or have committed violations of administrative law, and secondly , to other persons in order to prevent possible offenses or to prevent possible harmful consequences for the state, society and individual citizens, thirdly, in connection with the provision of administrative proceedings. Synergetic forecasting technology involves the analysis of several scenarios, the assessment of their probability and the development of ways of managerial influence that can direct the movement in the desired direction. Here it is worth emphasizing the understanding of the category of administrative and legal coercion as a broad phenomenon. In addition to measures of administrative responsibility, in accordance with the main tasks it is called to perform, it also contains measures of prevention, termination, recovery.

Today it is important to establish and prove the position that administrative responsibility and administrative coercion are very important in society, because the implementation of their main goal correlates with a clearly regulated sanctions for a particular administrative offense. The issue of synergetic existence of administrative responsibility and administrative coercion is one of the

most controversial in the legal science of Ukraine, and the science of administrative law in particular. Contradictions arise both from the very fact of the existence of such synergies, and issues related to the nature of administrative sanctions, the procedure for their application, the definition of the characteristics and composition of the administrative offense.

§1. Understanding of synergetic methodology

In the system of protection of human and civil rights and freedoms, ensuring public order, innovative methods that will increase the effectiveness of public governance and law enforcement are becoming important. One of the relatively new research methods is to take into account the manifestation of the synergistic effect, the allocation of which in the coexistence of administrative responsibility and administrative coercion is appropriate, because it is the effectiveness of law enforcement is influenced by many factors, both internal and external. All factors indirectly have a certain influence (positive or negative), and their combined influence can affect the efficiency of both increasing and decreasing. Such a combined impact must be taken into account in the system of administrative accountability, identification, and adjusted in accordance with the strategic goals of civil society development, so the study of this impact plays an important role in building an effective rule of law.

An important component of a democratic, social and legal state is its effective legal system. In the field of both public governance and public order in general, law enforcement activities should be based on the constitutional principles of the rule of law, social orientation of market relations, effective legal regulation, as this area of public life is the basis on which all components of economic security. . That is why the state, which ensures discipline, law and order, must provide for the establishment of responsibility for all types of offenses, where administrative responsibility and administrative coercion are a priority, taking into account the criteria of expediency, timeliness, rationality and efficiency.

By means of synergetics it is possible to find the answer to global challenges of mankind. In particular, this applies to the problem of administrative coercion and administrative responsibility, which affect

the development of modern civilization as a whole. Typically, synergetic forecasting technology involves analyzing several scenarios, estimating their probability, and developing ways of managing influence that can steer you in the desired direction. Here it is necessary to emphasize the understanding of the category of administrative coercion as a broad phenomenon, which, in addition to measures of administrative responsibility, in accordance with the main tasks it is designed to perform, also includes measures to prevent, stop, restore. However, there is no denying the fact that administrative coercion is one of the signs of administrative liability.

Synergetics methodology is valuable for studying the coexistence of legal institutions in the sense that their systems are open; they are in constant exchange with external factors, determinants. Their dynamism and correlation is a constant change of two processes - hierarchization (ie the transition from simpler to more complex social structures) and dehierarchization (reverse transition from more complex to simpler structures). National legal systems are also open systems where self-organization processes play an important role in the overall dynamic development process. Any legal system adapts to previously unknown external circumstances that have a direct impact on their formation. An example of this is the borrowing of new ideas (for example, the Europeanization of administrative law), legal constructions in the case of their compliance with universal values. Then there is a dynamic development of the system and positive self-realization of processes where the coexistence of administrative coercion and administrative responsibility is undeniable. Synergetics in its classical form studies the phenomena of imbalance, crisis, evolution, self-organization, probability, random and regular processes, fluctuations, problems of biological evolution, the evolution of human cultures. All these elements are the basis for the creation of order, including legal, are certain determinants. Synergetics solves a number of modern methodological problems. This science: a) methodologically open to new theories and concepts, including legal; b) inherits interdisciplinary links with non-legal sciences such as cybernetics; c) has a special interdisciplinary tolerance for new methods and hypotheses; d) is characterized by philosophical dialogue and reflexivity.

In the modern legal literature it is easy to find unequivocally optimistic assessments of the possibilities and prospects of applying a synergetic approach in legal research. Thus, MV Kostytsky notes that "the use of synergetics as a methodology of legal science is legitimate." OM Dzhuzha, Yu. Yu. Orlov and E. Yu. Orlova believe that "it is possible to draw a conclusion about the principled possibility of studying legal phenomena from the standpoint of synergetics" and that "the process of using synergetics to study legal phenomena" will develop in two ways. areas ", one of which"... involves the application of a new method of cognition first in the common law (theory of state and law, philosophy of law) with a gradual spread to branch and special legal sciences ", and the other"... is the gradual promotion of synergistic method of cognition of social phenomena to socio-legal and, ultimately, to purely legal phenomena. According to IS Kryvtsova, "penetration of synergetics ideas into the field of legal reality research will allow to move to a new worldview level of legal research, to coordinate the logic of legal knowledge with the logic of post-classical science, to review some ontological and epistemological bases of legal reality; will allow to replace intuitive forecasts with constructive models, to develop forecasting techniques; to reveal new directions of search of ways of management of systems; will allow to understand the nature of crises of state and legal character, to define ways of their overcoming; will consider the possibility of a revolution, the coordinated development of legal systems among themselves and with the state... ".

In addition, as noted by LG Chistokletov that the role of a synergistic approach in the study of administrative and legal security of economic entities we see as follows: 1) in the study of legal phenomena and processes to be considered in such a study, synergistic approach primarily performs the role of thinking style; 2) in the analysis of other phenomena and processes to be studied within these limits, it is possible that the methodological tools of synergetics will be widely used, especially in the field of forecasting.

§2. Administrative responsibility in the system of synergy of protection of human rights and freedoms

The importance of administrative responsibility as a leading institution of administrative law to ensure the protection of rights and

freedoms of citizens, public relations in the state is confirmed by the intensive development of regulatory and legal support and the dynamics of administrative-tort relations. Moreover, the social value of administrative responsibility is manifested not only in preventive and protective functions, but also in the active promotion of socially useful types of lawful behavior. Therefore, in the existing normative-regulated system of protection of human and civil rights and freedoms, ensuring public order, innovative methods that will help increase the effectiveness of public governance and law enforcement are important. And there is no doubt that state coercion as a means of ensuring law and order should be applied only on a legal basis by specially authorized state bodies and persons, and only to specific subjects of law in connection with their wrongful conduct. Depending on the branch of law that coercive measures are established, it is customary to differentiate coercion in constitutional, civil, criminal, criminal procedure, labor, and administrative law.

Administrative liability is a state conviction that manifests itself in terms of subjective law as a normative, formally defined in law, guaranteed and secured by administrative and legal coercion legal obligation to the offender to undergo state coercive measures in the form of administrative sanctions for his administrative offense. The issue of separating administrative liability from administrative coercion is particularly acute, as the current legislation contains contradictory and overlapping norms that create difficulties in law enforcement practice. The situation is complicated by the fact that the general theory of legal liability remains controversial and requires further research. In particular, there is no unity in the interpretation of such concepts as "legal liability", "offense", "sanction", the relationship between legal sanctions and legal liability is not defined.

The importance of administrative responsibility as a leading institution of administrative law for the stable protection of the rights and freedoms of citizens, public relations in the state is confirmed by the stable and intensive development of regulatory and legal support. Thus, the social value of administrative responsibility lies not only in the preventive and protective functions, but also in the active promotion of socially useful types of lawful behavior.

It should be noted that the system of administrative penalties is dynamic. This indicates that the legislator and scholars are in search of an "ideal" system of measures of administrative responsibility, which would generally contribute to combating illegal acts in our society. It is also surprising that penalties that are long overdue and do not correspond to today's realities are not removed from this system. We are talking about the forfeiture of an object that has become an instrument of commission or a direct object of an administrative offense, and corrective work. For example, the content of paid seizure of an object consists of three interdependent actions: a) forced seizure of the object from the offender; b) the implementation of this subject in a specially established manner; c) transfer of the proceeds to the former owner, except for expenses for the sale of the seized item. The mechanism of implementation of this administrative penalty is such that it has a minimum of criminal, educational and preventive value, but creates additional conditions for corruption schemes and abuses by public authorities involved in the procedure of paid seizure of the object.

Administrative liability, as a type of legal liability, has the following features: 1) has an external character; 2) is applied only for the commission of an offense; 3) associated with state coercion in the form of punitive and restorative measures; 4) defined in the rules of law; 5) bringing the offender to justice is carried out in a certain procedural order; 6) prosecution is carried out by authorized state bodies and officials; 7) the person guilty of the offense bears certain losses of material and domestic nature, which are provided by law.

Administrative liability can be attributed to negative (retrospective) liability. Negative liability is always associated with the commission of an illegal act by a person and is accompanied by negative consequences in the form of certain sanctions.

As for the experience of European and developed countries from other regions, the gradual transformation of their legal framework, as well as the historical period of study in this area, indicates the presence of two different views on the understanding of administrative responsibility as the basis of administrative-tort relations. Some developed countries, such as France, the United States, and the United Kingdom, have concluded that the volume of administrative acts that

violate citizens' rights has increased significantly in the early twentieth century has led to the need to hold their administrations accountable. In view of this, the institute of administrative justice was established in these countries, thanks to which it was possible to form the main means of public oversight of the administration's actions. Another approach is in Germany, where before the emergence of the concept of administrative offenses in the modern sense, the responsibility for criminal offenses came, ie the possibility of criminal coercion was established administratively. This approach can be conditionally classified as a punitive approach, the purpose of which was not to restore the violated right, but to punish non-compliance with the rules of conduct established by law. The same approach is in the legislation of Switzerland, Belgium, Italy, where administrative offenses are enshrined in the Criminal Codes and, accordingly, are a kind of criminal action. And only a small number of offenses are enshrined in other regulations.

Functions of administrative responsibility should be defined as the purposeful influence of such responsibility by means of the means established in the current legislation on public relations, behavior of people, morals, legal awareness, culture for achievement of a certain result. As already mentioned, all types of functions of legal responsibility are inherent in administrative responsibility. Only the degree of manifestation of punitive (punitive) and restorative (compensatory) functions of administrative liability differs from other types of legal liability (criminal, civil and disciplinary). Therefore, we will consider in more detail the specifics of the manifestation of the functions of administrative responsibility.

Educational function of administrative responsibility. The upbringing (correction) of a person who has committed an administrative offense is the main function of administrative responsibility. "Educate" means to instill, influencing the will and consciousness of the individual, respect for universally binding rules established by the state, to show that violation of these rules is a negative phenomenon that affects public life, successful activities of an organization and finally the benefits the most guilty person. Such influence is realized by all institute of administrative responsibility. Significant influence of the educational function begins to manifest

itself at the first stage of proceedings in cases of administrative offenses, when the case materials are drawn up, procedural and security measures are applied, which restrict the rights and freedoms of the offender. Such influence is exercised at the second stage of proceedings in cases of administrative offenses, when a decision is made on the case, which condemns the actions of the offender and imposes a certain type of administrative penalty. But the main educational impact of administrative responsibility is manifested at the stage of implementation of the decision to impose an administrative penalty.

Administrative and legal measures, in addition to state coercion, combine mandatory moral influence. It is difficult to overestimate the social role of administrative responsibility. It arises as a legal consequence of unacceptable forms of behavior of individuals, both individuals and legal entities, unacceptable forms of realization of their rights and responsibilities in society. It, first of all, performs the task of the positive aspect of application, ie forms a certain internal state of the person, his attitude to the task, society, and only then aims at retrospectiveness as a consequence of the offense.

Preventive function of administrative responsibility. Prevention is aimed at preventing administrative misconduct in the future, both by the offender and other citizens. This feature includes two components: general and special warning. The preventive function is aimed at preventing future administrative misconduct by both the offender and all members of society in the territory where the relevant administrative liability applies. The preventive function (general warning) can work effectively only in the conditions of constant information notification, especially in the modern world of developed information technologies. According to O. Panasyuk, the preventive function due to the lack of informatization of this issue in Ukraine is insufficiently implemented. The strategy of development of the system of the Ministry of Internal Affairs of Ukraine until 2020 provided for informatization of activities, ie increasing the efficiency of work and interaction through maximum use of information and communication technologies in the implementation of tasks by the system of the Ministry of Internal Affairs of Ukraine. We consider it necessary to increase or improve the level of security of coexistence in modern Ukrainian society to implement or

improve existing programs to inform about the activities of administrative courts of Ukraine, information about administrative liability for the most common misdemeanors, especially "popular" among people under 18 years. The program should operate with the latest technology and take into account the thinking of modern man who uses these technologies. It is necessary to move away from "dry" presentation of facts or, for example, a link to the website of the Verkhovna Rada, which contains the Code of Ukraine on Administrative Offenses; preventive measures should be .cognitive, even, perhaps, somewhat entertaining. For example, state support and partial funding of TV series showing real cases of administrative prosecution, conducting talk shows on this topic, creating pages on social networks that are actively conducted, inclusion in school programs to study real events related to administrative prosecution. responsibility. From school age, a person must learn legal behavior, in particular, to study the rules of administrative liability.

Regulatory function of administrative responsibility. The regulator as an administrative liability is a typical and characteristic of other types of legal liability - the establishment of prohibitions to perform certain actions. The system of prohibitions devised by the legislator is designed primarily to ensure that the entity acts lawfully. This system indicates the necessary program of action, which is assessed by the state as pleasant. This function manifests itself in the fact that administrative liability, as a legal mechanism of administrative tort law, is characterized by the adoption of certain prohibitions, due to which the process of regulating the relevant sphere of public relations in society.

Punitive function of administrative responsibility. Punishment is aimed at punishing the offender for an administrative offense committed by him with the application of appropriate measures of administrative responsibility. In this case, the offender feels the force of state coercion for non-compliance with the rules protected by administrative law. Consider the specifics of the punitive function of law, depending on the goals it achieves, the legal means it attracts to achieve the goal, and the result that must occur after its implementation. First, the main purpose of the punitive function is to apply to a person a measure of legal responsibility (deprivation of

moral, property and organizational nature), which is proportional to the degree and nature of public danger of the illegal act committed by him. In characterizing the purpose of the punitive function of administrative tort law should mention two important principles of administrative responsibility - expediency and inevitability. It is these principles that help to understand the peculiarity of the goal achieved by the punitive function of administrative tort law in the course of its implementation. Thus, the principle of expediency of administrative liability requires a correspondence between the chosen measure of influence on the offender and the degree and nature of public danger of an administrative offense. The principle of inevitability of administrative liability implies the inevitability of administrative liability for the person who committed an administrative offense. The inevitability of administrative liability mainly depends on the well-established work of law enforcement agencies and the professionalism of employees who are authorized to prosecute and apply sanctions. An administrative offense to which the state has not responded causes serious damage to the rule of law. After all, the impunity of the offender encourages him to commit new offenses and sets a negative example to other unstable people. Second, the legal means of implementing the criminal function of administrative tort law are administrative penalties. The system of administrative penalties needs to be improved today, but unfortunately, scientific papers and bills present many ways to improve - from leaving only two types of administrative penalties (warnings and fines) to a significant expansion of the list of penalties, including for example, revocation of a license to conduct a certain type of economic activity, revocation of a certificate (certificate), prohibition of a political party, forced dissolution (liquidation) of an association of citizens, etc.

The punitive function of law is characterized by the following features: 1) the purpose of the punitive function is to apply to a person a measure of legal responsibility (deprivation of moral, property and organizational nature), which is proportional to the degree and nature of public danger of his illegal act; 2) legal means of realization of punitive function are measures of legal responsibility (punishments, penalties and other sanctions); 3) the consequence of the implementation of the punitive function is the fact that the violator felt the force of state coercion and served or is serving legal liability. The

punitive function of administrative tort law is to establish a system of administrative penalties, as well as their application to the person who committed an administrative offense, so that the imposed administrative penalty corresponds to the degree and nature of public danger of the offense.

Restorative (compensatory) function of administrative responsibility. Compensation is the restoration of illegally violated rights and property of the victim. However, this function in administrative liability is less pronounced than in civil liability.

Thus, as noted in the scientific literature, it is safe to say that, given the codified system of legislation of Ukraine governing administrative liability, the current legislation of Ukraine lacks the official concept of "administrative liability" and other concepts in the general part of the Code of Administrative Offenses. , leads to ambiguity in both its application and understanding of its content, and therefore the current Code of Administrative Offenses needs to be supplemented, which will fully reveal the full diversity of its meaning.

§3. Administrative coercion in the synergetic system of measures of responsibility

The use of administrative coercion in its various manifestations (preventive, precautionary and punitive measures) is always associated with controversial elements, because we are talking about the possibility of influencing a person's behavior, the possibility of restricting both personal property rights and non-property persons. Therefore, quite often one of the problems of administrative coercion is the lack of unity in the perception of this phenomenon, which is due primarily to the low level of systematization of administrative tort law, the rules of which regulate these measures. And, secondly, it should be noted that this is constructive from the standpoint of not only doctrinal but also applied perception. Thus, in the scientific literature it is often noted that when providing a substantive description of administrative coercion should be considered in organic connection with state coercion, defined as a sectoral type of coercion based on administrative law and the main application of which takes place in public administration.

Administrative coercion is directly related to the measures of responsibility applied for violation of administrative law. Therefore, considering such coercion as a complex formation through the prism of administrative responsibility, we can focus on the following points, in particular: the connection with the offense; consolidation in administrative and legal sanctions; combination of punitive (repressive), educational and preventive elements of the purpose of application; retrospective nature of the direction; detailed regulation of the application procedure; specifics of the status of subjects of application and others.

When forming the definition of administrative coercion in the scientific literature, emphasis is often placed on a certain aspect of its manifestation. Thus, focusing on the subjective side of coercion, under administrative coercion define a special type of state coercion, which is provided by the rules of administrative law and is a system of measures of psychological, physical and organizational influence, applied, first, to persons who commit or have committed violations of administrative law, secondly, to other persons in order to prevent possible offenses or to prevent possible harmful consequences of the state, society and individual citizens, thirdly, in connection with the provision of administrative proceedings. Or the emphasis is on law enforcement and therefore, administrative coercion is defined as the application of appropriate subjects to persons who are not under their control, regardless of the will and desire of the latter provided by administrative law measures of moral, property, personal and other in order to protect public relations arising in the field of public administration, by preventing and stopping offenses, punishment for their commission. In addition, it is worth noting the scientific position on the understanding of administrative coercion through its place in public law, where administrative coercion is defined as a special kind of state coercion, ie defined by administrative law methods of official physical or psychological influence of authorized state bodies (and in some cases and public organizations) on individuals and legal entities in the form of personal, property, organizational restrictions on their rights, freedoms and interests in cases of these persons committing illegal acts (in the field of public relations) or in extraordinary circumstances within separate administrative proceedings for prevention, cessation of

illegal acts, ensuring proceedings in cases of offenses, bringing the perpetrators to justice, prevention and localization of the consequences of emergencies.

In addition, some scholars note that there is a concept of identifying legal liability with state coercion. This approach is ambiguous, as not all coercive measures can be attributed to measures of legal responsibility. The category of state coercion, of course, is a much broader phenomenon and, in addition to measures of legal responsibility, in accordance with the main tasks it is designed to perform, also contains measures to prevent, stop, restore. However, there is no denying the fact that state coercion is one of the signs of legal responsibility. For example, it is contained in the sanction of the financial law, so if there are sufficient grounds in the form of a financial offense is reflected in the negative consequences of a property nature for the offender.

The main features of administrative coercion that reveal its legal nature include the following: first, measures of administrative coercion are applied, as a rule, by executive bodies and their officials, and only in some cases, their application is entrusted to courts (judges) and in relation to both individuals and legal entities; secondly, since we consider administrative coercion through the prism of administrative responsibility, it is of course that it is not related to the subordination of subjects, in addition, it is used in public administration to protect public relations arising in this area; thirdly, the official procedure for the application of measures of administrative influence and the efficiency of the procedure of such application, which, in turn, encourages individuals and legal entities to comply with mandatory rules, prevent or stop illegal actions, emergencies, public safety in case of their occurrence and localization of their consequences, bringing offenders to justice. At the same time, administrative liability is characterized by such features as external nature, applied only to the commission of an offense related to administrative coercion in the form of punitive and restorative measures, defined in law. In addition, bringing the offender to administrative responsibility is carried out in a certain procedural order and by authorized state bodies and officials. And of course, the person guilty of the offense bears certain losses of material and moral nature, which are provided by law.

Given the basic properties, as well as the public law nature of administrative liability, administrative coercion can be defined as a form of public coercion, which consists in applying to a special group of persons measures of physical or psychological influence (moral, property, personal and other) in order to protect public relations arising in the field of public administration, by preventing and stopping offenses, as well as punishment for committing administrative offenses.

Conclusions. Thus, taking into account the synergistic effect of the interaction of administrative responsibility and administrative coercion in the system of protection of human rights and freedoms, ensuring public order helps to identify and increase the positive effects of lawmaking, law enforcement and law enforcement. In addition, it should be emphasized that administrative responsibility as one of the priority and leading institutions of administrative law can not be formed in isolation from internal and external factors of legal influence, and at the same time, administrative coercion is one of these areas. Thus, the synergetic effect is also manifested in the interaction of internal and external factors shaping the effectiveness of administrative sanctions for administrative offenses, but the decisive influence in this case can be given to the educational function. However, these functions of administrative responsibility cannot be divided into primary and secondary, their impact is not isolated, but systemic. But the classification of measures of administrative and legal coercion is based on the purpose of applying a particular group of coercive measures. That is, when applying preventive measures, the main goal is to prevent possible offenses and other harmful consequences of catastrophes, accidents, natural disasters, etc., when applying administrative measures - to stop an already started offense and prevent its possible harmful consequences - compensation for property damage and restoration of the state of affairs that existed before the offense, when applying measures to ensure proceedings in cases of administrative offenses - ensuring the appropriate procedural procedure for bringing the perpetrator to administrative responsibility.

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RELATIONSHIP AND DISTINCTION BETWEEN TERRORISM, CRIMINAL ENVIRONMENT AND CROSS-BORDER MIGRATION

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In the modern world, there are relationships between terrorist groups and the criminal environment that are so clear that it is sometimes difficult to distinguish one phenomenon from another. First of all, it concerns the realization of the financial possibilities of cross-border crime. The illicit trade in arms, drugs, other goods and smuggling are the main sources of funding for cross-border terrorist organizations [1]. At the same time, criminal communities are also the main providers of potential members of such organizations, who are in principle directly responsible for committing terrorist acts [2]. The motivation of criminal communities for predominantly material aspirations and common criminal values, as opposed to the political motivation of terrorists, is at the root of these differences. The processes of merging terrorist organizations with organized criminal groups can be characterized as active expansion of terrorists in the criminal environment with regional (as in Afghanistan) pushing organized crime out of the most profitable areas - drug trafficking, arms and human trafficking, gambling and others. A number of potentially disturbing trends are accelerating the expansion of links between terrorist and transnational criminal gangs. Criminal unions are beginning to increase in size and scale. Globalization is expanding their transnational reach, while major advances in technology, trade and

industry have allowed them to exploit vulnerabilities in sectors such as cybercrime, credit card fraud and money laundering. Criminal groups adapt their structure and composition based on the processes of globalization. From a conceptual point of view, the existing interaction between terrorist and organized criminal groups cannot be defined as clear. Terrorist groups try to take advantage of these interactions by using methods such as cooperation, coercion and direct interaction. At the same time, the interaction is manifested in the participation of terrorist organizations in ordinary crimes at the national or transnational level. This process is not always obvious in practice. A number of terrorist groups are associated with organized crime, taking an active part in its activities. They play a significant role in maintaining the social, political and legal instability that ensures their criminal activity. In particular, criminal communities can provide funding, weapons and other resources needed for terrorist groups. The terrorist groups themselves already have the characteristics of organized criminal organizations, which in a sense allows them to be prosecuted in accordance with the law. As a significant difference we can mention the ideological nature of the goals faced by terrorists, which may exclude the possibility of applying such legislation to them. At the same time, organized crime groups are seeking to negotiate with the authorities in exchange for support.

The use of terrorist methods in cases of threat to their existence is not excluded. In these cases, we can talk about a manifestation of quasi-state terrorism. In fact, criminal organizations tend to use the existing situation for enrichment. That is why they are not interested in political change. The purpose of their actions against the state power is to create, expand and maintain favorable conditions for their activity. In turn, terrorist organizations are characterized by manifestations of mafia structures: illegality, possession of energy resources built on personal trust. Terrorists have a dominant attitude, according to which the breadth of their views allows them to attract supporters, activists and public figures. In this case, money is not seen as a goal, but as a means that allows them to continue the fight against the state. Therefore, the goals of terrorists and criminal groups are different. According to ideological concepts, terrorists go against the state or the political system as a whole, trying to achieve certain political changes

using violent methods. They are demonstrating and resorting to targeted violence against innocent citizens to draw media attention to this. On this basis, terrorists, using their interaction with organized criminal groups, seek to exert increasing influence on international peace and security, because through such interactions they can accumulate sufficient financial and political resources to come into conflict with sovereign states. These resources are intended to support military campaigns, provide funds for the overall management of the territory and provide an opportunity to expand offensive operations beyond the established borders. Terrorist and transnational criminal groups have long had similar characteristics and tactics. Historical examples also show that such groups can deviate, develop, converge, transform, or otherwise change their ideology and organizational structure, often duplicating themselves. In general, crime and terrorism can intersect in at least three main areas:

1) general tactics and methods,

2) through a process of transformation from one type of group to another,

3) through short-term or long-term transactions based on mutually beneficial services.

The growing involvement of rebel and extremist groups in criminal activities has been a concern for many governments for decades. Terrorist groups continue to pose a threat to the national security of many countries, and transnational organized crime groups are expanding their global reach. However, the scale and nature of criminal terrorist relations can vary considerably and depend on public response. From the point of view of a terrorist organization, the main motivation for partnership or adoption of criminal tactics is the maintenance and development of the organization in order to stimulate or finance ideological activities. At the same time, efforts to expand the organization and scope of terrorist activities can create vulnerabilities that can be exploited by the authorities. In turn, these vulnerabilities can lead to the detection and disorganization of the activities of both a terrorist organization and a criminal group. Cooperation can serve as a multiplier for both criminal and terrorist groups, strengthening their potential, infrastructure and increasing their wealth. However, this cooperation is fraught with great risk for both types of organizations.

Partnerships can sometimes lead to successful alliances, but they can also have grounds for mistrust, competition and opportunities to exploit vulnerabilities. The formation of such partnerships leads in some cases to increased supervision and control by public institutions, which otherwise cannot allocate resources and do not pay attention to individual organizations and their activities. Common motives for criminal and terrorist organizations to encourage them to partner include financial viability, geographical growth, staff protection, logistics, support for mutually exclusive criminal activities, and the involvement of third parties to achieve organizational goals. Sometimes the criminal activities carried out by terrorists can be determined by the individual ideological principles of the group. For example, the Italian "Cosa Nostra" has always had an ideological motive in its activities, while remaining mostly a criminal community. The crime rate can range from minor crimes, such as accidental robbery or document fraud, to systemic transnational crimes, such as drug and arms trafficking. If members of a terrorist group are involved in such activities, they are usually involved in several forms of crime - often a combination of small and large crimes and, as a rule, to achieve several operational objectives. For example, Tamil Tigers from Sri Lanka are involved in various forms of criminal activity, including extortion, drug trafficking, credit card fraud, social security fraud, insurance fraud, cybercrime, illegal currency transactions, counterfeiting, infringement of intellectual property rights, piracy, robbery, smuggling and human trafficking, kidnapping for ransom and illegal arms trafficking. The illicit trade in arms and ammunition is usually one of the main types of interaction between terrorists and organized crime groups. Such weapons are used by terrorists to carry out terrorist acts, and by organized criminal groups to carry out attacks. This is the uncontrolled movement of weapons, which poses a serious threat to the civilian population. Terrorist groups often use weapons smuggled into regional criminal communities to ensure that their operational targets are resolved. For example, following the 2011 anti-government events in Libya, all state arms stocks have been looted. They were subsequently transported to various countries, where they were used by terrorists and organized crime groups. The violence caused by these processes is deadly and long-lasting, which increases the feeling of insecurity. This

leads to an increase in the demand for weapons among the civilian population. Another area of association between terrorist organizations and criminal groups is drug trafficking. The drug business is a pursuit of terrorist organizations such as Hezbollah, Hamas and others. Lebanese factions are fighting for control of Indian hemp and opium plantations concentrated in the Becca Valley. Most of the proceeds from the drug trade go to the Kurdish PKK / KADEK, the Armenian ASALA, the Irish IRA, the Spanish ETA, the Italian Red Brigades, the revolutionary Tupac Amaru movement in Peru and others [3]. Ultra-left extremist groups in the Philippines make financial profits by selling marijuana to drug cartels. These and other criminal organizations are waging a real war against the country's authorities, who are stepping up the fight against drug trafficking. Similarly, in Afghanistan, the huge revenues of networks involved in drug trafficking are used to fund terrorist organizations. At the same time, the Taliban movement, in addition to its cooperation with drug traffickers, is linked to the supply chain involved in drug trafficking. For example, they charge a 10% "land tax" on the income of opium poppy growers in Helmand province.

The link between the Taliban and the drug supply chain can be confirmed even by the example of the location of drug laboratories near Taliban training camps. At the same time, proceeds from the drug business are used to finance and equip terrorist organizations, on the one hand, and on the other hand, to facilitate drug trafficking by using methods of corruption among government officials to neutralize them and to prevent appropriate government measures in this area. In order to finance their expenses, in addition to drug trafficking, terrorist groups often commit crimes typical of organized criminal groups: kidnapping for ransom, drug trafficking, robbery, and so on. Organized crime groups, on the other hand, are increasingly using terrorist specific methods, such as bombings that result in the death of accidental victims or killings to intimidate the population. For example, in the 1970s, the Italian Red Brigades and the German Red Army Faction were funded by armed robbery. Similarly, for the release of the OPEC ministers of the oil industry taken hostage in Vienna in December 1975, the terrorists received a significant amount of money. In December 2004, North Bank in Belfast was robbed, stealing £ 26.5 million. This operation was planned and carried out by the Irish

Republican Army. In addition to the attack, this organization carried out other major robberies. Although such fundraising activities fall within the scope of anti-organized crime legislation, it cannot always be applied to events that take place in the name of violence itself - explosions, ideologically motivated murders and do not pursue material gain. Another way to generate income from terrorist organizations is to plunder and illegally sell cultural and historical property. For example, Islamic State in Iraq and the Levant (ISIL) has been widely involved in excavations of historic sites. The items found were sold to local traders, and the proceeds were used to finance and support terrorist activities. According to UNESCO, due to the illegal excavation of archeological sites in Syria, the proceeds are becoming one of the main sources of funding for terrorists, and such illegal trafficking in cultural property causes significant damage to these sites. In this regard, especially in Iraq and Syria, the looting of cultural property and its illegal trafficking by terrorist groups are of great importance. In their criminal activities, terrorists are increasingly using kidnappings not only for ransom, but also to obtain certain political concessions. This can be seen in the Middle East, the Mediterranean and North Africa and is often done with the support of transnational criminal networks. The money received from the ransom provides opportunities for recruiting supporters or buying weapons for terrorist and criminal groups. Trafficking in human beings, defined as recruiting, transporting, harboring and attracting people through the threat of force or fraud, is a very serious crime and a gross violation of human rights. Every year, thousands of men, women and children fall into the hands of traders in their own countries and abroad. Almost all countries in the world are affected by human trafficking, whether the country of origin of the victims or in transit. For example, terrorist organizations and organized crime groups in Southeast Europe receive huge revenues from smuggling people across the border. According to experts, ISIL has also received significant revenues from human trafficking. In particular, the United Nations has documented evidence that ISIL, especially since mid-2014, has been involved in trafficking in women and children. It took place between Iraq and Syria, and the victims were girls captured by ISIL in Iraq and sent to Syria for sale later as sex slaves. There is evidence of seven such cases. According to the UN, however, the number of

abducted girls is significantly higher. Young boys captured by ISIL or recorded as "volunteers" were also forcibly taken across the border to undergo military training under constant pressure and ideological treatment. Terrorist financing and money laundering are crimes that are ubiquitous in the context of terrorist profits from organized crime. Funds for terrorist financing can be obtained both legally (for example, personal savings, property related to legitimate business activities, charitable and non-profit funds) and illegally. At the same time, money laundering, as well as the legalization of other illicit proceeds, is the most common and dangerous economic crime in the world. Money laundering processes are becoming a large-scale business based on the transformation of 'dirty money' obtained illegally and from illegal operations in the form of income from a legal source. But revenues illegally obtained and used to finance terrorist or extremist activities do not have such a transformation. If the funds are related to illegal activities, terrorists either use these funds directly to finance their activities, or legalize them to be transferred to a legal form of economic activity. In this regard, it is possible to talk about a higher return for terrorists from such financial operations than for organized criminal communities. The content of illegal actions to secure terrorist financing is reflected in the following models: a) terrorist organizations use the proceeds of crime to finance terrorism based on the economic characteristics of the particular region (or group of regions) in which they operate; b) the use of proceeds of crime by terrorist organizations often comes from the transit situation of such a region, which creates conditions for the smuggling of prohibited goods; c) there is some connection between the methods of generating income to finance terrorism and the scale of a terrorist organization. The scale of its activities often determines the level of involvement in the criminal business. It should be noted that state pressure limits the number of traditional sources of funding for terrorist organizations that are moving to non-traditional activities and alliances with illegal funding. These include unorganized sources of funding, such as wealthy private donors and the use of charities, as well as sources of funding traditionally associated with organized crime. Attracting to criminal sources of funding is a natural step for terrorist groups that already have experience with illegal activities. Given their ability to evade

government attention, terrorist groups can engage in criminal activity because they perceive them as profitable and low-risk. In this way, financial support for terrorists is also provided by the fact that the group can "tax" criminals or receive a fee for the opportunity to work with criminal elements in a certain region or along a certain smuggling route. In particular, Hezbollah receives such taxes from diamond smuggling in West Africa and profits from piracy in the border areas of South America. The Kurdish Workers' Party collects similar fees from drug traffickers, thus replacing state authorities. However, general restrictions on building partnerships may include increased government vigilance, fear of compromising internal security, ideological resistance to illegal initiatives ambiguously perceived in an organized criminal environment, such as drug trafficking, child abduction, and sufficient resources. of non-crime funding from charities, large private donors, private companies and government sponsors. Such restrictions are among the main reasons why the leadership of some extremist groups such as Hezbollah and Al Qaeda do not have significant partnerships with transnational criminal structures. The need for logistical support underlies the existence of many terrorist groups, as they often require significant potential to buy weapons on the black market, to conceal assets through money laundering methods, smuggling people across borders, maintaining communication systems. , avoidance of discovery and the need to create a security infrastructure. In this case, terrorist groups can rely on criminal groups to obtain drug smuggling. Terrorist groups can use the same methods that criminal organizations use to cover up, transfer and launder their assets. Common methods for criminal and terrorist groups include the use of alternative money transfer systems such as Hawala or Hyundai; cash smuggling; money laundering and valuables, including precious metals and precious stones. Havala is a popular money transfer method that predates the Western financial system and remains cheaper and sometimes more efficient than modern banking services involving the transfer of funds around the world. Remittances are based on communications between a trusted network of hawala dealers or havaladars, both in origin and destination. Therefore, when sending money, especially over long distances, many continue to hire havala. In some parts of the world where formal banks remain rare and

difficult to access, the hawala remains the only transfer format. Although the use of the hawala is almost always carried out in legal forms, it is also used by criminal and terrorist elements who value the technology of the hawala for their accounting methods, which are often difficult to rely on to enforce the law. Another method used to circumvent the official financial system is the use of couriers to transport cash, which involves the physical transportation of large sums from one jurisdiction to another. Today, terrorist groups, especially those most threatened by developed countries, are motivated more by the religious than by the nationalist or ethnic separatist imperative that prevailed in the 1960s and 1970s. This leads to the development of extremist movements that can arouse sympathy far beyond the borders of a particular country or geographical region. In addition, terrorist groups appear to have become more resilient to financial crises due to a combination of ongoing sponsorship or support and expansion of business activities to generate profits from criminal activities. Many observers believe that cooperation or duplication of activities, such as drug trafficking and human trafficking, is of particular interest to criminal and terrorist groups. Other criminal areas with potential interest in terrorism include money laundering, smuggling, arms and other industrial goods trafficking, extortion, kidnapping and petty crime. Researchers suggest that such criminal terrorist connections are the result of mutual opportunities for financial gain. Such relationships may be temporary to meet the short-term needs of terrorist and criminal organizations and may not develop into a partnership. In addition, such relationships may be part of the structural transformation of a terrorist group into a criminal one, whose financial survival depends on the proceeds of criminal activity. Terrorist organizations can create institutionalized internal criminal structures in addition to their combat units. In such scenarios, the group may set up a criminal wing to engage in illegal activities on a professional basis. An organization can hire existing criminals in an organization, develop crime skills among existing staff, or pursue a combination of the two. For some groups, criminal activity will always be secondary to their political aspirations. Others, on the other hand, can become a hybrid unit that is an equal part of both a criminal and a terrorist organization. At the same time, the organization's political

motives may weaken as it becomes involved in criminal activities. In some cases, the criminal activity of a terrorist group is carried out by "specialists" or "shadow workers" who are specially hired for criminal activities or perpetrators who can cooperate with various terrorist groups and other criminal organizations. These criminal experts can be experts in the black market and technology, money laundering, smuggling, cybercrime and many other criminal activities. Terrorist groups can look for such specialists not only among existing groups of criminals. Alternatively, terrorist groups may hire such specialists for specific projects on a contractual basis. In such cases, criminals may have accomplices or be hired through intermediaries and potentially be unaware that their clients are terrorists. In other cases, a terrorist group may send its representatives to "specialty" training with well-known criminal experts. From the point of view of the criminal union, the motives for cooperation with terrorist organizations include a single goal - to increase the financial well-being of the criminal group. Many researchers suggest that the desire of criminal unions to gain access to illegal means outweighs the potential risks associated with perceived support for the terrorist group's ideological goals. For example, some criminal groups, especially relatively young, small or poorly organized by traditional hierarchical unions, have already become ideologically radicalized and actively carry out operations that not only lead to illegal profits but also contribute to the terrorist group's goals. In other situations, the lower echelons of a terrorist organization cannot follow the instructions of their leaders to stay away from the criminal organization (or vice versa) and can unilaterally decide on a partnership. This could happen given the global financial crisis and the increasingly decentralized nature of terrorist groups. Thus, the link between terrorists and organized crime remains a topical issue, as terrorists turn to criminals by providing them with forged documents, providing arms smuggling services or covert assistance in cross-border movements when terrorists cannot obtain goods and services on their own. However, organized crime groups are unlikely to form long-term strategic alliances with terrorists. Organized crime is motivated by the desire to make money and, as a rule, considers any activity beyond what is necessary for profit as bad for business. For their part, terrorist leaders are concerned that ties with non-ideological partners will

increase the chances of successful special services infiltrating their ranks. Corruption in the public and private sectors contributes to organized criminal enterprises. Through bribery, other financial incentives and the threat of violence, criminal elements can take advantage of corrupt entities to facilitate their criminal operations and reduce the likelihood of their detection or seizure. Corrupt actors can range from border guards, financial regulators, justice officials, to high-ranking politicians, private bankers, small business owners and industry tycoons. At the same time, terrorist groups can take advantage of such corrupt connections, coordinated through or on behalf of criminal groups or independently of such criminal groups. The potential for corruption is particularly significant in vulnerable environments, such as weak states, post-conflict situations and gaps in legislation. It should be noted that the link between terrorism and crime may increase the vulnerability of most countries to attacks by terrorist groups with increased criminal potential and financial resources. The combined use of resources, access and opportunities for criminal and terrorist groups can even improve a terrorist group in obtaining and using weapons of mass destruction. The expanded spectrum of combined criminal and terrorist activities can significantly affect the global economy and political goals, disrupt trade and undermine the rule of law. It should be noted that there is still a gap between intelligence and research on the proliferation, threat and future trends associated with the development of criminal terrorist links. The current debate on the possible convergence of terrorism and criminal groups must be seen as a significant possibility of increasing the threat to the security of the modern world order. In this case, convergence implies not only an increase in the financial resources available to the two organizations, but also an increase in the opportunities for illegal activity of their members and geographical scope. Such developments can have negative consequences for the short-term and long-term interests and security of most countries around the world. Thus, the interaction between terrorist organizations and organized crime continues to grow so far. Importantly, terrorists who take advantage of their links to international organized crime increase their ability to undermine a country's legitimacy, and this can undoubtedly ultimately affect states' relations and security. The

urgency of the problem of the relationship between the concepts of cross-border migration and international security has regained its importance after a series of processes to overthrow government regimes in confrontation with the West (Egypt, Jordan, Libya, Iraq, Tunisia, etc.) and is accompanied by institutionalization of terrorist groups in modern geopolitical conditions. This has led to significant flows of legal and illegal migration, which form various processes of destabilization, including terrorist processes, which in turn depend on these flows. In this regard, the question of the effectiveness of the existing migration control systems has been formulated in the public consciousness. As a result, a number of countries are taking steps to strengthen these counter-terrorism systems. In addition, one of the main tools used to combat terrorism is pre-entry migration control, border control and security measures, as well as internal migration control measures. However, it should be borne in mind that the alienation and isolation of foreigners and immigrants in host countries may also increase the likelihood of their participation in terrorist activities as a form of protest. Despite efforts to expand the concept of security, understood not only as state security but also as a concept of security for individuals and society, it is clear that the paradigm in this regard is again militaristic. Opinions and arguments, which suggest the need to ensure public safety and protect the country from terrorists, again occupy a prominent place in everyday discussions. The resolution addresses cross-border migration and refugee status. In particular, States should prevent the movement of terrorists through effective border controls, the control of the issuance of identity documents and travel documents (§ 2 g). States are obliged to take measures with regard to asylum seekers, to prevent the planning of terrorist acts, to facilitate them and not to participate in their commission (§ 3 f), as well as to prevent the abuse of refugee status by perpetrators and organizers of terrorist acts. acts (§ 3 g). As a result, a situation has arisen in which Western countries, with their destabilizing activities, in many respects provoke these migration flows and, on the other hand, try to present themselves as victims of them. This situation has largely been shaped since the late twentieth century, when jihadists from the Middle East and North Africa, many of whom could not return home, took advantage to expand into Europe and North America. Influential

jihadist preachers, fundraisers and intermediaries managed to obtain asylum and then took the opportunity to hire and expand their networks in the host countries. As a dominant direction within the modern migration processes is the reorientation of the population from poor and unstable countries to leading, economically developed countries. At the same time, the scale of this migration is only increasing. As V. Luneev rightly noted, "the growing process of migration in the world and the formation of ethnic diasporas in different countries are successfully used by organized criminals from other countries to create national groups that are more united and protected by law enforcement agencies. National solidarity, and sometimes family ties, language and cultural barriers, reliably protect these groups from the entry of unauthorized persons, including intelligence agents" [4]. It should be noted that migration flows in countries around the world are generally subject to the same negative trends. Given the political, economic and social tensions in many regions of the world, a number of major problems stand out in this area:

- lack of systematic interaction between the countries on the issues of international migration;
- inadequacy of regional and national migration policies and insufficient development of the regulatory framework of countries in this area;
- insufficient coordination of actions and lack of a mechanism for collecting and analyzing migration data;
- inconsistencies and misunderstanding of migration issues by the authorities together with undeveloped potential in migration management, etc.

Therefore, in the conditions of globalization processes, both the basic parameters of migration processes and the factors that determine them change. In modern society, migration processes are especially important in terms of the scale of their development, as well as the political and socio-economic consequences for countries. It must not be forgotten that the majority of refugees are victims of war, terror and persecution. They are fleeing terrorist groups in countries that no longer control their territory. Due to their geographical proximity, they come to Europe to seek refuge under the protection of the law. Under the Geneva Refugee Convention, all EU Member States are obliged to

ensure the protection of refugees. However, there are some extremes, especially in that migrants, especially Muslims, are perceived in many Western European countries as a potential threat to traditional values and as terrorist risks to national security. The question of how migration relates to global security issues is multidimensional. Terrorism, given its cross-border aspects, can also be seen as a matter of migration. This raises a number of issues that directly affect migration policy, including the integrity of borders (entry and / or residence with unlawful intent), national security, integration, ethnic / multicultural issues and citizenship. The use of arguments such as religion or ethnicity as a just cause for incursions and countering terrorist acts seems to be a real ideological threat. The growing affiliation of terrorist acts to religion, particularly Islam, is the most dramatic innovation ever lacking. This poses a real threat to peace and security and serves as a catalyst for the development of terrorism. Historical experience has shown that terrorists trying to enter a country are more likely to benefit from a valid visa. Moreover, several future terrorists first fled to Britain and the United States as children as members of refugee families or were legitimate asylum seekers at the time of the petition, and were later radicalized. Therefore, they do not intend to use mass migration flows to introduce and carry out terrorist acts. Similarly, none of the nineteen al Qaeda hijackers are seeking asylum. They have all entered the United States legally, although some have been in the country longer than the validity of their visas. The tightening of asylum policy in the West since 9/11 has been the culmination of hostility to asylum seekers that accumulated in the 1990s. "Dragon" measures that are considered unacceptable to democratic communities before 9/11 are justified by national security considerations. It should be noted that there is no organic and direct link between migration and terrorism. This raises the question of why the leading countries in the fight against terrorism focus mainly on migration and border control policies. We believe that the answer to this question can only go beyond the fight against terrorism. In this case, increasing efforts are being made to develop restrictive migration and asylum policy instruments, such as the use of state power, expulsion and entry control. In this way, there is a disproportionate shift from more liberal to stricter migration policies. Nevertheless,

illegal migration is a contributing factor to the growth of organized crime, drug trafficking, terrorism and the deterioration of the epidemiological situation. Well-known examples are Abu Qatad in London, Sheikh Anwar al-Shabaan in Milan, Abdul Rahman Ayub in Sydney and Mullah Krekar in Norway. Numerous terrorists linked to groups such as the Egyptian Islamic Jihad, the Libyan Islamic Fighting Group and the Algerian Armed Islamic Group also roamed the West under the guise of asylum seekers. In most cases, they perform supporting functions, but some of them are related to the planning and conduct of attacks. Given the current growth trends, these types of crime are a significant risk factor, especially given the fact that illegal migration is characterized by a high degree of latency. It should be borne in mind that changes in the landscape of global jihad are reflected to varying degrees in the extremist activities of various diasporas in the West. For example, after the end of the war in Algeria, fewer Algerians became involved in jihadist activities in the United Kingdom. However, as Pakistan becomes increasingly important to groups such as al Qaeda and the Taliban, a growing number of Pakistani Britons are beginning to take the path of terrorism, a similar pattern in Canada. In the United States, meanwhile, about two dozen Somalis, some of whom are refugees and at least four have become suicide bombers, are returning to al-Shabab's country in Africa since the 2006 invasion of Somalia. To date, the scale of organized forms of illegal migration is growing. Both smuggling and human trafficking are largely controlled by major criminal syndicates or terrorist organizations. At the same time, the term "irregular migrants" applies to illegal migrants.5 Thus, despite the discrepancies between the systems of states and governments in monarchical, totalitarian or democratic models of government, it can be said that all these states perceive the existence of foreign persons and uncontrollable groups on the territory of the state as a serious threat. It is generally expected that the response to such threats in liberal democracies will be more rational and in line with democratic principles. However, the response to foreigners and immigrants in the United States and other Western countries suggests otherwise. Due to its cross-border and transnational characteristics, terrorism is seen as a problem closely related to migration. Issues such as border control and security, illegal

migration, asylum, integration of foreigners and immigrants, inter-ethnic or cultural ties and citizenship are considered common areas of interest for both counter-terrorism and migration management. However, it should be emphasized that measures related to migration policy and border control are only part of national and international counter-terrorism actions. This is due to the fact that the perception of the national security of the state is closely related to the assessment of internal and external threats, as well as to its historical experience. It should be borne in mind that those who intend to commit terrorist acts often enter the country under false names, with real passports that have been forged or stolen by legitimate owners. This is the case, for example, with the attacks in Paris in 2015, when terrorists used Syrian passports and were registered as refugees, even though they were citizens of Belgium and France. The prevention of such crimes is the responsibility of law enforcement and intelligence services. However, security goes far beyond the work of the police and security services. Basically, complex social work and political interaction are required. The current inability to integrate refugees and immigrants creates fertile ground for future terrorism. This is the most important lesson learned from the Paris attacks. After all, the terrorists are Belgian and French citizens. In October 2014, RT News reported that "US intelligence agencies have unencrypted correspondence with the caliphate government," confirming that "Islamic state activists plan to deploy undercover agents in Western Europe." Fears that Islamic State would implement the Trojan horse strategy intensified in January 2015 after one of the smugglers from the organization operating in Turkey admitted to transporting 4,000 fighters to Europe by cargo ships, full of refugees. According to him, the purpose of this is to organize terrorist attacks in response to coalition air strikes. A month later, an online article was published by another prominent Islamic State figure based in Libya, in which he spoke about the use of ships carrying North African migrants to Europe. In practice, fears of the deliberate introduction of terrorists into refugee flows have intensified since the attacks in Paris in November 2015. At least two terrorists are believed to have entered the European Union via Greece, posing as asylum seekers. Given the extent to which these issues continue to haunt the media, politicians and security experts, it is important to objectively

assess the threat of terrorism and its link to mass migration. A negative factor is that the massive influx of migrants exacerbates the situation on national labor markets due to competition for jobs and lower wages for local workers, as foreigners agree to work for lower pay, which creates a risk from wage dumping and rising social tensions. The undeniable positive and negative economic effects of migration for donor and recipient countries become apparent after a short period of time and are amenable to formalized mathematical calculations.

The decision to use migration control tools as an important counter-terrorism mechanism may prove reasonable. However, the same policy can have some, and sometimes significant, negative effects when used strictly for other purposes. There are two main consequences: damage to national interests and violation of individual rights and freedoms. In particular, it should be noted that the use of migration control instruments under the pretext of preventing terrorism undermines in particular the rights of settled third-country nationals and weakens their legal status. Strict policies and practices adopted in the fight against terrorism can lead to a gradual reduction in the positive contribution of migration to the host country's community. And this can happen against the background of the unanimous recognition of the positive contribution of immigrants or foreigners to the economies of the host countries. Foreigners or immigrants make a significant contribution to the lives of host countries for the development of education, vocational training, health care. However, immigrants are usually disadvantaged in host countries, and terrorist groups can abuse this situation or the existing conservative policies of the countries. Therefore, countries facing the sad consequences of terrorism are expected to take precautions against the possibility of such a development. But all these safeguards must be legal, proportionate and in line with human rights requirements. At the same time, “home” communities, which are characterized by the priority of their own ethnicity and culture and the elevation of these concepts to the main motivation for life, create a negative image of other communities, which leads to their alienation and marginalization. In this case, diversity cannot be reflected as a positive value in a society that accepts immigrants, as national identity is created on the basis of special values. These problems involve the formation of hostile

attitudes towards other communities. Homogeneity, uniformity and a special emphasis on identity lead to the alienation of migrants and their integration into the social system is almost unsuccessful. And the only classification is another negative factor affecting social relations, which are experiencing a crisis due to the attacks and create quite clear boundaries between social groups. It should be borne in mind that the political effects of migration, due to their specificity, manifest themselves over a long period of time and are more difficult to predict and model. It is worth noting that the phenomenon of terrorism is still associated with people of migrant origin. In this connection, it is necessary to consider migration in the context of the political sphere of social life. In particular, some jihadists are using the current crisis of mass migration to infiltrate or move within Europe, and there is no doubt that the consequences could be severe. However, among more than one million migrants, many from Syria and other troubled regions, the number of identified refugee terrorists remains minimal. To further determine the level of threat, it is useful to examine the latest wave of jihadist attacks in the West and other countries. In fact, the great threat comes from radicalized groups and individuals who do not receive training or engage in hostilities abroad. The terrorist threat associated with the return of foreign fighters disguised as refugees or otherwise is clearly increasing in terms of potential impact. However, the probability is relatively low, at least in the short term. As local jihadists are responsible for most of the latest terrorist attacks in the West, Western extremists are more likely to try to hire refugees from Syria and other countries upon their arrival. An important factor is the fact that organized criminal groups also act as entities directly interested in the growth of migration processes. These groups derive huge profits from the transportation and subsequent employment of migrants. However, they use them as couriers to transport weapons, drugs and other illegal goods, expanding the territory and scope of their criminal activity. Thanks to the criminal formations of illegal migrants, an uncontrolled market for goods and services is being created. Illegal migrants can act as disseminators of extremist religious and nationalist views, and individual special services can use individual migrants for their own purposes. In this regard, the Islamic State is seriously concerned about the possibility of successful integration of refugees

into Western life. This became apparent in September 2015, when the group released 14 videos in three days, warning the Muslim population not to emigrate to Dar al-Harb ("territory of war" or "territory of disbelief") and urging them to stay. and to join the "caliph." As Aaron Zelin notes, "the influx of migrants [to Europe] is a curse for ISIL that undermines the idea of a self-proclaimed caliphate as a refuge." As can be seen, broader migration policies can also help address social stability issues in various sectors of society in order to reduce the potential for ethnic or other conflicts. Improvements in these areas can contribute to improving security, improving the functioning of cross-border migration regimes, and facilitating the cross-border movement of people. Some of the measures implemented for this purpose can be technologically complex and highly innovative, but often this involves the development of traditional ways of managing migration flows. There is already a common understanding and belief in the world that, although an effective migration control policy will not prevent all acts of terrorism, it can still play a key role in combating this phenomenon. Finding the right balance between guaranteeing, protecting human rights and controlling migration is therefore a key challenge for all parties in their efforts to make international borders more secure and political processes sustainable.

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THE TAX POWERS OF LOCAL SELF-GOVERNMENT BODIES

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Abstract

The article reveals the legal nature of the tax powers of local governments. There is no consensus among domestic and foreign scholars on the nature and content of tax powers of local governments. Some scholars, considering them through the prism of the principle of financial independence of local government, advocate the unconditional expansion of the tax powers of local governments. Others, adhering to the concept of tax sovereignty of the state, emphasize their derivative nature. The problem is also caused by the constant, often divergent change in tax legislation on this issue.

It is substantiated that local taxes and fees have their own features related to the status of local governments and their powers in the field of taxation. This applies to the procedure for their establishment and introduction, budget allocation and mandatory implementation. The provisions of Article 143 of the Constitution of Ukraine on the right of local governments to establish local taxes and fees in accordance with the law must be considered in the context of other constitutional provisions relating to taxation. Collectively, these constitutional norms stipulate that a person will be obliged to pay a local tax or fee only if there are two legal grounds - a law and a decision of a local self-government body to establish it. That is, the procedure for establishing local taxes and fees consists of two stages - national and local. In the science of tax law, they are called definition and establishment. Such a procedure is a guarantee of protection of taxpayers' rights from excessive tax initiative of local governments.

It is established that the realization of the rights of citizens guaranteed by the Constitution should be ensured throughout the

country at the same level. Whatever the tax powers of local governments, in the absence of a sufficient economic basis, local taxes and fees are unable to ensure the appropriate level of implementation. Therefore, the financial independence of local governments should be understood as the availability of sufficient financial resources to perform their functions. The sources of these resources should be of secondary importance. Not necessarily it must be tax revenue. It is likely that a significant part of such resources can be formed from non-tax sources, including self-taxation, which has a completely different legal nature from taxes.

Key words: Local Self-Government, tax, tax powers, tax sovereignty, tax initiative.

Problem statement.

Local government with elements of self-government existed at all stages of society. Without a developed system of local self-government, it is difficult to imagine a modern democratic, social and legal state. An extremely large number of works by domestic and foreign scientists are devoted to the study of the nature, essence and competence of local self-government. But as noted by O.V. Batanov: "The whole science of self-government originates from an attempt to solve the problem of whether a community has separate, non-state power, whether it is an independent public law corporation, or firmly integrated into the state body and performs only the functions of a state body" [7, p. 12]. However, the representatives of both the first and the second approach agree that local self-government bodies are the closest to human form of public power, which is responsible for ensuring that citizens exercise most of their constitutional rights and freedoms.

Local government should be primarily concerned with local affairs, without attempting to take part in solving state affairs if they are not related to solving local problems. It is in the interaction of local governments with each other during the resolution of issues of local importance that the essence and properties of local government are revealed and realized. V.F. Pogorilko in a monographic study identifies several specific features of the components of this institute: first, if the central government is sovereign, supreme, capable of reforming itself, then local self-government is a bylaw that operates in the manner and

within the limits set by the supreme power, ie the law; secondly, it is the delimitation of the spheres of competence of the central and regional authorities and local self-government, ie the limitation of the range of matters entrusted to local self-government; thirdly, it is a space that has a certain integrity, is marked by administrative, geographical, economic, informational and other borders, the territorial basis of local self-government is formed by the village, town, city; fourth, local self-government appears in the system of organization of life of the population in the relevant territory, is a set of elected and other bodies and institutions of power; fifth, local self-government is organized and functions as a structure that takes into account historical, national, ethnic, cultural and other features, common features of the relevant territorial community; sixth, local self-government presupposes the unity of independence and responsibility in resolving all issues of local importance (economic, social, cultural and others); seventh, local self-government, independently deciding on issues of local importance, in its activities focuses primarily on the interests of the population of the territory; eighth, most issues in this area should be regulated by local acts - statutes of territorial communities, decisions taken through local referendums, acts of bodies and officials of local self-government; ninth, it is a complex organized object of social reality with common characteristics of systems [25; pp. 568-585].

It is clear that the effective implementation of such tasks requires an appropriate level of financial resources. Therefore, in the context of administrative reform and financial decentralization, the issue of financial independence of local self-government is becoming increasingly important. Financial independence is mostly understood as the provision of own sources of income, which are mostly identified with taxes and fees, the authority to establish which belongs to local self-governments. However, the current system of local taxes and fees is not able to ensure the financial independence of local governments, some local taxes and fees generally perform a decorative function. The solution to this problem is mostly seen in expanding the limits of tax powers of local governments, giving them the right to tax initiative. In order to determine whether this can ensure the financial independence

of local governments, it is necessary to first examine the nature of such powers.

Analysis of recent research and publications.

In the science of tax law there is no consensus on the nature and content of tax powers of local self-governments. Some scholars consider the tax powers of local self-governments through the prism of the principle of financial independence and advocate their unconditional expansion. Others adhere to the concept of tax sovereignty of the state and emphasize their derivative nature. The problem is also caused by the constant change of tax legislation on this issue. The study is based on theoretical developments of both domestic and foreign scholars on constitutional, administrative and financial law, in particular P.M. Godme, N.N. Zlobin, M.P. Kucheryavenko, A.Y. Ivansky, O.A. Muzyka-Stefanchuk, V.V. Pysmennyy, V.F. Pogorilko, V.I. Skorobogach and others.

The purpose of the article is to reveal the legal nature of the tax powers of local self-governments.

Presenting main material.

The tax and legal status of local self-government directly depends on its constitutional and legal status, as it ultimately determines the features and limits of the powers of territorial communities in the financial sphere. Regarding the latter, there are several scientific theories in the theory of municipal law [10; p. 177].

One of the theories is the theory of "natural rights of the community", which has more than two hundred years of history. The essence of this theory is based on the idea that the community as a self-governing territorial group is the same social entity as the state, and the community as a group of people living together in one territory, arose before the state. Therefore, the state cannot revoke the rights of the community, because they were not granted by the state.

In view of this, local self-government bodies have their own competence, are not subordinated to state power and are outside this power. Each territorial community has its own tasks, which it determines independently. The influence of the state on the activities

of the territorial community can be exercised only through legislation. But it cannot deprive it of its natural rights.

Another theory, the "state theory of local self-government," is based on diametrically opposed positions, as it is based on the assertion that local self-government bodies are public administration bodies and are created by state authorities to carry out its functions and tasks at the local level. According to this theory, local self-governments do not have natural original rights. Local self-government cannot be considered as an institution equivalent to the state. Local self-governments are subordinated to the state government as its agents on the ground. That is, the scope of functions and tasks that local self-governments have is completely determined by the state authorities [31; p. 57].

Next is the theory of "public self-government", or "economic self-government". This theory is a synthesis of the ideas of the previous two. It is based on the assertion that local self-governments have their own, natural, and therefore sovereign competence only in the field of non-political relations, ie in the field of public economic or local affairs, in which state power does not interfere, and which are decided independently by local self-governments. However, in the political sphere, local self-government bodies are not independent, as the sphere of political relations is entirely the prerogative of state power, and local self-government bodies are its agents at the local level. According to this theory, local self-governments have dual functions and tasks. In the sphere of political relations, the institution of local self-government is in the structure of state power, performs its tasks, and in matters of local economic and public affairs, it operates outside state power and is independent [19; p. 37].

The influence of one or another theory of local self-government in different countries has been going on for almost 200 years. In 1985, the European Charter of Local Self-Government was signed, which laid down general principles for the organization of local self-government, based on ideas close to the public-economic theory of local self-government.

The restoration of the institution of local self-government in Ukraine in the early 1990s as a bearer of local interests, the emergence of functions and tasks performed by local self-governments, have become objective factors in the process of reviving local finances in our

country. And Ukraine's accession in November 1996 to the European Charter, where local finances are formed as an independent component of the financial system of the state, made it possible to determine the importance of functions and tasks as autonomous managers of their territories and as assistants to the central government [13; p. 30]. At the same time, the issue of the powers of local self-government bodies and their nature remains controversial.

Powers are an element of competence and are related to the subjects of competence, as they determine the degree of possible and necessary behaviour of the subjects of competence in certain spheres of public life related to their competence. Thus, powers is the main legal means by which local self-governments and other entities perform local self-government functions.

It should be noted that the tasks and functions of local self-governments can be divided into two main groups:

- tasks and functions that are the competence of local self-governments;

- tasks and functions entrusted to local authorities by the central government or delegated powers [22; p. 71-84].

As noted by P.M. Lyubchenko, the problem of legislative definition of the competence of local self-government includes two aspects: 1) separation of powers between state executive bodies and local self-government bodies; 2) definition of own and delegated powers [23; p. 123].

If we consider the first aspect of the problem, we can say that the state should not take on the solution of those issues that, firstly, arise from the collective needs of villagers, towns, cities, ie directly related to their interests and, secondly, can successfully decide independently by territorial communities and their elected bodies [9; p. 65]. Even those issues in which the interest of the state is clearly represented should be resolved by the bodies closest to the population, ie self-government bodies. This is due to the fact that decentralized decision-making, as stated in the European Charter of Local Self-Government, reduces the congestion of the center, as well as improves and accelerates government action. At the same time, it is an important requirement of the principle of subsidiarity as one of the main in the functional model of the organization of municipal government on the European model.

The term “own powers” was introduced by the Law of Ukraine “On Local Self-Government in Ukraine” to define the sphere of competence of local self-government, within which “local self-government bodies are endowed with full freedom of action to carry out their own initiatives on any issue that is not excluded from its competence and is not referred to the competence of another authority”. Thus, one's own powers are those that are recognized by the state as such and enshrined in law. This group includes: out-of-school education, local fire protection, transport, road management, veterinary care, local social protection and social security programs, housing and communal services and improvement of settlements, cultural and artistic programs of local significance, environmental protection programs of local significance, management of communal property, regulation of land relations, garbage collection and disposal, local debt service and other expenses.

Delegation has a long history, dating back to Roman private law, to the contrary requirement of the basic agency agreement: powers conferred on an agent cannot be delegated to a third party, as this is contrary to the purposes for which the principal was granted. Delegation of powers of executive bodies to local self-government bodies is well known to the European practice of state-building, as evidenced by Article 4 of the European Charter of Local Self-Government. This practice does not violate the autonomy of local self-government within its own powers and at the same time is one of the most important forms of saving financial and human resources, as it eliminates the need to create more local executive bodies along with local governments. The institute of delegation of powers to local self-government bodies has a constitutional basis in Ukraine, as it is provided for in Article 143 of the Basic Law.

From a theoretical point of view, there are several forms of empowerment to local self-governments:

- establishment - such a method of regulation, when the legislature in the Constitution and laws determines the competence of local self-governments;

- transfer - a form of regulation of powers, when any power of one body is excluded from its competence and included in the competence of another body;

- delegation - granting the state body the right to resolve issues once, for a while or indefinitely [18; p. 42].

Delegation must be distinguished from transfer. Upon transfer, the relevant authority shall be removed from the competence of one body and included in the competence of another. In turn, delegation is the granting of the right to resolve an issue to another body without significant interference in its resolution. Delegation of powers is a bilateral imperative legal relationship in which one body has its own competence defined by regulations, and the other - the appropriate capacity to receive and exercise these powers, and the competence of the first body is the source of competence of the second body.

After receiving the delegated powers, local self-government bodies become under control in terms of their implementation to the bodies that granted them. For example, upon receiving delegated powers, local self-government bodies become under the control of local executive bodies in terms of their implementation. And given that there are more delegated powers in local self-governments than their own, it can be concluded that the government through the institution of delegated powers has significant control over local self-governments. Therefore, we can fully agree with the statement that local self-governments are under strong control by the state executive [33; p. 234].

The list of entrusted rights or delegated powers is determined by the central government. It is established in the legislative act. The Budget Code of Ukraine defines the powers of local self-governments to make expenditures from local budgets, but does not single out the functional powers of local self-governments.

Local taxes and fees are an integral part of the system of taxes and fees of Ukraine, they are subject to its general principles and characteristics. However, these payments also have their own characteristics related to the status of local self-governments and their powers in the field of taxation. This applies to: the procedure for setting local taxes; the order of their introduction; the procedure for sending to the budget; mandatory implementation [6, p. 112-113].

According to Part 2 of Article 92 of the Constitution of Ukraine, taxes are established exclusively by the laws of Ukraine. Regardless of whether the tax is national or local, its establishment is carried out by adopting the relevant law of Ukraine. Article 67 of the Constitution of

Ukraine stipulates that everyone is obliged to pay taxes and fees in the manner and amounts established by law. This means that local taxes and fees are set by law and that no one is required to pay local taxes and fees not set by law. On the other hand, Article 143 of the Constitution of Ukraine stipulates that territorial communities of villages, settlements, cities directly or through the local self-government bodies formed by them... establish local taxes and fees in accordance with the law. This, in turn, means that the establishment of local taxes and fees by law does not mean their automatic collection on the territory of a particular territorial community. This requires a decision of the territorial community or the local self-government body formed by it. Collectively, these constitutional norms stipulate that a person will be obliged to pay a local tax or fee only if there are two legal grounds - the law and the decision of the territorial community (local self-government) to establish it. That is, the procedure for establishing local taxes and fees consists of two stages - national and local. In the science of tax law, they are called - definition and establishment [17, p. 8].

At the first stage, the state determines an exhaustive list of such taxes, the necessary elements of their legal structure, empowering local self-governments to introduce them on its territory. In the second stage, local self-governments exercise the powers granted by the state, establishing and regulating in detail the mechanisms for collecting each of the taxes and fees separately, as well as putting them into effect. According to M.P. Kucheryavenko, such provision provides protection of local budgets from unreasonable and unlimited pressure from above (the state) [29, p. 242].

As noted by V.I. Skorobogach, "according to the domestic tax legislation, the implementation of the first part of the process of establishing any tax payments - normative determination of their list and consolidation of legal mechanisms for each of them - is entrusted exclusively to the Verkhovna Rada of Ukraine. The latter, as one of the most important state authorities, only by the fact of legislative consolidation of legal mechanisms of all local taxes and fees allows to remove the question of the implementation of the mechanism of various taxes in the development of the tax system of Ukraine [32, p. 40]. According to paragraph 12.1 of Article 12 of the Tax Code of Ukraine,

the powers of the Verkhovna Rada of Ukraine as the sole legislative body of state power in Ukraine include the definition of: a) a list of national taxes and fees; b) a list of local taxes and fees; c) obligatory and optional elements of tax mechanisms of national taxes and fees; d) mandatory and optional elements of tax mechanisms of local taxes and fees. In this context, the commentary of M.P. Kucheryavenko continues to be relevant, who in his fundamental work "Course of Tax Law" noted that currently the use of local taxes and fees is regulated in detail by the Verkhovna Rada of Ukraine with, in fact, the imaginary freedom of local authorities [21, p. 123-124]. Sometimes this situation led to the direct replacement of local self-government bodies by the Verkhovna Rada of Ukraine, when the latter were excluded from the process of establishing local taxes and fees on their territory. We are talking about 2015-2016, when the tax legislation allowed the possibility of collecting transport tax and real estate tax other than land, in the absence of a decision of the local council directly on the basis of the Tax Code of Ukraine. Of course, the constitutionality of such provisions was questionable and gave rise to mass appeals against tax notices-decisions on the accrued these two local taxes. For example, an analysis of the Register of Judgments shows that in the courts of first instance taxpayers appealed notices of accrued transport tax in about 40% of cases, and in the courts of appeal about 50-60% of such claims were upheld [1, p. 80]. However, the fact that the constitutional and tax legislation provide for the exercise by local self-governments of tax powers within the limits narrowly defined by the Verkhovna Rada of Ukraine is an undoubted fact.

According to paragraphs 12.3 and 12.4. Article 12 of the Tax Code of Ukraine, the powers of village, town, city councils and councils of united territorial communities, established in accordance with the law and the long-term plan for the formation of community territories, on taxes and fees include:

- decision-making on the establishment of local taxes and fees and tax benefits for the payment of local taxes and fees before July 15 of the year preceding the budget period in which it is planned to apply local taxes and / or fees, and amendments to such decisions;

- setting rates of local taxes and fees within the rates specified by this Code;

- determination of the list of tax agents in accordance with Article 268 of this Code;

- decision-making on the establishment of local taxes and fees, change in their rates, object of taxation, procedure for collection or provision of tax benefits, which entails a change in tax liabilities of taxpayers and which takes effect from the beginning of the budget period.

This small list legally limits the tax powers of local self-governments. However, given that part of the local taxes and fees are mandatory for local self-governments, and the single tax rates for group III and IV taxpayers are determined by the Tax Code, the actual tax powers are even smaller. Analyzing the municipal legislation, A.Y. Ivansky concludes that local self-governments are deprived of the opportunity to create competent bodies for financial control over the activities of individuals and legal entities - payers of local taxes and fees. The mayor is effectively deprived of any authority to protect the financial rights and interests of the community at the stage of budget execution, except for filing lawsuits against controlled entities - utilities and other entities, the founders of which are local self-governments. At the same time, the application of financial sanctions to them for offenses in the field of financial activities is not provided by law, ie it is not possible [14, p. 205-206]. However, it should be noted that the current practice of foreign countries shows the low efficiency of local tax authorities in the case of their creation for the administration of local taxes and fees [2]. Relevant state bodies are successfully coping with this function. Therefore, the arguments for empowering local self-governments to establish local tax authorities are not convincing. According to O.A. Muzyka-Stefanchuk, the concept of legal regulation of interaction between public authorities and local self-governments in the budget and financial sphere is based on the principle of unity of the budget system, as well as the constitutional principle of unity of economic space, the principle of unity of budget and tax policy [30, p. 61].

This tendency to centralize powers in the tax sphere is related to the concept of state sovereignty. E.I. Kozlova and O.E. Kutafin notes that "the sovereignty of the state is the property of the state absolutely and independently of the power of other states to perform its functions

on its own territory and abroad, in international communication" [16, p. 140]. Signs of sovereignty are: the supremacy, unity and independence of state power. The founder of this concept, Thomas Hobbes, among the properties of state sovereignty also pointed to the exclusive right of the state to impose taxes [3, p. 92-93]. This position later became decisive in financial and legal science and legislation. For example, P.M. Godme notes that "tax is a manifestation of state sovereignty... The right to collect taxes has always been part of sovereign rights, as well as coinage and justice" [11, p. 371]. M.O. Perepelytsya emphasizes that the right of the state to establish, collection and recovery of taxes is sovereign and cannot belong to anyone else [27, p. 13]. According to N.N. Zlobina, this is the essence of the state as a special subject of public law [12, p. 217]. In turn, I.I. Kucherov points out that the "right to impose and introduce taxes and fees is inherently part of state sovereignty, which can be defined as sovereignty in the field of taxation (tax sovereignty). This right is derived from the will of the people, which is usually enshrined in the establishment of the constitutional obligation to pay taxes and fees" [20, p. 190].

According to some researchers of local taxes, the concept of tax sovereignty of the state for Ukraine today is not relevant, because our state is unitary and recognizes and guarantees local self-government, so the real powers of local self-governments in the field of local finance should be expanded [32, p. 69-72]. V.V. Pysmennyy sees such an expansion in empowering local self-governments with the right of tax initiative. The scientist writes: “Following the example of foreign experience, local councils in Ukraine need to be given much more tax powers and enshrined in law. In particular, we are talking about the possibility of introducing their own tax payments" [24, p. 40].

However, world experience shows that the concept of tax sovereignty does not depend on the political regime and form of government, and democratic unitary states, including our neighbour’s, which have already successfully passed the stage of financial decentralization, also provide a derivative nature of local self-government tax powers. For example, in Poland, the potential to have tax powers is limited solely by community level. Neither of the two higher levels - county or voivodeship - has any tax powers. And even at

the municipal level, tax autonomy is limited. The list of local taxes, their minimum and maximum rates are set by parliament, so the powers of local self-governments are limited only by the choice of a particular tax rate [5, p. 38].

In our opinion, the issue of limited tax powers of local self-governments should be considered not only from the standpoint of financial independence of local self-governments and their ability to provide themselves with financial resources necessary for the exercise of powers, but also from the other side of the tax relationship - the taxpayer. A tax is primarily a restriction on the right of private property, which is the obligation to transfer part of it from a private to a public entity. The inviolability of the right to private property and the payment of taxes are among the rights and basic responsibilities of citizens, so based on Article 92 of the Constitution of Ukraine, they should be determined exclusively by the laws of Ukraine. Analysing the provisions of Article 92 of the Constitution of Ukraine, P.S. Patsurkivsky emphasizes: "This form of fixing the tax is the basis for the observance of the rights and freedoms of taxpayers" [26, p. 14]. Returning to the right of tax initiative in local self-governments, ie in the period before the entry into force of the Constitution of Ukraine, would mean a return to the era of tax arbitrariness of local self-governments, when to fill the local budget local self-governments, despite the Law of Ukraine "On Taxation" and the Decree of the Cabinet of Ministers of Ukraine "On local taxes and fees", tried to impose local taxes and fees on almost everything: from owners of dogs that are without a leash and ending with the temporary stay of foreign nationals in the city [15, p. 226].

When building a system of local taxes and fees, it should be borne in mind that the filling of the tax system of each country with one or another type of tax depends on various factors: from socio-economic to geographical and historical. The combination of these factors makes each territorial community unique. This should be taken into account when establishing a local tax system. It is no coincidence that in many countries the list of local taxes reaches one hundred or more. Of course, this does not mean that all the taxes on this list apply in every territorial community. Only those that have subject to taxation in the community are applicable. It is the presence of such a large list that allows you to take into account the characteristics of each territorial community and

create an effective system of local taxes for each community. As a rule, part of the local taxes in this system is universal and applies in all communities without exception (the object of taxation of such taxes is what is available in any community without exception, such as real estate). The rest is applied by the decision of local self-governments in the presence of the object of taxation of such taxes. For example, a tourist tax or a fee for the use of local symbols. In principle, such an approach is provided in the tax legislation of Ukraine, where the Tax Code divides local taxes into mandatory (without exception, should be introduced in each territorial community) and optional (the introduction of which is at the discretion of local self-governments). However, the small list of local taxes and fees provided by the Tax Code of Ukraine (5 in total) does not allow to take into account the specifics of each territorial community and create an optimal model of local taxes and fees at the territorial community level.

In addition, it should be borne in mind that local taxes and fees are mostly considered by scholars and residents of local communities as a kind of payment for benefits provided by local self-governments [28; p. 20]. As noted by T.G. Bodnaruk, local taxes and fees are needed to enable local self-governments to provide services that are associated with the level of funds paid. Funds raised on the ground are used more efficiently than allocated by the central government [8]. This interpretation of their essence is closely related to the realities of the practice of "voting with your feet" (motivation to move to a particular jurisdiction), resulting in a rational redistribution of public services at the local level. Therefore, when reforming local taxes and fees in order to strengthen their fiscal importance, emphasis should be placed not only on the inclusion of some national taxes (as was the case with land fees), but also on expanding the list and share of local taxes, which are fees for certain local services and demonstrate the activities of local authorities. Such reform of local fees should provide for the targeted use of funds received, which will make the expenditure part of the local budget transparent and thus increase the level of tax culture. Unfortunately, the local fees provided for in the Tax Code of Ukraine are general in nature and are not used to improve the services for which they are paid. The potential for expanding the list of local fees is shown by the practice of EU member states, where fees for cleaning and

lighting of streets, garbage collection, landscaping of parks, recreation areas, cemeteries and others are widespread at the local level. For example, local garbage collection fees apply in all European countries except Sweden and the Netherlands. In the Republic of Poland, the Czech Republic and the Slovak Republic, the procedure for its implementation and the elements of the legal structure are determined at the national and local levels: by relevant laws and decisions of local self-governments. According to the Czech scientist M. Radvan, the charges on communal waste are local taxes according to the definition that the local tax is a financial levy, determined to municipal budget that can be influenced (talking about tax base, tax rates or one of the correction elements) by the municipality; it is not crucial whether the taxpayer obtains from the municipality any consideration or if it is a regular or a single levy – local taxes include both the tax sensu stricto and the charge [4; p. 513]. For both Polish and Slovak municipalities, the charges on communal waste are obligatory, i.e. municipalities do not have any discretion to decide whether they want to collect this charge or not, they must collect the charge and in the bylaws they have to set special conditions, especially the charge rates. This practice was confirmed even by the decision of the Polish Constitutional Court [4; p. 514].

Conclusions.

The exercise of the constitutionally guaranteed rights of citizens (to education, health care, social protection…) must be ensured at the same level throughout the country. Whatever the tax powers of local self-governments, in the absence of a sufficient economic basis, local taxes and fees are unable to ensure the appropriate level of implementation. The tax powers of local self-governments are delegated. Due to the principles of unity of the tax system and the unity of the economic space of Ukraine, the limits of competence of representative local governments in the field of taxation are limited to such actions as a choice from the statutory list of local taxes and fees of a specific tax or fee, development and specification of the content of clearly defined elements of the legal structure of the selected local tax or fee, as well as the implementation of the process of making the relevant decision on the introduction of this local tax or fee in force in

its jurisdiction. There can be no question of endowment of local self-government bodies with the right of "tax initiative". Violation of the constitutional principle of separation of powers in the tax sphere by the central government and non-compliance with the procedure for introducing local taxes and fees have repeatedly served as a basis for judicial appeal of tax notices-decisions by taxpayers. Therefore, the financial independence of local self-governments should be understood as the availability of sufficient financial resources to perform their functions. The sources of these resources should be of secondary importance. These do not have to be tax revenues. It is likely that a significant part of such resources can be generated from non-tax sources in the form of fees for special services, or intergovernmental transfers in general. The institution of self-taxation of the population, which has a completely different legal nature from local taxes, may be promising in this regard.

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