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Circumstances to be proved in the investigation of violations of the laws or customs of war

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■ **Abstract**. Investigating violations of the laws and customs of war is a relatively new area of activity for law enforcement agencies in Ukraine. Although some experience of such investigations has existed since 2014, the international armed conflict that began on February 24, 2022, identified almost all forms (methods) of violation of the laws and customs of war, which requires a comprehensive analysis and correct understanding of the rules of international humanitarian law that define the rules for participants in armed conflict. The purpose of the research is to define some circumstances to be proved in the course of the investigation of violations of the laws and customs of war and to disclose their content with due regard for the rules of international humanitarian law which determine the specifics of the object of proof in such criminal proceedings. The research employs philosophical (dialectical and hermeneutical), general scientific (systemic, historical, functional), and special scientific (comparative jurisprudence, technical-legal, and interpretation of legal provisions) methods of cognition. The work is based on the provisions of the treaty and customary law of armed conflict, the practice of its application at the national and international level, national law providing for liability for violation of the laws and customs of war, the procedural procedure for investigating criminal offences, and forensic recommendations for investigating particular types of crimes. Based on the results of the research, the author develops several circumstances to be proved in the course of investigation of the laws and customs of war as separate but related to other elements of the object of proof, namely: lawful combatants, combatant's immunity; territorial and time limits of international humanitarian law; legitimate purpose, military necessity. Their content, evidentiary value, and relationship are covered

■ **Keywords**: pre-trial investigation, international humanitarian law; evidence; combatant; legitimate purpose; military necessity

■ Introduction

The specific feature of the investigation of violations of the laws and customs of war is the necessity to apply the rules of international humanitarian law (IHL), which contains several restrictions and prohibitions on the methods and means of warfare to minimise the devastating effects of armed conflict, protect civilians, infrastructure, cultural heritage, dangerous objects, etc. Thus, the object of proof in such criminal proceedings should be determined according to the general theoretical and legal requirements for its construction, with the identification and specification of elements that cover the essence and content of acts considered by international and national law to be violations of the laws and customs of war. It will allow for avoiding mistakes in criminal legal qualification, initiation of criminal proceedings against persons who are not subject to criminal liability for participation in hostilities and other shortcomings, in particular, loss of evidentiary information or incomplete/incorrect recording, interpretation and processing.

The development of a high-quality evidence base in the investigation of violations of the laws and

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customs of war is important both for national practice and for international mechanisms for bringing perpetrators of such crimes to justice. Therefore, it is important to develop scientifically based proposals for investigating violations of the laws and customs of war, namely, to identify and specify the circumstances to be proved. The scientific originality of the work is based on the fact that this issue has not previously been the object of a separate study, and on using an integrated approach that includes consideration and combination of provisions of various branches of knowledge – international law, criminal law, criminal procedure, and forensics, which ensures the comprehensiveness and completeness of the scientific research.

Particular issues of interpretation and application of IHL have been explored by Ukrainian and foreign scholars [1-3]. Referring to some of the results allows for improving the understanding of the terminology and clarifying the specifics of IHL application to particular legal situations.

For example, research on the jurisdiction of the Nuremberg Tribunal, which paved the way for the jurisdiction of national and international courts over crimes under international law, while prompting the evolution of the relevant law on immunity from jurisdiction [1], covers the specific features of international responsibility for war crimes, including violations of the laws and customs of war. Security issues during hostilities, in particular, and the restriction of actions of participants in a military conflict using IHL [2-4] are relevant for determining the limits of application of IHL when defining the object of proof under national law. The analysis of the signs of terrorism in the context of military conflicts [5; 6] allows for distinguishing acts of terrorism from violations of the laws and customs of war and affects the determination of the legal status of participants in a military conflict. Determining the scope of human rights during a military conflict [7-9] affects the legitimacy of restrictions allowed by international and national law in such cases. The issues of harmonisation of domestic legislation and IHL [10-12] are relevant to ensure the same or close understanding of IHL as the legal basis for the regulation of armed conflicts.

Concerning the investigation of violations of the laws and customs of war in Ukraine, some issues of qualification and evidence in criminal proceedings on violations of the laws and customs of war and related issues have been explored in the works of domestic authors: A. Melnychuk and S. Melnychuk cover general approaches to the qualification and investigation of violations of the laws and customs of war [13], A. Shulzhenko emphasises the conduct of expert research in the investigation of the laws and customs of war [14], K. Savchuk explores the historiography of research in this area [15], I. Glowyuk and H. Teteryatnik address the issue of the contextual element in the object of proof in war crimes proceedings [16]. Other issues of liability for war crimes are explored by: O. Kaplina & O. Leyba [17] in light of the problems of legal regulation and functioning of military justice; O. Kaluzhna & K. Shunevych [18] on the mechanisms of responsibility for war crimes committed as a result of russia's invasion of Ukraine in February 2022; O. Khotynska-Nor & N. Bakaianova [19] on the transformation of the advocacy in wartime; O. Uhrynovska & A. Vitskar [20] on the administration of justice during military aggression against Ukraine; A. Antonyuk [21] on the criminal law assessment of collaborationism.

The significant contribution of these and other scholars who have devoted their work to the interpretation, application, and enforcement of IHL, its implementation and its impact on national law, provides the foundation for new research, which is primarily motivated by the demands of law enforcement.

The purpose of the research is to define some circumstances to be proved in the course of the investigation of violations of the laws and customs of war and to disclose their content with due regard for the rules of IHL which determine the specifics of the object of proof in such criminal proceedings.

Materials and Methods

The methodological tools of the research are a combination of philosophical, general scientific and special scientific methods of cognition, which allowed obtaining new knowledge about the specifics of proof in the investigation of violations of the law and customs of war, considering the provisions of IHL.

Philosophical methods guided the research in general. The dialectical method allowed the development of a general idea of the structure, functions, connections, and development of the legal phenomena and processes under study. Thus, the author identifies the connections of national law with international law and other social, political, and economic phenomena, and the impact on the areas, forms, and results of its development. The hermeneutic method is applied to clarify the essence and interpretation of the content of IHL provisions containing vague, ambiguous wording and their interpretation, considering the legal positions of international courts and scientific research.

General scientific methods, as the foundation of any scientific knowledge, include: a systematic method used to determine the individual elements of the object of proof in its general system (internal connection), their connection with other components of this system and the tasks of criminal proceedings in general (external connection). The historical method allowed for clarifying the preconditions for the emergence, causes and areas of development of IHL. The functional method is used to develop an idea of the

relationship, interaction and development of different systems of law in the context of the subject of the research.

Specialised scientific methods are designed to understand the specifics of the phenomena and processes under study. The method of comparative jurisprudence (comparativistics) is used to explore the system and provisions of IHL to identify its general characteristics and features; the technical and legal method and the method of interpretation of legal provisions are designed to define specific concepts (combatant, legitimate aim, military necessity, etc.) and their content, and to determine the legal significance for law enforcement, including evidence.

■ Results and Discussion

Evidence, as the foundation of any investigation, always involves consideration of the specifics of a criminal offence, the circumstances of its commission, and, in the case of violation of the laws and customs of war, the application of IHL, which affects the development of all components of the object of proof. From this standpoint, some circumstances to be proved in criminal proceedings on violation of the laws and customs of war are defined. In addition to the above, the circumstances to be proved during the investigation of the laws and customs of war are covered in other publications of the author [22].

The proposed recommendations can be applied in the practice of investigating violations of the laws and customs of war and other criminal offences, in the investigation of which they can have evidentiary value. The list of circumstances to be proved is not exhaustive; it can be supplemented with other circumstances according to the specifics of a particular proceeding.

Lawful combatants. Combatant immunity. IHL defines rules and restrictions for parties to an armed conflict, including the protection of civilians (general prohibition of attack, avoidance and prevention of excessive impact of hostilities, and taking security measures, etc.), restrictions on means and methods of warfare, rules for the treatment of prisoners of war, the legal status of combatants, etc.

Establishing the status of a person is important for determining their legal position, which can affect their criminal liability, the correct qualification of their actions, and the necessity to comply with special requirements due to their status (e.g., prisoner of war). It concerns the violation of the laws and customs of war and is relevant to other crimes.

Although IHL does not define the concept of "lawful combatant", but only "combatant", this research uses it to specify the status of persons who take or have taken part in hostilities, the scope and content of their immunity, the extension of some legal provisions, guarantees, and related legal situations.

The main and defining feature of a legal combatant is their right to participate in hostilities, to perform these actions, and to support them. Accordingly, an unlawful combatant [23] is a person who does not have such a right but performs these actions despite their current status.

Thus, an unlawful combatant should be distinguished from a non-combatant, which is generally considered to be a civilian protected by IHL, and persons not participating in hostilities but belonging to the armed forces.

Thus, the immunity of civilians (from attack) and the immunity of combatants (from criminal prosecution) provided for in IHL vary substantially depending on the status of these persons.

The status of a person during a military conflict is not necessarily permanent, it can change depending on the circumstances, thus, it is important to establish the status of a person before the offence, at the time of its commission and afterwards. It is important from the standpoint of the possibility of bringing a person to criminal liability, proper qualification and proof of a criminal offence.

Notably, the loss of civilian protection as a result of incompatible actions still implies the necessity to minimise the danger during an attack. For example, if civilians physically, without using weapons, obstruct the actions of the enemy military that are essential to a military operation, such civilians can lose the protection of IHL as civilians, but the military, in overcoming the obstacles created, must take precautionary and proportionate measures to avoid excessive harm. In this situation, if the military uses lethal force or other disproportionate force and measures against unarmed civilians who have lost this status as a result of actions incompatible with their status, these actions of the military will constitute a violation of IHL, and thus a loss of the combatant's immunity from criminal prosecution for participation in hostilities.

According to the Protocol Additional to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I), of June 8, 1977 (Article 43, paragraph 2) [24], and the Geneva Convention relative to the Treatment of Prisoners of War [25] (Article 4A, paragraphs 1, 2, 3, 6), lawful combatants have the right to participate in hostilities and not be prosecuted for it, if they have not committed crimes.

According to the content of these documents [24; 25], it is proposed to distinguish a system of features that should be considered in conjunction with the determination of the presence/absence of a person's status as a legal combatant. These features include:

– the presence of a military conflict;

– belonging to the armed forces, which, according to IHL, include both military personnel and other

persons, such as irregulars, who may participate in hostilities;

– he presence of a command responsible for the behaviour of its subordinates;

– compliance with the requirements for identification as a participant in hostilities;

– the obligation to comply with IHL.

Thus, a person's service in the armed forces and participation in hostilities, unless they have violated the laws and customs of war (or other crimes), is not an independent ground for prosecution.

The provisions on detention within criminal proceedings, application of preventive measures, etc. do not apply to combatants who are not held criminally liable. The apprehension and detention of prisoners of war are regulated by other legal provisions.

The capture and detention of a person in captivity (temporary restriction of liberty) are not intended to bring them to criminal liability or to ensure criminal proceedings but are implemented to prevent their further participation in hostilities. Therewith, holding a person as a prisoner of war does not mean that it is impossible to bring them to criminal liability based solely on their status as such.

The territorial and temporal limits of IHL as a component of the object of proof are related to others – the setting of the violation of the laws and customs of war, the connection of a person's actions with the conditions of military conflict [22]. It allows concluding that IHL applies throughout the territory of states involved in armed conflict and covers all situations related to this conflict. Thus, these are not necessarily exclusively the territories where hostilities are conducted, but all the territories of the countries at war, they can be territories where no hostilities are conducted, occupied territories. All parties to an armed conflict are obliged to comply with IHL.

It should be noted that IHL technically applies until the end of the armed conflict (except for the obligation to disseminate knowledge of IHL, which is implemented in peacetime). But this does not mean that the conclusion of peace and the end of the occupation are absolute conditions for the termination of IHL. The criterion for such termination is all the grounds on which IHL no longer applies. However, IHL does not cease to apply to the consequences resulting from a military conflict and requires the application of relevant rules, for example, about persons who remained detained in connection with a military conflict after its end, if the occupation regime remains, etc.

Thus, proof implies the necessity to determine whether a criminal offence was committed while IHL was in force on a certain territory, the status of this territory (relevant for determining the method), and if the military conflict has ceased, what consequences are governed by IHL.

Evidently, it is not always possible to accurately define when a conflict is over, particularly in cases where there is no surrender or official declaration of the end of the war. Thus, this issue should be based on the real situation and the position of the state party to the conflict and international bodies (e.g., the UN) on the situation, namely, the assessment of the state of military conflict. It can only be said unequivocally that the cessation of hostilities does not always mean the end of the conflict, thus, this circumstance should be considered only in conjunction with others.

Concerning occupation, the International Committee of the Red Cross and Red Crescent has defined the following three conditions that must be present in a situation for a regime of occupation to arise under IHL:

1. The physical presence of the armed forces of a state on a foreign territory without obtaining the consent of the local authorities in power at the time of the invasion.

2. The existing local authorities that were exercising their powers during the invasion have been or can be deprived of the opportunity to exercise their powers, to a large extent or in full, due to the presence of foreign forces that were not consented to.

3. Foreign forces can exercise authority over the relevant territory (or part thereof) instead of local authorities [26].

Taken together, these conditions constitute the so-called effective control test, which is used to determine whether a situation can qualify as an occupation for IHL [26].

These provisions can be used as a foundation for establishing the fact of occupation, with the specification of the actual circumstances in each case.

In addition, it is important to emphasise that IHL provisions are general and comprehensive, applying to all parties to an armed conflict, and require measures to ensure that the other party complies with them.

A legitimate purpose. Military necessity. An analysis of the provisions of IHL demonstrated that attacks on objects that are not legitimate targets are generally prohibited. The author believes that a legitimate purpose – is a category that can undergo transformations considering various factors of a particular situation, and, above all, the connection with military actions, operations, and requirements.

A correct understanding of these concepts is important for establishing the circumstances of the offence and whether it contains signs of violation of the laws and customs of war. As the author has already noted, IHL contains several prohibitions, restrictions, and obligations relating to various actions and measures related to military conflict. These include the distinction between civilians and combatants, military objectives, objects related to military operations and civilian objects as possible targets of

attack. The distinction between civilian and military objects is based on the principle that civilian objects are all objects that are not military. Doubt as to whether an object belonging to the military is interpreted in favour of that object, i.e. it is considered civilian.

Part 2 of Article 52 of Protocol I [24] states that attacks must be strictly limited to objects. Evidently, this refers to material items (objects). The characteristics of military objectives include their nature, location, purpose or use, which constitute an effective contribution to military operations. Therewith, when determining whether they are the object of attack, it matters whether there will be a clear military advantage if the attack results in partial or complete destruction, capture or neutralisation of a military objective (Article 52 of Protocol I) [24].

Thus, a military facility must comply with these criteria in aggregate and at a specific point in time. Effective contribution to military operations and military superiority should be determined specifically by the current situation. It corresponds to the regulatory statements, namely: "under the circumstances as they currently exist", "make an effective contribution" "provide a clear military advantage", and "object in use", i.e., referring to the present, not to events and circumstances in the future.

A broad interpretation of these circumstances will establish artificial and unlimited grounds for determining virtually any object as a military and therefore legitimate target, which will negate the protection of IHL as such. Thus, if the ultimate purpose of armed aggression – gaining political advantage – is applied to any military action, then from this perspective, almost all such actions will be justified.

As stated by the author, the distinction between civilians and combatants is made according to the definition of these persons contained in IHL, the main criterion being participation in hostilities (use of weapons, attacks (but not self-defence), destruction of property related to hostilities), and the principle that if there is doubt as to whether a person is a civilian or a combatant, such person is considered a civilian.

The possibility of an attack on legitimate targets does not preclude the obligation to take security measures to reduce the consequences of the attack or prevent it (Article 57 of Protocol 1) [24].

Thus, the necessity of gaining military advantage as the purpose of an attack does not justify unnecessary, excessive risks, losses, and destruction, especially those not related to neutralising or weakening the enemy. Military necessity cannot justify a violation of the principle of proportionality.

Proportionality is assessed on a case-by-case basis, in particular, considering the following circumstances: what measures were taken to determine whether the target was legitimate; whether there was a military necessity for the attack; the location of the target; whether the weapons used comply with the requirements of selective action and are proportionate to the characteristics of the target; and whether sufficient measures were taken to prevent excessive impact.

Thus, destruction, extermination, killing as an end in itself, without military necessity and not for legitimate purposes, constitutes a violation of the laws and customs of war or another crime, depending on the circumstances and the connection of these actions with the military conflict.

The party under attack has the obligation to protect civilians and limit the consequences of the attack – to ensure, as far as possible, that military objectives are located away from densely populated areas, to prohibit using civilian participation in military operations and related activities, etc.

Military necessity should not be considered as a generally permissible derogation from the obligation to comply with IHL, but rather should be determined on a case-by-case basis, based on objective circumstances, and tested against the requirements and indicia established by IHL. The essence and purpose of IHL, which is to reduce the consequences of armed conflict, determine its content, which mainly consists of restrictions and prohibitions and some provisions relating to specific rights. Thus, in proving the presence/absence of military necessity, it is necessary to proceed from the general prohibition of undue influence and then determine whether particular actions comply with the signs of military necessity as defined in IHL.

The conducted research, which had the purpose of identifying some circumstances to be proved during the investigation of violations of the laws and customs of war, in addition to its main purpose for use in law enforcement practice, contributes to the expansion and deepening of scientific and practical knowledge about the content of IHL [2; 4; 10], the specific features of their interpretation, interpretation and application in modern conditions, namely, during the tasks of investigating violations of the laws and customs of war and/or other crimes connected with military conflict (if the law enforcement officer sees such a necessity).

Development of the circumstances to be proved in the course of investigation of violations of the laws and customs of war is based on the scientific works [12-14] associated with the subject of research and reflecting the current situation of military conflict, its impact on various legal relations and procedural situations in criminal proceedings which arise, develop and terminate during and in connection with military conflict. This ensures the comprehensiveness and completeness of the research and its connection with doctrine and practice at various levels.

Thus, the criminal legal qualification and concept of war crimes, in particular violations of the laws and customs of war, determine the area and applied

tasks of pre-trial investigation in relevant criminal proceedings and provide the foundation for the list of circumstances to be proved. As noted by A.I. Melnychuk & S.M. Melnychuk, war crimes are serious violations of international humanitarian law (principles, provisions, rules, laws and customs of war in force during hostilities and applicable to the parties to the conflict); violation of prohibitions contained both in the treaty and customary law, which does not assess the legitimacy of armed conflict, can be equally applied to both the aggressor and the victim. As their main vocation is to limit the warring parties to violence that exceeds the amount necessary to weaken the enemy's military power and against those who are not involved or have ceased to participate in the conflict [13, p. 72]. This definition mentions all the main elements that are relevant to evidence in criminal proceedings for violations of the laws or customs of war and to which special attention is paid, primarily the content and purpose of IHL, its impact on qualification and investigation, and the subjects to whom IHL applies. In addition, the author separately defines the temporal and territorial limits of IHL as part of the object of proof.

The forensic approach [14] provides scientific and practical recommendations for determining the elements of the forensic characterisation of violations of the laws and customs of war, the purpose of which, among other things, can be seen as detailing, and specifying the circumstances to be proved in such criminal proceedings, and the specifics of investigative (search) and other procedural actions. According to the author, determining the circumstances to be proved in the course of investigating violations of the laws and customs of war requires a combination of forensic and criminal procedure approaches, which was performed in the framework of the research.

Notably, the problems of investigating violations of the laws and customs of war that have arisen since the beginning of the armed aggression against Ukraine in February 2022 have sparked a wide discussion among scholars and practitioners on various issues [15; 16]. It appears that it was conditioned upon the lack of experience in such activities, the specifics of the situation and legal regulation during the military conflict. One such controversial issue of particular interest according to the research subject is the contextual element in the object of proof in war crimes proceedings [16]. In the author's opinion, one should agree with the position of I.V. Glowyuk & H.K. Teteryatnik on the existence of a special object of proof in the categories of war crimes proceedings, the specificity of which is conditioned, firstly, upon the features of qualification which is non-standard, considering the construction of Article 438 of the CC of Ukraine, which refers to the provisions of international treaties and includes a wide range of acts which may be attributed to war crimes only upon proof of contextual circumstances. Secondly, the necessity of establishing the contextual circumstances of a criminal offence, which are in a causal relationship with other elements of the object of proof, affects the specifics of the proof itself [16, p. 394]. In addition, the author identifies the connection of a criminal offence (actions of a person) with a military conflict among the circumstances to be proved and covers the content of such connection [22]. Proof of this circumstance ensures that violations of the laws and customs of war are distinguished from other crimes that can be committed in a military conflict since not every crime committed during a military conflict is a war crime, a prerequisite is the connection of a person's actions with a military conflict and the compliance of their actions with the signs of violation of the laws and customs of war. Such a connection is directly or indirectly correlated with other components of the object of proof.

It is necessary to emphasise the importance of the development of national law and international law in the establishment and application of effective mechanisms of liability for war crimes [18]. Thus, to determine the circumstances to be proved during the investigation of violations of the laws and customs of war, the author analysed in detail and considered the provisions of IHL, which will determine the legal foundation for the activities of international courts concerning crimes involving armed aggression against Ukraine. Attention is emphasised on the quality of evidence collected in criminal proceedings under national law to ensure that it can be accepted by international courts without additional verification, which will become more difficult over time. In addition, the author believes that the development and improvement of IHL in the future requires considering the circumstances and specifics of the beginning, course and consequences of the military conflict in Ukraine, which identified both violations of the laws and customs of war defined in IHL and other forms of violations not reflected/not clearly reflected in the rules of IHL, which was mainly determined by the impact of the aftermath of the Second World War, which is evidently different from the current situation. As it appears, the specific feature of the wording of most IHL provisions is their general, non-specific nature, which can be explained by the desire to introduce a universal approach that allows for the application of IHL by different countries whose national laws can vary significantly. However, Ukraine's experience in countering armed aggression, and the implementation of international accountability mechanisms should serve as a foundation for the specification and improvement of IHL in general.

The effectiveness of criminal proceedings is not possible without the proper functioning of the advocacy [19] and judicial authorities [20]. The activities

of the judiciary, the advocacy and other subjects of criminal proceedings have undergone some changes and transformations under martial law, including evidentiary activities. Therewith, it remains unchanged that the problems of proof are relevant to other subjects of criminal proceedings, and pre-trial investigation bodies investigating violations of the laws and customs of war. In addition to these, the circumstances to be proved are defined and disclosed in another work of the author [22]. The collection and evaluation of evidence, while ensuring and respecting the rights of persons held criminally liable for violations of the laws and customs of war, should be conducted in strict accordance with the requirements of the law and considering the prospect of cases being heard by international courts.

Conclusions

The development of some circumstances to be proved in the investigation of violations of the laws and customs of war, as the purpose of this research, has necessitated a systematic study of IHL, determining the limits and conditions of its application, considering the requirements of proof under national law. Based on the results of this work, the circumstances to be proved include the following: 1) whether a person belongs to the category of "lawful combatant", determining the conditions and limits of combatant immunity; 2) territorial and temporal limits of IHL; 3) the content and relationship of the categories of "legitimate purpose" and "military necessity".

The proposed provisions include specific circumstances that are relevant in the investigation of the laws and customs of war, and they can be supplemented and detailed in specific proceedings.

The circumstances to be proved in criminal proceedings for violations of the laws and customs of war should not be considered in isolation, but in conjunction with and supplemented by others, which are determined by the specifics of each investigation. Thus, a model of evidence is developed that can ensure the achievement of the objectives of criminal proceedings.

Proving in compliance with the requirements of national law, considering the experience of applying IHL, its correct and systematic understanding will influence the establishment of an evidence base in international courts, and the development of interpretation and application of IHL in general, since the relevant provisions and processes are constructed and developed through and as a result of a legal and moral (from the standpoint of humanity, mercy, tolerance) assessment of the actions of participants in armed conflicts.

In addition, it should be noted that along with the importance of IHL, whose provisions have not lost their relevance for the most part, the problems that arise during the international armed conflict in Ukraine cannot always be effectively resolved by available legal means, including the practice of applying IHL, but require new approaches to understanding and interpreting some provisions of IHL. This further emphasises the importance of national law enforcement practices that respond promptly to ongoing events, with evidence collected as part of a formal investigation and in compliance with the regulatory requirements of proof.

Further research on solving the problems of investigating violations of the laws and customs of war can be devoted to improving national legislation, considering and generalising law enforcement practice (as it is developed), exploring the possibilities of using the experience of IHL application by international courts, and establishing a methodology for investigating violations of the laws and customs of war.

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Обставини, які підлягають доказуванню під час розслідування порушення законів і звичаїв війни

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■ **Анотація**. Розслідування порушення законів і звичаїв війни – відносно новий напрям діяльності правоохоронних органів України. Попри те, що певний досвід таких розслідувань існує з 2014 року, розгортання державою-агресором повномасштабної війни, яке розпочалося 24 лютого 2022 року, виявило практично всі форми (способи) порушення законів і звичаїв війни, що потребує від правозастосовника всебічного аналізу та правильного розуміння норм міжнародного гуманітарного права, яким визначено правила для учасників збройного конфлікту. Метою статті є формулювання деяких обставин, які підлягають доказуванню під час розслідування порушення законів і звичаїв війни та розкриття їх змісту з огляду на норми міжнародного гуманітарного права, що визначає специфіку предмета доказування в таких кримінальних провадженнях. Під час дослідження застосовано філософські (діалектичний і герменевтичний), загальнонаукові (системний, історичний, функціональний), спеціально-наукові (порівняльного правознавства, техніко-юридичний, тлумачення юридичних норм) методи пізнання. Підґрунтям роботи є норми договірного та звичайного (звичаєвого) права збройних конфліктів, практика його застосування на національному та міжнародному рівні, національне право, яким передбачено відповідальність за порушення законів і звичаїв війни, процесуальний порядок розслідування кримінальних правопорушень, криміналістичні рекомендації щодо розслідування окремих видів злочинів. За результатами дослідження сформульовано низку обставин, які підлягають доказуванню під час розслідування законів і звичаїв війни як окремих, але пов'язаних з іншими елементами складових предмета доказування, а саме: законні комбатанти, імунітет комбатанта; територіальні та часові межі дії міжнародного гуманітарного права; законна ціль, військова необхідність. Розкрито їхній зміст, доказове значення та зв'язок

■ **Ключові слова**: досудове розслідування; міжнародне гуманітарне право; доказування; комбатант; законна ціль; військова необхідність

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Operational and technical measures in counteracting bribery-related corruption offences

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■ **Abstract**. Legislators and developers of by-laws and regulations, theorists and practitioners consider anti-corruption as one of the priorities of Ukraine's domestic policy. However, the work of law enforcement agencies in detecting and investigating corruption offences is not sufficiently productive. But it is in the legal regulation of operational and technical measures and covert investigative actions that several problems have accumulated, which determines the relevance of this study. The purpose of the work is to outline the range of problems of legal regulation and the practical application of operational and technical measures and relevant covert investigative actions in combating corruption offences related to bribery. The methodological tools are chosen according to the chosen purpose and considering the object and subject of the study. The study is based on the general dialectical method of cognition, which is used to explore social and legal phenomena and processes, and to establish their connections with the work of operational and investigative units of law enforcement agencies, prosecutors and courts. In addition, general scientific and specific methods of legal science were used, including: logical-legal (dogmatic); system-structural; comparative legal and comparative; and sociological. It is substantiated that a necessary condition for increasing the efficiency of the application of operational and technical measures and relevant covert investigative actions in combating corruption offences is the specification and detailing of legislative provisions that establish the content and procedure for conducting some activities. The law should define all operational and technical measures (and relevant covert investigative (search) actions), clearly distinguishing between audio, and video control of: a person; a publicly inaccessible place; a publicly accessible place, and visual surveillance of a publicly accessible place using photography, video recording and special technical means for surveillance. The practical value of the work is conditioned upon the prospects of using the results obtained to improve the legal regulation of operational and investigative activities and criminal proceedings

■ **Keywords**: operational and investigative measures; covert; investigative actions; corruption; bribe; illegal benefit; legal regulation; legality

■ Introduction

The level of corruption, according to the research results of the international anti-corruption organisation Transparency International, remains consistently high in many countries of the world (for example, Azerbaijan, Algeria, Iraq, Iran, Mexico, Nigeria, Pakistan, Uzbekistan) [1]. Thus, one of the priorities of the domestic policy of these countries should be prevention and counteraction to corruption, in particular its most widespread form – bribery (hereinafter the terms “bribery” and “obtaining illegal benefits by an official” will be used synonymously). In this regard, Ukraine is no exception.

For these reasons, the efforts of theorists and practitioners are devoted to overcoming corruption. Under international and state programs and grants, scientific research is conducted to identify the determinants of corruption and improve anti-corruption activities. Therewith, these problems are raised both at the level of specific areas of public life (public administration, education, medicine, construction, foreign direct investment) in individual countries (Brazil, India, China, Congo, Nigeria, Uganda, etc.) [2; 3] and in the global perspective [4; 5].

Admittedly, such studies are conducted by Ukrainian specialists. Among other things, they pursue the purpose of using the international experience and achievements of scientists in Ukraine [6; 7].

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Therewith, the attention of Ukrainian scientists and their colleagues from other countries is mostly devoted to general criminological measures to counter corruption. Therewith, there is a lack of attention to special criminological measures that are secretly used by law enforcement agencies.

Among such measures, operational and technical ones occupy an important place. Nowadays, counteraction to crime is impossible without using modern technical means (reconnaissance computer programs; means of removing information from transport telecommunication networks; means of covert visual and auditory control of publicly inaccessible places; means of covert entry into the premises; means of locating radio electronic means). However, the analysis of practice demonstrates that the legal regulation of operational and technical measures (OTM) is far from perfect. It has a very adverse impact on the efficiency of combating corruption offences related to bribery and determines the relevance of this study.

The purpose of the research is to outline the range of problems of legal regulation and practical application of OTM in combating corruption offences connected with bribery – with further identification of ways to solve these problems.

The achievement of this purpose necessitated the implementation of the following tasks:

– to cover the meaning of the concept of "operational and technical measures";

– to define the essence of specific OTM and identify problems that arise during their conduct in the framework of combating corruption-related bribery offences;

– to propose legal measures to eliminate these problems.

■ Literature review

In recent years, the vast majority of studies on combating corruption crimes in Ukraine are criminological in their content, such as the works of V. Hura [8], A. Dobroskok [9], M. Kikalishvili [10], O. Lehka [11], V. Moiseienko [12], I. Tomchuk [13] and many others. In addition, scientists from other countries prefer to explore the criminological component of the fight against corruption. Recently, the research results have been published on specific issues of combating corruption in Bangladesh [14], Brazil [15], Iran [16], China [17-19], Colombia [20], Nigeria [21; 22] etc. The same trend is observed in international studies on combating corruption in various spheres of social life, in particular, in the banking sector [23; 24], in the market economy [25; 26], in public administration [27], in sports [28], etc.

In addition, criminal law issues of fighting corruption are being actively explored in Ukraine. The works of A. Vozniuk [29], V. Kabaiev [30] are devoted to these aspects. V. Kartavtsev, I. Tomchuk & S. Prytula [31], I. Oheruk [32], I. Chuhunikov [33] and many others.

During this period, there were significantly fewer publications of research results on operational and investigative, forensic and criminal procedural problems of combating bribery-related offences. Such works include the work of I. Sukhachova [34], who covers the role of operational and investigative activities in detecting and investigating the receipt of illegal benefits by officials; R. Stepaniuk, V. Kikinchuk & M. Shcherbakovskyi [35], who explored the problems of proving corruption; O. Tarkan [36], who determined the specifics of investigative actions within the pre-trial investigation of bribery by police officers; V. Shevchuk [37], who explored the identification of signs of corruption criminal offences as a structural element of forensic investigation methodology. In addition, there is a lack of research on forensic and criminal procedural problems of combating bribery-related offences, which are represented by single works [38].

Even narrower is the range of studies that address using modern technologies and equipment in the fight against corruption. Such studies are mainly designed to explore the efficiency of open use of information and telecommunication technologies in preventing and detecting corruption [39; 40]. The issue of legal regulation of the covert use of technology in the operative and investigative and criminal procedural counteraction to corruption offences related to bribery has not yet been comprehensively explored.

Therewith, the scientific foundation for such research has already been established by Ukrainian (S. Albul [41], A. Cherniak [42], I. Kharaberiush [43], S. Kniaziev [44] etc.) and foreign (C. Atkinson [45], E. Kruisbergen [46], B. Loftus [47], R. Schlembach [48]) scientists in the field of covert methods of obtaining information. In addition, nowadays, Ukrainian scientists are exploring the issues of investigating criminal offences using the latest digital technologies, integrating the latest achievements of science and technology into forensic science to implement a strategy for solving crimes in the digital era [49].

■ Materials and methods

Considering the subject and purpose of the study, its object and subject, the corresponding methodological tools were chosen. The main component of it was the general scientific dialectical method of cognition, which was used in the study of the activities of operational and investigative units of law enforcement agencies, prosecutors and courts in the field of counteracting corruption in their interconnection. In addition, the author used general scientific and specific methods of legal science, including: *logical and legal (dogmatic)* – to improve the terminology, develop proposals for amendments and additions to legislation, *systemic and structura*l – to determine the

content of the studied categories and legal phenomena, in particular the development of the terminology, systematisation of theoretical achievements on the subject of this research, comprehensive analysis of the provisions of legal acts and the practice of their application; *comparative legal and comparative* – for comparative analysis of Ukrainian legislation and regulations that constitute the legal foundation for using covert methods of work of law enforcement authorities with using operational and technical means.

These methods were used at all stages of the study, which include: defining the scientific problem, setting the purpose and objectives of the study; detailing the content of the category "operational and technical measures"; determining the legal and actual content of each OTM, which was embodied in the legislation of Ukraine; analysis of the practice of using individual OTM in combating corruption offences related to bribery to identify problems of legal regulation; development of ways to solve these problems.

The theoretical foundation of the study was based on the results of recent fundamental research of Ukrainian and foreign scientists in the following areas: combating corruption offences; conducting covert investigative activities (CI(S)A) and operative-search activities (OSA) by law enforcement agencies; using operational techniques for the detection and investigation of offences.

The empirical base of the study is the official statistical data, and materials of criminal proceedings on corruption crimes related to bribery (a total of 89 criminal cases were explored, including under individual articles of the Criminal Code (CC) of Ukraine: Art. 354 – five; 368 – forty-seven; 368-3 – seven; 368-4 – seven; 369 – three; 369-2 – twelve; 369-3 – eight) [50]. The author conducted a sample of these proceedings by searching by the category of case (criminal), instance (cassation) and keywords in the Unified Register of Court Decisions – with further analysis of the content of the relevant judgments and resolutions for relevance to the subject of the research [51; 52]. In parallel, the author surveyed 20 operatives and 26 investigators of the National Police, 14 detectives of the State Bureau of Investigation of Ukraine (SBI) and the National Anti-Corruption Bureau (NAB) of Ukraine; 17 prosecutors; 9 judges and 23 lawyers. This author's survey (research) was intended to confirm, correct or refute the conclusions drawn from the results of the study of criminal proceedings. All surveys were conducted with the consent of the respondents, and the information obtained is used only for scientific purposes.

Results and Discussion

In the process of documenting corruption offences related to bribery, investigators, detectives and officers of operational units actively use the term "operational and technical measures". It is used to refer to both OSA and technologically based CI(S)A. Therewith, some actions and measures are designated by numbers assigned to them by closed departmental regulations.

Therewith, at present, the legislator does not use the phrase "OTM" either in the Law of Ukraine "On Operational and Investigative Activity" [53] or in the Criminal Procedure Code (CPC) of Ukraine. It can be found only in regulations. In particular, it is contained in the Decree of the President of Ukraine of November 7, 2005, No. 1556/2005 "On the Observance of Human Rights During Operational and Technical Measures" [52]. It is widely used by the developers of departmental regulations of law enforcement agencies.

However, the definitions of OTM provided in such regulations often contradict the logic and practice of their application.

Exploring this issue, the author concluded that only those operational and investigative measures that cannot be performed without using operational and technical means should be considered operational and technical. It should become the main defining feature of OTM, which should be considered in the development of its regulatory definition.

An important issue is the correlation of the content of the OTM with the relevant covert investigative (search) actions.

Each provision of Art. 8 of the Law of Ukraine "On Operational and Investigative Activity" [53], which provides for the right of operational units to conduct a particular OTM, refers to the provision of the CPC of Ukraine which provides for the relevant covert investigative (detective) action. Consequently, when considering the issue of conducting OTM to document bribery-related corruption offences, the author will simultaneously consider the conduct of the relevant CI(S)A. And vice versa: when studying a specific CI(S)A based on using technical means, the author necessarily explores the operational and technical measures that correlate with it.

Based on the above, it can be argued that the OTM include: audio, and video control of a person – Art. 260 of the CPC of Ukraine [54]; removal of information from transport telecommunication networks (TTM) – Art. 263 of the CPC of Ukraine [54]; withdrawal and inspection of correspondence – Art. 262 of the CPC of Ukraine [54]; inspection of publicly inaccessible places, housing or other property of a person – Art. 267 of the CPC of Ukraine [54]; establishing the location of a radio electronic device – Art. 268 of the CPC of Ukraine [54]; removal of information from electronic information systems (EIS) – Art. 264 of the CPC of Ukraine [54]; audio and video control of a place – Art. 270 of the CPC of Ukraine [54]. Consider each of these measures separately in terms of their application in the process of documenting corruption offences related to bribery.

Analysing Art. 260 of the CPC of Ukraine [54], it is concluded that the legislator has defined its provisions in such a way that the prosecution is granted the right (in case of obtaining the permission of the investigating judge) to monitor and record the behaviour of a particular person through technical means of audio and (or) video control, regardless of where the person is (private house, apartment, office, car, yard, street, park, etc.) and where and how the person moves. Therewith, the investigating judge's permission to conduct audio, and video control of a person, and to conduct other CI(S)A, can be granted for a period of up to two months. Admittedly, in practice, it is quite difficult to organise continuous audio and video surveillance of a person even for a short period if the person changes location.

The analysis of the practical application of the provisions of Art. 260 of the CPC of Ukraine [54] within the framework of documenting corruption offences related to bribery demonstrates the coexistence of two approaches to the organisation of audio and video control of a person, which provide it with different content.

The first approach is to covertly install audio and video surveillance of a person in a specific room or vehicle, where, according to the investigator or operational unit, the person is supposed to be. It guarantees the achievement of the purpose of the CI(S)A only if this person is in a controlled room, and their actions, movements, words, and sounds will be relevant to a specific criminal proceeding (operational investigation case). With this approach, the control is practically performed both regarding the individual and other persons who are in the room (vehicle). In addition, the premises may be monitored even in the absence of the person in respect of whom the permission for conducting the CI(S)A was obtained, as provided for in Article 260 of the CPC of Ukraine [54]. It converts it into the control of a publicly inaccessible place.

The implementation of this approach to the organisation, and, accordingly, to the content of audio and video control of a person is frequently impossible without a preliminary inspection of publicly inaccessible places, housing or other possessions of a person (Article 267 of the CPC of Ukraine [54]). To install devices of audio and video control of a person in a particular room and vehicle, as a rule, it is necessary to enter it first.

Analysing the legislative regulation of covert inspection of publicly accessible places, housing or other property of a person, D.M. Tolpyho [55] indicates it is imperfect due to the lack of regulation of the tactics of installation of audio, and video control devices on the relevant objects and their subsequent dismantling. According to the researcher, this results in the lack of a precise procedure for conducting this CI(S)A by authorised entities [55]. The statement about the imperfection of the legislative regulation of the studied CI(S)A can be agreed with. But it is not connected with the regulation of its tactics. Thus, the tactics of CI(S)A and OSA should be defined in methodological recommendations and only in some cases should be regulated at the level of regulations with the appropriate classification. The organisation of specific CI(S)A and OSA can be subject to legal regulation only at the level of departmental orders, instructions, guidelines, etc. It, among other things, concerns the inspection of publicly inaccessible places, housing or other property of a person.

The organisation of the CI(S)A, provided for in Article 267 of the CPC [54] is complicated conducting. It is simplified when a relationship of covert cooperation is established with a person who has access to the necessary premises and the ability to independently conduct an inspection there (or conduct it systematically at the right time).

The second approach of audio and video control of a person does not require inspection of publicly inaccessible places, housing or other property of a person.

This approach consists in involving the applicant in conducting audio and video control of the person, who is provided with appropriate technical means placed in their clothes, shoes, accessories, etc. Such an applicant, involved in covert cooperation, can mostly document the actions of the controlled person regardless of their location (without connection to specific premises or vehicle). With these means, an undercover officer can arrive at a place that is spontaneously and unexpectedly determined by the object of operational development. This approach to audio and video control of a person is used during the pre-trial investigation of corruption offences related to bribery. During a special investigative experiment, it is much easier to apply it than to audio, and video control of a person with the preliminary installation of technical devices for control and fixation in a specific office or vehicle. In addition, the provision of appropriate technical equipment to the applicant allows for documenting the actions of the developer even if the latter unexpectedly moves the meeting place.

This approach is simple and effective in application. There is no necessity to develop and implement operations on entering the premises to install control devices there (and their subsequent removal) with the involvement of a wide range of specialists, etc.

However, the high efficiency and simplicity of such an approach are combined with significant risks of its use not to protect legally protected interests, but to establish artificial indicators with unlawful restriction of the rights of the persons under development, suspects and other persons, such as in criminal cases No. 164/104/18 [56]; No. 166/1199/18 [57]; No. 332/2723/15-k [58]. In these cases, there was actual control over the commission of a crime within

the framework of the execution of the decision of the investigating judge on the permission to conduct audio-video control of a person with the involvement of covert officers.

Using confidential employees in the process of conducting covert measures, rightly emphasises M.A. Pohoretskyi, should be based on ensuring guarantees of legality, among which the European Court of Human Rights (ECHR) distinguishes two groups. The first includes guarantees that ensure legality during the control over the commission of a crime. The second – procedural guarantees at the stage of criminal proceedings in court [59]. Admittedly, this rule should be applied to the process of detection and investigation of corruption offences related to bribery.

Close in content to audio and video control of a person is the CI(S)A provided for in Article 270 of the CPC of Ukraine [54] – audio and video control of a place. This CI(S)A and the corresponding OTM are used to record criminal actions that are to occur in a specific place that has signs of public access.

The establishment of technical means of control in such places frequently causes difficulties. Therefore, as part of the control over the commission of an offence, based on the provisions of the mentioned article, audio and video recording devices are installed on the personal belongings of the person who is to provide an illegal benefit (IB), which is audio and video control of the person. Theoretically, this approach should result in the recognition by the court of the evidence obtained in such a way as inadmissible, since there is a substitution of one CI(S)A by another.

However, numerous court decisions (rulings of investigating judges, verdicts and resolutions) generally use the term "audio, video control of the place (for the person)". In the practice of the Supreme Court, the CI(S)A with such a name is found in 17 decisions (cases No. 212/5246/20; 655/570/17; 741/458/17; 739/361/19; 725/1477/18; 263/10353/16-k etc.) [60]. Therewith, in many cases, these evidences are considered inadmissible not for the reason of the substitution of the content of one CI(S)A by another, but on such grounds as failure to disclose their materials to the defence under Article 290 of the CPC of Ukraine [54], conducting CI(S)A outside the scope of the investigating judge's ruling, etc.

Thus, the decision of the Supreme Court of December 12, 2019, in case No. 681/1024/16-k states: "Therewith, the arguments of the defenders of the convicted P.P. Posadovets & K.K. Kerivnyk on the inadmissibility of evidence – protocol on results of tacit investigation activities on P.P. Posadovets, namely protocol on results of audio, video control of place (behind the person) No. 6351 of June 04, 2014, and audio record of results of audio, video control of place (behind the person) are fair [60].

Thus, it follows from the materials of the criminal proceedings that they indeed do not contain information about obtaining the permission of the investigating judge to conduct the above-mentioned CI(S)A and their declassification.

Considering this, this protocol cannot be considered admissible evidence, and references to it should be excluded from the appealed court decisions.

The practice of accepting the protocol of "audio, video control of the place (by person)" as evidence is considered unacceptable. The CPC of Ukraine does not provide for such an CI(S)A. Analysis of the content of the provisions of Articles 258, 260, 270 of the CPC of Ukraine [54] allows asserting that the main criterion for distinguishing between audio, and video control of a place and audio, and video control of a person should be interference with private communication. Such interference can occur during the CI(S)A provided for in Article 260 of the CPC of Ukraine [54]. When conducting the CI(S)A provided for in Art. 270 [54] – no. Indeed, audio and video control of the place is not included in the list of CI(S)A, which is an interference with private communication.

Thus, in proceedings on corruption offences related to bribery of the CI(S)A, the bribery associated with the receipt and use by the applicant (involved in confidential cooperation) of audio and video surveillance equipment should be determined by Art. 260 of the CPC of Ukraine [54]. Indeed, the fact that communication occurs in a publicly accessible place does not deprive it of privacy.

The analysis of the practice of applying the provisions of Art. 270 of the CPC of Ukraine [54] to document corruption offences related to bribery demonstrates that investigators and operatives often make mistakes of technical, tactical and organisational nature, which subsequently results in the inadmissibility of the evidence obtained.

Thus, in the ruling of 02/17/2021 in case No. 263/10353/16-k (criminal proceedings under Part 3 of Article 368 of the CC of Ukraine), the Supreme Court notes that from the video recording of the CI(S)A audio, video control of the place (by person) to record the meeting of P.P. First & D.D. Second, on 12/17/2015, it is impossible to visually identify the persons whose conversation was recorded, due to the lack of images. Therewith, no phonoscopic examination of the voices of the persons between whom the conversation occurred was conducted. In the courts of previous instances, D.D. the Second categorically denied the fact of meeting with P.P. the First and receiving money from him in the vehicle. The prosecution did not provide any other evidence to confirm the fact of the transfer of funds from IB to D.D. Second, except for the testimony of P.P. First" [61]. In this case, the court does not consider the fact that there was an interference with private communication,

which cannot be performed within the framework of the CI(S)A provided for in Article 270 of the CPC [54].

Therewith, the above decision allows concluding that the phonoscopic examination is an important source of evidence in criminal proceedings concerning the acceptance of an offer, promise or receipt of IB by an official. It concerns both audio control of a place and a person (which can be performed without video control), and, first of all, the removal of information from transport telecommunication networks (TTM) (Article 263 of the CPC of Ukraine [54]). The actual audio recording of the conversation, where it is recorded how the person accepts the offer (promise) to provide IB and the results of the phonoscopic examination (in case of identification of the voice of this person) together can be evidence of the acceptance of the offer, the promise of IB in the actions of this person.

Therewith, the analysis of judicial practice allows concluding that criminal liability is brought precisely for obtaining IB or for actions specifically designed to obtain it, but for some reason not completed.

Within the framework of criminal proceedings on corruption offences related to bribery of the CI(S)A, the removal of information from TTM is mostly used only in conjunction with other investigative actions and serves to obtain both evidentiary information and information used for operational and tactical purposes.

The practical significance of extracting information from the TTM is the ability to access the content of negotiations on the criminal intentions of the controlled person, including the place, time and method of transferring the subject of the IB, the intermediaries who will be involved in this process, the caches, hiding places used, specific means of ensuring the conspiracy of criminal activity. Finally, through this CI(S)A, the fact of extortion of a bribe with the statement of specific requirements, and threats to the potential provider of IB can be recorded [62, p. 64].

In terms of this CI(S)A, it is important to identify and precisely record the investigator the features that allow unique identification of the desired consumer of telecommunication services, namely their subscriber number [62, p. 64].

Similar in nature to the removal of information from the TTM is the removal of information from electronic information systems (EIS) without the knowledge of its owner, possessor or holder (Part 1 of Article 264 of the CPC of Ukraine [54]).

Analysis of the definitions and practice of application of the provision of Part 1 of Art. 264 of the CPC of Ukraine [54] by operational units in the course of documenting the acceptance of an offer, promise or receipt of a Bribe by an official demonstrates that there are specific features of its application before and after the control of the crime (tactical operation to expose a bribe-taker).

Before and during such control (operation), this CI(S)A is conducted exclusively confidentially, which fully complies with the requirement of covertness. In this format, this measure can be divided into the following stages: gaining access to the necessary information system (or part of it); searching and identifying the necessary information by known features; copying information; destroying traces that can indicate the removal of information. All these stages (except the first) are exclusively software and technical operations.

The author is convinced that gaining access to the required information system (or part thereof) can be performed both by using intelligence computer programs and by using the possibility of physical access to the required information system or part of it. In the latter case, there can be a situational (one-time) establishment of confidential cooperation with a person who has the appropriate access and can independently remove the necessary information from a specific device.

Currently, according to the author, there are intelligence computer programs that allow both remote and covertly obtaining data stored on a particular mobile device (information system), and obtaining the possibility of covertly capturing information from microphones and video cameras of this device in real-time. When using such programs, there is a problem distinguishing between CI(S)A provided for in Part 1 of Article 264 of the CPC [54] and audio-video control of a person. Consider that the removal of information from the microphones and video cameras of EIS in real-time should be regulated as a separate OTM and the corresponding CI(S)A, which is an interference with private communication.

In addition, notably, nowadays the practice of extracting information from the EIS ex post facto – after control over the commission of a crime, detention of a person, inspection and search – has become widespread. Information is taken from mobile phones, tablets, and computers confiscated during the search and subsequently arrested.

In content, this brings the CI(S)A provided for in part 1 of Article 264 [54] closer to an examination, since it is generally not a secret for the owner of the confiscated property that their computer system will be examined by specialists for information relevant to criminal proceedings. The author's practical experience demonstrates that investigators and prosecutors frequently openly inform suspects and their defence lawyers that they will be removing information from confiscated equipment based on the decision of the investigating judge. It is confirmed by the results of a survey conducted by the author, during which 100% of prosecutors, investigators and detectives testified that they usually do not conceal from suspects and their defence counsel the fact that the CI(S)A provided for in Part 1 of Article 264 is used to explore confiscated computers and smartphones.

All respondents indicated that they sometimes use the verbal notification as a tactical and psychological technique to get a suspect to confess to a crime. All the lawyers interviewed by the author stated that such techniques are used by the prosecution. In addition, all procedures related to the removal of information from the EIS are formally classified according to the Law of Ukraine "On State Secrets" [63].

This approach has replaced using the procedure of temporary access to things and documents to extract information from confiscated information systems. It, in the author's opinion, was a completely logical step, since temporary access to things and documents: firstly, is a measure to ensure criminal proceedings, not an investigative (search) action (it should provide access to the medium, not obtain information); secondly, it cannot replace interference with private communication, which inevitably occurs when exploring the content of the suspect's correspondence with other persons conducted through information systems.

The author's practical experience demonstrates that in rare cases, the transfer of the subject matter of the IB is performed through postal institutions. It is mostly due to an attempt to ensure the concealment of criminal actions and avoidance of liability in case of red-handedness. In such cases, the inspection and confiscation of correspondence should be an integral part of tactical operations to expose bribe-takers. Thus, the CI(S)A provided for in Article 262 of the CPC of Ukraine [54] are an important component of tactical operations to expose bribe-takers if the subject matter of the IB is sent by mail.

Undoubtedly, during the covert investigative (search) action provided for in Article 262 of the CPC of Ukraine [54], it can be necessary to: open letters, packages, and boxes – with their subsequent return to their original form; to determine the filling (content) of letters, packages, boxes without opening them – using special equipment; identify some items by their specific features, etc. Such actions may require the special knowledge, skills and abilities of a specialist. In addition, the relevant operational and technical units should have such specialists on their staff.

Establishing the location of a radio electronic device as an CI(S)A and OTM to detect and investigate corruption-related bribery offences is usually used for operational and tactical purposes. The results of this measure are not used in evidence on their own but only in conjunction with other evidence.

Conclusions

The lack of unambiguity in the legal provisions establishing the content and procedure for conducting the OTM and related CI(S)A results in problems with documenting bribery-related corruption offences. These problems are manifested in the following actions of operatives, detectives, investigators and prosecutors:

– actual control over the commission of a crime within the framework of the investigating judge's decision to allow audio and video monitoring of a person;

– using audio and video monitoring of a person by the decision of the investigating judge to allow audio and video monitoring of the place;

– audio and video surveillance of the place without proper grounds – by order of the investigator, prosecutor to conduct visual surveillance of the place using photography, video recording and special technical means for monitoring;

– conducting OTM and relevant CI(S)A not provided for by the CPC of Ukraine and the Law of Ukraine "On Operational and Investigative Activities" (audio, video monitoring of the place (by person)).

– using during the control of a corruption offence related to the bribery of technical devices for audio and video monitoring of a place and person without the decision of the investigating judge to conduct the relevant CI(S)A.

Such actions are a violation of the rights of the suspect or accused and frequently result in the inadmissibility of the evidence obtained.

In the author's opinion, the improvement of using OTM and relevant CI(S)A in counteracting crime should consist in specifying and detailing the provisions of the legislation that establish the content and procedure for conducting individual activities. In particular, at the legislative level, it is necessary to provide definitions of all OTM and relevant CI(S)A, clearly distinguishing between audio and video monitoring of: a person; a publicly inaccessible place; a publicly accessible place, and visual surveillance of a publicly accessible place using photography, video recording and special technical devices for surveillance.

In addition, the legislator should consider the necessity of introducing to the list of operational and technical measures the latest methods of obtaining information arising from modern scientific and technological advances, with the definition of the content and procedure for conducting such measures.

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Оперативно-технічні заходи в протидії корупційним злочинам, пов'язаним з підкупом

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■ **Анотація**. Законодавець і розробники підзаконних нормативно-правових актів, теоретики та практики розглядають протидію корупції як один з пріоритетних напрямів внутрішньої політики України. Проте робота правоохоронців з виявлення та розслідування корупційних злочинів є недостатньо продуктивною. Але саме в правовому регулюванні проведення оперативно-технічних заходів і негласних слідчих дій накопичилася низка проблем, що й зумовлює актуальність цього дослідження. Мета роботи полягає в окресленні кола проблем правового регулювання та практичного застосування оперативно-технічних заходів і відповідних негласних слідчих дій у протидії корупційним злочинам, пов'язаних з підкупом. Методологічний інструментарій підібрано відповідно до обраної мети та з огляду на об'єкт і предмет дослідження. Підґрунтям дослідження є загальний діалектичний метод пізнання, який використано для вивчення соціальних та правових явищ і процесів, а також для встановлення їх зв'язків з роботою оперативних і слідчих підрозділів правоохоронних органів, прокуратури та суду. Крім того, використано загальнонаукові й спеціальні методи правничої науки, серед яких: логіко-юридичний (догматичний); системно-структурний; порівняльно-правовий і компаративний; соціологічний. Обґрунтовано, що необхідною умовою підвищення ефективності застосування оперативно-технічних заходів і відповідних негласних слідчих дій у протидії корупційним злочинам є конкретизація та деталізація законодавчих норм, якими встановлюється зміст і порядок проведення окремих заходів. На рівні закону потрібно подати визначення усіх оперативно-технічних заходів (і відповідних негласних слідчих (розшукових) дій), чітко розмежувавши між собою аудіо-, відеоконтроль: особи; публічно недоступного місця; публічно доступного місця, а також візуального спостереження за публічно доступним місцем з використанням фотографування, відеозапису та спеціальних технічних засобів для спостереження. Практична цінність роботи зумовлена перспективами використання отриманих результатів для вдосконалення правового регулювання оперативно-розшукової діяльності та кримінального провадження

■ **Ключові слова**: оперативно-розшукові заходи; негласність; слідчі дії; корупція; хабар; неправомірна вигода; правове регулювання; законність

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Administration of justice in Ukraine as an indicator of modern constitutionalism

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■ **Abstract**. The relevance of the study of judicial constitutionalism is explained by the public necessity to restore confidence in the Constitutional Court of Ukraine. The necessity of reforming the regulation of the Constitutional Court of Ukraine is relevant to this study. The purpose of the research is to cover the connection and impact of the results of the administration of justice in Ukraine on the overall state of constitutionalism. In the course of exploring the subject of this work, the authors, use the dialectical method of cognition to clarify the essence of the concept of "constitutionalism", the formal legal method to analyse the sources of constitutional law relating to the administration of justice and develop recommendations for overcoming the identified systemic problems, the logical and legal method to identify the state of compliance by judges and public authorities with the basic principles of the constitutional order of Ukraine, and the analysis of legal practice, identified differences in understanding the legal content of the rule of law principle in the administration of justice, and thus its unequal application, and identified two systemic problems. One of them emerged as a result of the Supreme Court's ambiguous position that a notary cannot be a defendant in cases of illegally committed executive inscriptions, and the other, on the contrary, is due to the ignoring of decisions of the Constitutional Court of Ukraine and the Supreme Court by public authorities empowered to ensure social protection of the population. The proposed research is the result of the analysis of some specific practical aspects - the results of the judicial proceedings in Ukraine, and the identification of systemic problems in judicial practice which affect the assessment of constitutionalism as a constitutional and legal reality. The authors emphasise the necessity of raising legal culture and legal awareness, both in society in general and among lawyers in particular. It is possible if the educational process combines the acquisition of professional and practical competencies with the education of both human and professional qualities. The practical significance of the work is a comprehensive consideration of current issues of the administration of justice in Ukraine from a practical and theoretical standpoint

■ **Keywords**: constitutional order; judiciary; judicial proceedings; rule of law; judicial practice

■ Introduction

The concept of judicial constitutionalism involves a wide range of issues and provides for a rather thorough analysis and elaboration of its components. In practical terms, the issue of judicial constitutionalism is relevant both for constitutional scholars and for judges of general courts, judges of the Constitutional Court, and all those who are called upon to ensure the immediate effect of the Constitution of Ukraine. The study of the problems of judicial constitutionalism identified by judicial practice and constitutional justice practice is highly relevant in the context of legal and judicial reform.

The issues of the administration of justice in the context of modern Ukrainian constitutionalism remain relevant and are raised by both constitutional scholars and legal practitioners. It should be emphasised that constitutionalism for the author of the research is, first and foremost, the point where theory and practice, constitutional-legal reality.

The following conclusions are interesting and useful for the research.

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B. Kalynovskyi, K. Sokh, K. Kulchytska, P. Kolomiitsev define constitutional legality as a real system of constitutionalism, a complex phenomenon that consists of strict observance of the Constitution and its provisions during its immediate effect and ensuring the implementation of the law by all public authorities, public organisations, officials of all levels and citizens, courts and is an integral feature of the constitutional order as an integral part of the rule of law [1, p. 114]. In agreement with this approach, it should be supplemented by the fact that constitutional legality should include both strict adherence to the Constitution and correct interpretation of its provisions, their uniform application and using a substantive rather than a formal approach.

The author agrees with the position of O. Kopytova, O. Bratel, T. Kulyk, & N. Kosiak, in their study on the analysis of the judiciary in transitional justice countries belonging to the continental law system note that the rule of law as a guiding principle in judicial activity has a twofold manifestation: in the activity of each judge during law enforcement; in the activity of the highest judicial body in the judicial system – the Supreme Court, when it concludes, particularly on the correct application of substantive law [2, p. 148-149]. Therewith, it should be noted that the rule of law in the administration of justice is applied and interpreted by judges, including the Supreme Court, rather broadly and frequently in the abstract, and a unified approach should be ensured.

The authors of the research on the role of the media as a parallel instrument of justice for crimes against civilians, Y. Bidzilya, L. Snitsarchuk, E. Solomin, H. Hetsko, & L. Rusynko-Bombyk, believe that the involvement of the media in justice for crimes against civilians is possible and important. Considering that this type of crime is an international crime against human rights, the media can perform several non-legal functions to establish justice and punish the perpetrators. The authors of the research proposal to develop a model of media involvement in justice for crimes against civilians, considering the expansion of international and domestic armed conflicts. In particular, it is proposed that the media should: cover and document crimes, including through the latest technologies; provide social support and opportunities for victims to express their views; and coordinate efforts between governmental and non-governmental entities interested in justice for crimes against civilians. The author substantiates the idea that the media are subjects of the prevention of offences against civilians [3, p. 305].

In general, the authors' position has a specific rational basis, but an important aspect is missed: usually, bodies and officials authorised to investigate criminal unlawful actions are representatives of public authorities, who are vested with appropriate powers but are burdened with several obligations and restrictions that ensure their impartiality, independence, and guarantee the reliability and appropriateness of the evidence they collect. The media belong to the sphere of private law by their legal status, thus, various kinds of influence on their representatives cannot be excluded; in addition, they do not have the appropriate education and practical training to perform such activities, thus, their participation in the process of administering justice for offences against civilians is possible, but cannot be the main one.

The relevance of this research is to identify, analyse and find ways to solve acute human rights problems related to the administration of justice. In addition, the experience of the Federal Republic of Germany, the French Republic and the Republic of Poland are explored to compare the problematic aspects of the administration of justice.

The purpose of this research is to cover the connection and impact of the results of the administration of justice in Ukraine on the overall state of constitutionalism. To achieve this purpose, the author considers it necessary to address the following tasks: – to identify current trends in judicial practice in Ukraine; – to characterise the impact of the results of the administration of justice on the state of compliance with the Constitution and the principles of the constitutional order of Ukraine; – to substantiate the importance of judicial practice in the context of characterising constitutionalism in Ukraine. The scientific originality of the work is a comprehensive consideration of current issues of the administration of justice in Ukraine from a practical and theoretical standpoint, and a perspective on constitutionalism – as a constitutional-legal reality.

Materials and Methods

This research consists of two main stages: a dialectical comprehension of the doctrine of constitutionalism and theoretical developments related to the chosen subject, and an investigation of judicial and administrative practice in the context of identifying systemic problems.

The methods used by the authors are conventionally based on the methodology of legal science. Thus, the dialectical method of cognition allowed clarifying the essence of the concept of “constitutionalism” and operating with such categories as “justice”, “judicial practice”, and “judicial power”; the formal-legal method allowed analysing of the sources of constitutional law relating to the administration of justice and formulating recommendations for overcoming the identified systemic problems; the logical-legal method allowed identifying the state of compliance with the basic principles of the constitutional order of Ukraine by judges and public authorities. The analysis of legal practice was performed based on the author's long-term practical activity,

which allowed identifying and theorising systemic problems in the administration of justice in terms of ensuring human and civil rights and freedoms.

Concerning the theoretical component of the work, the authors have analysed relevant scientific publications on constitutional legality as a legal regime for the exercise of state power in countries in transition (post-Soviet states), the rule of law during the transitional period of legislation of transitional justice countries belonging to the continental legal system, justice as a condition for the implementation of Ukraine's European integration course, and constitutionalism as a regime of legal restriction of state power, constitutionalism as a philosophical-legal category and socio-political phenomenon, constitutional law as a transnational science.

Results and Discussion

When analysing the administration of justice in European countries, there are no similar problems, which are probably explained by different practices of legal regulation and law enforcement.

Thus, in the Federal Republic of Germany, the General Act on Equal Treatment (AGG) provides for various sanctions for violations of the law, mainly in the form of financial compensation. This Law defines the procedure for compensation for material (financial) and non-material damage. The AGG distinguishes between two alternative situations: remedies in labour law (sections 15-16 of the AGG) and remedies in private relations (sections 19-21 of the AGG) [4, p. 15].

There are several ways to enforce judgments in Germany: by applying for a garnishment to a local court having jurisdiction over the enforcement of a judgment (*Vollstreckungsgericht*), in addition, or a judgment creditor may apply to a bailiff (*Gerichtsvollzieher*) for enforcement of the judgment by levying execution on the debtor's personal property; the judgment can be enforced against the debtor's immovable property by applying for a forced mortgage (*Zwangshypothek*) or forced sale of immovable property (*Zwangsversteigerung*), and if the immovable property generates income, the creditor can apply for forced administration (*Zwangsverwaltung*). There is no time limit for the enforcement of national court decisions in Germany, but claims that are declared final and absolute are subject to a 30-year limitation period [5].

The variety of ways to enforce court judgments and the unlimited period for submitting a judgment for enforcement certainly establish conditions more favourable to the enforcement of court judgments, which in turn guarantees the true efficiency of justice. Thus, the experience of Germany is definitely useful and should be considered by the Ukrainian legislator.

When considering the administration of justice in France, it is interesting to note that the French judicial system is managed by the Ministry of Justice (Chancellery), which is headed by the Minister of Justice – the Keeper of the Seals. The Ministry of Justice of France is the developer of regulations in the field of justice, determines the national policy in this area, and manages the resources of the judicial system [6].

In the theory and practice of Ukrainian constitutionalism, the legislative, executive and judicial branches of government are characterised separately, thus, it is unusual for a ministry to be at the head of the judiciary. Therewith, in the area of the administration of justice in Ukraine, the judicial flaw is related to the Ministry of Justice, particularly in the enforcement of court decisions.

In addition, in Poland, there is a connection between the government and the judiciary that does not present promising prospects for the efficiency of justice. Thus, at the end of 2019, the Polish Sejm approved a law designed to streamline the structure and functions of the judiciary, allowing the Polish government to dismiss judges or reduce their salaries. The European Union does not approve of such trends, thus, in early 2020, the European Court of Justice ("CJEU") issued an interim decision obliging the Polish government to suspend the activities of the disciplinary chamber to bring judges to disciplinary responsibility [7].

Undoubtedly, the independence of judges is a guarantee of the effective functioning of the judicial system, which is a guarantee of the administration of justice in compliance with the rule of law and human rights. The Polish experience demonstrates that political struggle and attempts to imbalance the system of checks and balances are not unique to Ukrainian constitutionalism.

In this research, the focus is on law enforcement officers, but such requirements are relevant for lawyers. The high personal culture and morality of a particular lawyer are the factors that determine the application of the law in such a way as to comply with the rule of law, legality and the basic principles of constitutionalism.

Summarising the approaches to understanding the concept of "constitutionalism", M. Kozyubra notes that constitutionalism is a doctrine and phenomenon of political and legal life developed based on liberalism as an ideology and its values, including human dignity, inalienable human rights, justice, legal equality, the principle of separation of powers, the rule of law, impartial and fair justice, etc. and the author states that in this respect there are no differences in the three models of constitutionalism (American, English, and European). These three models are based on the same Euro-Atlantic liberal values, with some emphasis being given to the application of these values in the American, English or continental European varieties of constitutionalism (including French and German), which is conditioned upon the

historically specific features of constitutionalism in these countries [8, p. 59-60].

Ukrainian constitutionalism is definitely more inclined to the European model, but it is necessary to consider the historical features of the establishment of statehood in Ukraine, and a particular legacy of the legal system, the fact that Ukraine was reviving its democracy, which has been inherent since the 16th century, after a long period of Soviet rule, which, even as of 2022, still has its echoes in the legal reality.

The author agrees with the position of L. Ostafiychuk, who insists on the importance of ensuring the independence of judges, including pressure from the Supreme Court and its legal positions [9, p. 33].

The idea that legal nihilism should be eradicated primarily among judges, lawyers, prosecutors, investigators, and civil servants is in line with the content of this research, and constitutionalism in Ukraine should be established at the functional level [10, p. 38]. The case law analysed in this research demonstrates the validity of the above thesis.

V. Kovtuniak, exploring the theoretical and practical aspects of the procedures for amending constitutions, concludes that the dynamism of modern social life requires the possibility of modernisation of constitutions [11, p. 50]. For Ukrainian constitutionalism, it is necessary to consider the fact that most of the amendments to the Basic Law were politicised and served as a way to satisfy the interests of particular political forces.

T. Humeniuk notes that for Ukrainian constitutionalism, the experience of France regarding effective interaction between the president, parliament and government, and the experience of Germany regarding the interaction between parliament and government is useful [12, p. 23]. Insist that interaction, the ability to act together to solve the functions of the state between all public authorities and local governments is a determining factor in the effective functioning of the state and effective constitutionalism.

However, the most painful problems in terms of ensuring the rule of law, namely human rights guarantees, are those related to the administration of justice in Ukraine.

Section VIII of the Constitution of Ukraine defines the basic principles of justice in Ukraine, Article 124 of the Basic Law [13] states that in Ukraine justice is administered exclusively by courts and that any legal dispute and any criminal charge are within the jurisdiction of the courts. In cases provided for by law, the courts hear other cases.In turn, Section II of the Constitution guarantees the right to defend one's rights in court, and Article 55 provides that human and civil rights and freedoms are protected by the courts. Therewith, the Basic Law guarantees everyone the right to complain in court against decisions, actions and inaction of public authorities and their officials and employees; the right to file a constitutional complaint with the Constitutional Court of Ukraine on the grounds established by this Constitution and according to the procedure established by law [13].

Analysing these provisions, they appear to be safeguarding and should provide an effective human rights mechanism. But legal and legislative systems are complex and integrated with several other areas. In practice, unfortunately, they continue to identify legal provisions and precedents that contradict the Basic Law. In addition, the analysis of judicial practice in Ukraine demonstrates several highly controversial trends, which are difficult to identify and generalise due to the specificity of the issues they concern.

Thus, consider the following legislative provisions. According to clause 19 of Article 34 of the Law of Ukraine "On Notaries", notaries make an executive inscription, which is a notarial act [14]. According to Article 87 of the Law of Ukraine "On Notaries", notaries make executive inscriptions on documents establishing debts to collect money or reclaim property from the debtor. The list of such documents under which debt collection is performed indisputably based on executive orders is established by the Government of Ukraine [14].

According to subparagraphs 1.1, 3.1, 3.2 of Chapter 16 of the Procedure for Performing Notarial Acts by Notaries of Ukraine, approved by Order of the Ministry of Justice of Ukraine No. 296/5 of February 22, 2012 [15], notaries perform executive inscriptions on documents establishing debt or on transactions, the foreclosure of property under which is performed based on executive inscriptions, to recover monetary amounts or reclaim property from the debtor.

The law provides that the notary makes writs of execution when the submitted documents state that the debtor is indisputable or otherwise liable to the debtor towards the recoverer. The list of documents that can confirm the indisputability of the debt, which can be collected indisputably based on an executive inscription to a notary, is approved by the Resolution of the Cabinet of Ministers of Ukraine No. 1172 dated 06/29/1999 [16].

On the one hand, this provision is a positive step to reduce the burden on the judicial system, as there is no need to get involved in a long court process if the debt is indisputable, and the notary, according to their legal status, can be the entity that verifies this indisputability. Admittedly, provided that the person is honest. In general, the possibility of such actions by notaries would not pose a threat if it were not for the court practice in this area.

The Supreme Court, composed of the panel of judges of the Third Judicial Chamber of the Civil Court of Cassation, considered case No. 200/3452/17 and established that "a private notary is an improper

defendant in the case since civil liability for an illegally made executive inscription is imposed not on the notary, but on the person who applied for the executive inscription" [17].

The court's reasoning is as follows: "A notary is a public person who is authorised by the state to certify rights and facts of legal significance and perform other notarial acts to give them legal validity. When performing notarial acts, a notary acts impartially and cannot serve the interests of any of the persons involved in the notarial act. The notary does not become a party to civil legal relations between these persons, and therefore cannot violate civil rights that are the content of these relations. There is no procedural interest of the notary in the subject of the dispute and the implementation of the decision" [17].

For some unknown reason, this statement does not consider the fact that a notary can perform their work unprofessionally, irresponsibly or with integrity. Provided that notaries know that they will not be personally liable for violations of the procedure for making executive inscriptions, it is not difficult to predict the relevant actions in this area.

This type of work does not allow for a more extensive analysis, but, evidently, the position of the Supreme Court is not sufficiently substantiated, and it is widely used in court practice, in cases of challenging notaries' executive inscriptions, which ultimately results in violation of fundamental human and civil rights and freedoms.

Notably, one more relevant issue remains unresolved, despite the legal position of the courts. The Law of Ukraine "On the Status of War Veterans, Guarantees of Their Social Protection" [18] provides for the payment of one-time financial assistance to combatants by May 5 each year. In 2007, Article 12 of the Law was amended to specify the amount of this assistance. In particular, that this amount is determined by the Government.

The decision of the Constitutional Court of Ukraine (case on the subject matter and content of the law on the State Budget of Ukraine) of 05/22/2008 No. 10-rp/2008 declared these changes unconstitutional [19]. By the decision of the Constitutional Court of Ukraine dated 02/27/2020 No. 3-p/2020, a separate provision of paragraph 26 of Section VI "Final and Transitional Provisions" of the Budget Code of Ukraine was declared inconsistent with the Constitution of Ukraine (unconstitutional) in the part stipulating that the provisions of Articles 12, 13, 14, 15 and 16 of the Law of Ukraine "On the Status of War Veterans, Guarantees of Their Social Protection" are applied in the manner and amounts established by the Cabinet of Ministers of Ukraine, based on the available financial resources of the state and local budgets and budgets of general funds [20].

Considering the above decisions of the Constitutional Court of Ukraine, the amount of annual lumpsum financial assistance for combatants should be five minimum retirement pensions until May 5, 2020.

A similar application of the Decision of the Constitutional Court of Ukraine dated 02/27/2020 No. 3-p/2020 to the legal relations on the payment of a one-time annual financial assistance until May 5, 2020, in the amount provided for in Article 13 of the Law of Ukraine "On the Status of War Veterans, Guarantees of Their Social Protection" was expressed by the Supreme Court in its decision of 09/29/2020 in the model case No. 440/2722/20 [21].

Therewith, from 2020 to the present day, payments are made in a reduced amount, according to the resolutions of the Cabinet of Ministers of Ukraine (Resolution of the Cabinet of Ministers of Ukraine of 05/07/2022 No. 540, which approved the "Procedure for using in 2022 the state budget funds provided for the payment of annual one-time financial assistance to war veterans and victims of Nazi persecution") [22]. And combatants are forced to go to court, each individually, to receive the full amount of assistance. It raises another problem in the area of enforcement of court decisions. But this aspect will be highlighted in the following publications.

In general, a situation has arisen where the Government and its subordinate executive authorities and local governments, which are vested with powers in the field of social protection and implement these payments explicitly, ignore the decisions of the Constitutional Court, the position of the Supreme Court, and the extensive court practice that sided with citizens. Such a situation is an extremely blatant violation of the rule of law and a manifestation of criminal disrespect for the judiciary and the body of constitutional jurisdiction.

Starting from the subject of research, the primary focus should be on understanding the essence of constitutionalism.

Regarding the current opinions of scholars on Ukrainian constitutionalism, attention can be paid to the position of I. Gordienko identifies five characteristics of this phenomenon. Among them, in particular, it is noted that constitutionalism in Ukraine is based on the desire to ensure the implementation of the principles of constitutionalism enshrined in constitutional legislation, namely: the principle of democracy, the rule of law, constitutional legality, and the priority of human rights [23, p. 93].

Such a position is generally consistent with general scientific approaches to a broad understanding of constitutionalism. But once again, the principle of the rule of law and democracy should be interpreted equally in law enforcement, which is not the case in practice.

The authors of the research on the role of constitutional complaints in the legislative process, N. Brovko, L. Medvid, I. Makhnovskyi, V. Akhmedov & M. Leonenko, conclude that the introduction of the institution of constitutional complaints is one of the main conditions for ensuring the supremacy of the Basic Law and the development of constitutionalism in the system. The authors, after conducting analytical and statistical studies, concluded, however, that the most effective form of human rights protection is the consideration of a constitutional complaint by the Constitutional Court without intermediaries, in particular, courts of general jurisdiction; they propose a full regulatory constitutional complaint as the most effective model of a constitutional complaint [24, p. 848].

In Ukraine, in turn, a constitutional complaint was introduced in 2016 as a possibility to declare unconstitutional the law applied in a court decision in a case, while the right to a constitutional complaint arises after other national legal remedies have been exhausted. The introduction of this institution contributes to the development of constitutionalism in Ukraine, but note that the Constitution of Ukraine [13] explicitly states that it is the law of Ukraine applied in the final court decision in a case that may be recognised as contrary to the Constitution of Ukraine, i.e., a subordinate regulation cannot be the subject of a constitutional complaint.

Therewith, the analysis of law enforcement practice, mostly judicial practice, demonstrates that in the presence of a human-centred Constitution, several serious human rights problems are precisely in the area of interpretation and application of legal provisions, and at the level of adoption of regulations by public authorities at various levels.

And in this regard, the human factor is an important aspect, and in particular the level of professionalism of the relevant specialists involved in the above activities.

The authors of the research devoted themselves to the investigation of the level of self-educational competence of cadets of higher educational institutions with a special learning environment, I. Okhrimenko, R. Perkatyi, H. Topchii, Y. Andrusyshyn & A. Ponomarenko [25, p. 66], believe that the modern world imposes fundamentally new requirements for the qualifications of a modern law enforcement officer, their moral maturity, general cultural and intellectual level. Thus, the author substantiates the idea that law enforcement officers are subject to such requirements as being educated, highly cultured persons, having deep professional knowledge and skills in various fields, and having the ability to constantly improve their level of knowledge and skills.

■ Conclusions

It can be stated that the administration of justice in Ukraine is an indicator of modern constitutionalism, from the standpoint that courts remain an effective element of the human rights mechanism, and in situations where public authorities are bound by part 2 of Article 19 of the Constitution of Ukraine and act on the principle of formal application of provisions, it is the courts that have the opportunity to apply the principle of the rule of law, the supremacy and effect of the Constitution, justice and doctrinal achievements of constitutionalism when resolving a dispute on the merits.

In the course of this study, two specific problems in law enforcement were identified, described and analysed. Therewith, in the first situation, it means that false statements that have become a model in judicial practice result in the impossibility of full implementation of the right guaranteed by Article 55 of the Constitution of Ukraine. As for the proposals to overcome this problem, the author believes that amending the legislation on executive orders would be wrong, and the problem should be resolved by additional consideration of this issue by the Supreme Court. As for the second situation, it is precisely the case when justice is being done, the courts and the Constitutional Court of Ukraine have made several decisions ensuring the right to social protection for specific categories of citizens, while these decisions have been ignored by public authorities from the highest to the local level.

As a general proposal, to overcome the problems identified in this research and other similar problems existing in Ukrainian constitutionalism, it is necessary to improve legal culture and legal understanding, both in society in general and, first of all, among lawyers. It is possible if the educational process combines the acquisition of professional and practical competencies with the education of both human and professional qualities.

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Здійснення правосуддя в Україні як індикатор сучасного конституціоналізму

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■ **Анотація**. Актуальність дослідження проблематики судового конституціоналізму зумовлена суспільною потребою у відновленні довіри до Конституційного Суду України. Необхідність реформування нормативно-правового забезпечення діяльності Конституційного Суду України актуалізує це дослідження. Метою статті є розкриття зв'язку та впливу результатів здійснення правосуддя в Україні на загальний стан конституціоналізму. У процесі дослідження предмета зазначеної роботи, автори, використавши діалектичний метод пізнання для з'ясування сутності поняття «конституціоналізм», формально-юридичний метод – для аналізу джерел конституційного права, щодо здійснення правосуддя та формулювання рекомендацій для подолання виявлених системних проблем, логіко-юридичний метод – для виявлення стану дотримання суддями й органами публічної влади основних засад конституційного ладу України, та здійснивши аналіз юридичної практики, з'ясували наявність розбіжностей у розумінні юридичного змісту принципу верховенства права під час здійснення правосуддя, а отже, неоднакового його застосування, та виявили дві системні проблеми. Одна з них виникла внаслідок неоднозначної позиції Верховного Суду стосовно того, що нотаріус не може бути відповідачем у справах за незаконно вчинені виконавчі написи, а інша, навпаки, існує через ігнорування органами публічної влади, що уповноважені забезпечувати соціальний захист населення, рішень Конституційного Суду України та Верховного Суду. Запропонована стаття є результатом аналізу виокремлених конкретних практичних аспектів, що є результатами здійснення судочинства в Україні, виявлення в судовій практиці системних проблем, що впливають на оцінку конституціоналізму, як конституційно-правової реальності. Автори акцентують на необхідності підвищення правової культури та правосвідомості не лише загалом у суспільстві, а передусім серед юристів, що можливе за умови поєднання в освітньому процесі набуття фахових і практичних компетентностей з вихованням як людських, так і професійних якостей. Практична значущість роботи полягає в комплексному розгляді актуальних питань здійснення правосуддя в Україні з практичного та теоретичного погляду

■ **Ключові слова**: конституційний лад; судова влада; судочинство; верховенство права; судова практика

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Theoretical and applied principles of the phenomenon of counteracting psychophysiological research by using a polygraph

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■ **Abstract**. The relevance of the research is conditioned upon the fact that nowadays, in the practice of psychophysiological research, polygraph examiners are increasingly faced with the phenomenon of opposition from the subjects, who thus try to distort or distort the results obtained through using instrumental methods of psychodiagnostic. The purpose of this research is to highlight and analyse the various ways in which insincere persons can counteract these studies and the signs that indicate their use. The main components of the methodological toolkit are the dialectical method of scientific knowledge of real phenomena and general scientific and special methods of polygraphy. The author substantiates the techniques and methods of counteracting psychophysiological research by using a polygraph through the relevant signs that indicate them. It has been established that currently, the most common forms of counteracting psychophysiological research using a polygraph are physical (mechanical) methods that have external physical manifestations through the targeted mechanical action of the person under investigation and perform a distracting function from the instrumental testing procedure. The author considers physiological methods that involve a change in the examinee's psychophysiological state through the effect of excessive physical activity on the body performed or applied on the eve of a polygraph examination, which causes fatigue or demonstrates exhaustion of human strength. It was noted that, based on the identified signs and methods of counteraction, the polygraph examiner decides on the time of postponement of the examination procedure or further refusal to conduct it. The practical significance of the work consists in the fact that the methods of counteracting the research procedure, and signs of psychophysiological reactions used by insincere individuals, substantiated in it, will avoid errors in the work of a polygraph examiner, and will obtain a high level of reliability of the results of research using a polygraph

■ **Keywords**: lie detection; polygraph examiner; polygraph examination; psychophysiological reactions; concealment of information; deception; experiment

■ Introduction

The level of demand for psychophysiological examinations using a polygraph in various spheres of life (both in the private sector, business, and law enforcement) is currently growing rapidly. The widespread use of polygraphs in the modern world to conduct special studies based on them to clarify specific facts of events in a person's life and activities demonstrates their importance in making specific decisions by the initiators of these checks. Therewith, not all persons who are referred for this procedure complete it. The reason for this is the insincerity of individuals when answering specific test questions posed by a polygraph examiner, which allows them to record such reactions using a special scientific and technical device – a polygraph – and evaluate them as false. To achieve this goal, candidates for the polygraph examination procedure try to resort to tricks to bypass the polygraph, using various techniques and methods of influencing their bodies. It is the so-called opposition to the research procedure. Modern polygraph practice knows various forms of opposition from insincere people, which polygraph examiners emphasise

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when conducting special tests of candidates for research. However, practice demonstrates that these methods of counteraction are not sustainable, they are constantly changing, improving, and new ones appear, which confirms the relevance of exploring the theoretical and applied foundations of the phenomenon of countering lie detection in the light of the requirements of the times. In addition, there is a significant necessity to find new and optimise existing ways to prevent such counteraction.

In theory, there is a distinct, specific division of different methods of their use, according to the relevant signs for detecting them, since this adversely affects the behavioural activity of a person, their psychological and physiological state, and impedes concentration during a polygraph examination [1]. Emphasising the phenomenon of opposition to the polygraph procedure allows polygraph examiners to better understand the intricacies of the human psyche and physiology, which is reflected in the reflex activity and response of individuals to test questions during this study. The scientific originality of the study is in the classification of countermeasures and the author's characterisation of the signs of their use by an insincere individual, which will minimise in practice the situations of uncertainty in decision-making by polygraph examiners, and avoid mistakes in determining the state of a person who has voluntarily agreed to a psychophysiological examination with using a polygraph, but who deliberately prepared and committed deliberate deception during this procedure.

Considering the above, the study involves performing several tasks, namely:

– to cover the essence of the phenomenon of resistance to conducting psychophysiological polygraph examinations using disingenuous individuals who undergo the procedure to deliberately distort or misrepresent the results of the process;

– to provide a detailed description of ways to counteract the conduct of psychophysiological research using a polygraph;

– to identify signs that indicate opposition to the polygraph procedure;

– to propose one of the possible variants of tests for interviewees that can be used by practical polygraph examiners to identify signs of resistance to psychophysiological research using a polygraph.

The purpose of the study is to reflect the fundamentals of the existing phenomenon of opposition to psychophysiological research using a polygraph by insincere persons undergoing this procedure, to avoid problematic situations for polygraph examiners when analysing and evaluating the reactions obtained, which are reflected in the form of curves on computer polygraphs, and to ensure the objectivity of the results of the research performed.

Literature Review

Over the years, well-known scientists and polygraph researchers have devoted attention to this issue. For example, C. Honts [2], exploring attempts to impede technological procedures for assessing the reliability of such studies, proposes a theoretical model to explain the mechanism of effective countermeasures, the definition of which, in his opinion, is explicitly connected with approaches to the central nervous system. The well-known psychophysiologist J. Matte emphasises the measurement of the autonomic nervous system in his work "Forensic psychophysiology using the polygraph: Scientific truth verification, lie detection" [3], which highlights the mental, physical, and pharmaceutical countermeasures that polygraph subjects can use to "deceive" the device by changing "normal" physiological reactions. In this context, attempts to bridge the gap between outdated practices and proven testing and analysis protocols are being made by D. Krapohl & P. Shaw [4]. By analysing the practice of evidence-based polygraphy, they propose alternative technologies and methods to increase the reliability of these studies. Finding methods to improve the accuracy of the results is the subject of J. Swiec [5], who highlights the theoretical aspect of using the brain-computer interface in lie detection. Other researchers [6] propose a new solution to this problem by using artificial intelligence systems.

The results of practical research in this area are essential for highlighting the issue. Thus, the work of M. Stevenson & G. Barry [7] describes the results of their field research on the impact of breathing exercises performed before testing on the test results. Therewith, E. Mac Giolla & T. Luke [8] present the results of applying a cognitive approach to improve the ability to recognise lies. Instead, M. Pishghadam, H. Raoufian & A. Gazerani [9] describe the evaluation of a lie detection system by nonlinear analysis of electro-oculography signals. The theoretical foundation of the problem of counteracting psychophysiological testing is complemented by experimental studies by K. Suchotzki & G. Matthias [10] on the identification of behavioural and autonomic correlates of deception, in particular, in the context of the impact of adverse motivation on them.

A comprehensive analysis of using countering polygraph examinations is provided by the scientific work of the prominent American psychophysiologist, psychologist and psychogeneticist D. Lykken "Blood Tremors: The Use and Abuse of Lie Detectors", dated back to 1981, in which the author emphasises the strengthening of responses to control questions when assessing physical countermeasures [11].

However, the relevance of exploring this phenomenon of counteraction has not been abandoned to this day. In recent years, the field of lie detection has seen a trend toward technological progress from the classic polygraph to neuroscientific brain imaging, which was the subject of the work of B. Paul, L. Fischer & T. Voigt [12]. The modern scientific literature presents the results of exploring the specifics of concealing information through using specific methods of counteraction during polygraph examination by persons with different types of mental health: A. Uchaev & Y. Alexandrov [13] even identify the specific features of information concealment in the process of polygraph testing of persons with analytical and holistic types of mental health, which generally demonstrates positive results. A group of researchers with the participation of Hyeon-Gi Hong [14] focuses on exploring the psychophysiological reactions of people with different psychopathic tendencies to the hidden information test.

In scientific works on this subject, the issue of counteracting psychophysiological research by using a polygraph is considered fragmentarily, in the context of the relevant subjects of research.

Materials and Methods

The methodological tools of the study correspond to the outlined purpose of the research and the subject. The most popular is the dialectical method, in particular in the context of the relationship with the theory and practice of reflecting the content of the phenomenon of opposition to psychophysiological research by using a polygraph, which is used by insincere persons undergoing this procedure, who purposefully use it to distort or misrepresent the results of such a research process. In addition, general scientific methods were used, such as *analysis* – to process the array of existing information on the phenomenon of counteracting psychophysiological research using a polygraph; *synthesis* – to present an idea of the mental and physiological processes occurring in the minds of the persons under investigation using a polygraph under the influence of various drugs, precursors or any adverse actions taken by insincere individuals to circumvent the polygraph; *generalisation* – to systematise and evaluate the available results of polygraph examinations, which, through the relevant features, indicate that persons use appropriate techniques or methods to counteract psychophysiological examinations using a polygraph for their benefit. These methods allow for establishing algorithms for detecting deception and counteracting the research procedure, which is frequently used by individuals in the polygraph procedure to circumvent the polygraph by distorting or misrepresenting the results obtained with its help. These methods were used at all stages of the study, in particular, when defining the scientific problem, setting the purpose and objectives of the study; detailing the content of the information presented; analysing innovations and providing proposals for the application of modern approaches to displaying results, techniques and methods of counteracting psychophysiological research using a polygraph.

The theoretical foundation of the research was the results of exploring the materials of modern Ukrainian and international polygraph practice. The research is based on the innovations of Ukrainian and international scientists and polygraph researchers, who reasonably prove the necessity of exploring the phenomenon of counteracting psychophysiological research using a polygraph and suggest optimal methods for such research.

The empirical foundation of the study is international data published in the official documents of the American Polygraph Association [15] as the founder of key design in the development of the polygraph process, which devotes considerable attention to the quality of psychophysiological research using a polygraph and the evaluation of the results obtained with its help.

Results and Discussion

1. The essence of the phenomenon of opposition to the procedure of polygraph examination. A prominent place in modern practical polygraphy is occupied by the phenomenon of opposition to the process of examining by persons undergoing this procedure. This category is defined as a deliberate, purposeful action on the part of a person undergoing a psychophysiological test using a polygraph designed to distort the results of this research procedure. Thus, counteraction includes a specific adverse effect that a person deliberately uses in the psychophysiological research procedure to distort, misrepresent, alter, or conceal important information for the customer – the so-called initiator of the research.

Thus, it is a specific purposeful activity that can directly or indirectly influence the course and results of a polygraph examination and distort the results of this activity. Note that both computer polygraphs and various behavioural reactions can indicate opposition. After all, the test subject can resist during registration, pre-test, or post-test interviews. Therefore, the detection of such facts is difficult and complex. It is usually difficult for people to recognise deception by observing someone's behaviour or listening to a person, and theorists are constantly trying to establish comprehensive reasons for this [16]. Although in recent years there have been trends to shift the attention of polygraph examiners from observing non-verbal

behaviour to analysing the content of speech [17], the introduction of qualitative test formats, designed as targeted techniques [18], researchers are now unanimous in the fact that there are no simple verbal signs of deception that can be detected by people, nor is there a universal research strategy [19].

The issue of counteracting research by using a polygraph is not new to the theory and practice of the polygraph process. Attempts to "deceive" the polygraph began from the very beginning of the industry's inception and development, as "what can be invented can be circumvented" [20].

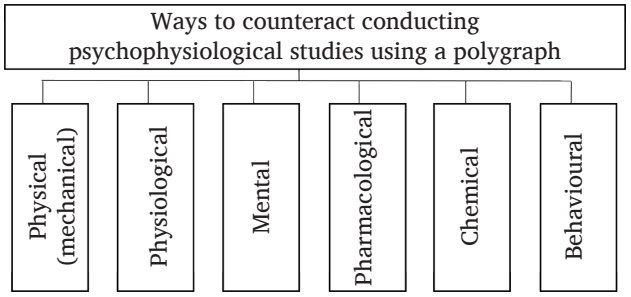
2. Methods of counteracting the polygraph examination procedure. In the context of the problem explored, notably, first of all, the factors that affect the objectivity of the results of the psychophysiological examination of persons using a polygraph. They play a key role in informing the person about this research procedure and its specific features. Thus, due to the possession of relevant knowledge, the person being explored has the opportunity to resort to a specific method of counteracting the objective research result. International practices of the polygraph examination process call them countermeasures rather than methods of counteraction. They refer to this interpretation based on its definition in the American Polygraph Association's (APA) Glossary of Terms, which states that *counter-measures* are usually methods used to mislead the observer [21].

In this context, the polygraph examiner conducting the research is considered an observer. Such methods of counteraction are both overt (detection of which does not require additional checks) and covert (can be detected only through additional checks).

Concerning their identification, the world's leading scientists and researchers in the study and development of polygraphs have implemented various constructions of countermeasures that were organised into appropriate forms (classes, types, groups). The most common classification is the one proposed by D. Krapohl [22], which combines four classes: physical, psychological, pharmacological/chemical and behavioural measures.

In the author's opinion, it would be more appropriate to terminologically call them not countermeasures, but the phenomenon of counteraction. This phrase is more capacious, as it includes the broader meaning of a particular action, namely, the process and method of using something that causes an adverse reaction in an individual to achieve the purpose. In addition, it is advisable to develop ways to define the phenomenon of counteraction not by classes, but by types or groups, as a narrower understanding of the essence of filling them with content.

Considering the achievements of Ukrainian and international empirical practice of polygraph examination, based on a thorough analysis [1, p. 228-249], all the ways insincere persons can counteract this study can be divided into six groups (Fig. 1).



■ **Figure 1.** Classification of methods for conducting psychophysiological examinations using a polygraph
Source: developed by the author based on research by O.I. Motliakh [1]

Consider these methods in more detail.

2.1. Physical (mechanical) methods of counteraction. These are the methods that have external physical manifestations through directed mechanical action by the examined person. On the one hand, they are simple psychophysiological reactions, and on the other hand, they are difficult for a polygraph examiner to detect, as they are very similar to the natural physiological reactions that occur in examinees when they are asked questions and provide answers. Physical (mechanical) methods of counteraction are usually resorted to by straining a specific muscle group of the arms, legs and other parts of the body, and by mechanically pressing the limbs together or against adjacent parts of things and objects to cause physiological pain and unpleasant reactions that can distract from the polygraph examination procedure [1]. This type of method includes actions related to clenching the lips, clenching the teeth, biting the tongue, cheeks, etc. Frequently, to use physical methods of opposition, a person uses various small improvised objects, such as pins, stationery buttons, snaps, which are placed in shoes, clothing items and pressed at the right time to cause pain (sensations). In addition, they wear related things: rings, jewellery, and hair clips that squeeze or rub on a particular part of the body, making the person being examined uncomfortable and diverting their emotions to other things. Occasionally, uncomfortable (tight) clothes and shoes are worn for this purpose, which adds to the problem by being too small, compressing parts of the person's body, causing irritability or increased emotional arousal, which is designed to interrupt the insincere person's excitement in answering questions.

A fairly common way of physical (mechanical) counteraction is to change the rhythm of breathing. It is the only one of the physiological indicators recorded by the polygraph. This method is used by persons who do not have knowledge of the technical capabilities

of the polygraph and are convinced that reducing breathing or, conversely, increasing its frequency will flatten or suppress the physiological reactions they detect. However, a change in breathing demonstrates a specific change in its indicators. For example, the intensity of the increase in respiration, which is not inherent in the normal human rhythm, results in hyper- or hypoventilation and the appearance of breath-holding (apnea) or deep breaths [21]. Therewith, relatively stable synchronous changes in heart rate and blood pressure are triggered. Individual deep breaths, both after verification and control questions and at other points during the test, prolonged breath-holds, or unstable, "ragged" breathing. In addition, it can be an artificial modification of breathing parameters for inhalation and exhalation, a decrease or increase in its frequency (for example, frequent shallow breathing). Other breathing parameters can be deliberately changed, such as the ratio of inhalation and exhalation times, and long pauses between them. Counteraction using the breathing method requires a sufficiently high level of self-control and does not always affect the overall result of a psychophysiological examination using a polygraph. Respiratory rate without the appropriate emotional mood of the individual changes other vegetative indicators with a significant delay, which is associated with changes in the level of gas metabolism in the body. When a person breathes rhythmically, emotional changes occur smoothly and are associated with other psychophysiological indicators and do not demonstrate sharp fluctuations in respiratory amplitude.

2.2. Physiological methods of counteraction. These methods involve changing one's psychophysiological state for a long time in such ways as excessive physical activity (immediately before the study), prolonged fasting, exhaustion due to sleepless nights, etc. [1]. These countermeasures are specific, as they cannot always be detected visually, let alone verified in any other way. Excessive physiological exertion by a person on the eve of the study can cause muscle crepitation, pain, or physical ailment. Combined, this will cause the examinee to become lethargic or, conversely, irritated, which adversely affects the quality of the polygraph examination using a polygraph. A person in this state will demonstrate atrophy to everything that surrounds them and what happens to them. Physiological reactions in this state will be minimal, even in issues that are significant for the study.

Prolonged fasting and lack of sleep on the eve of the examination will cause one of the following conditions: lethargy, inattention, or indifference. Considering the time duration of such research, the person will fall asleep, and their physiological reactions to the activity will be minimal.

Drinking a significant amount of fluids before the procedure to stimulate frequent urination is one of the physiological ways to counteract it. The subject ultimately concentrates not on the polygraph procedure but on meeting a physiological demand. In this case, the specialist frequently has to take breaks in the investigation, after which the person requires time to restore their emotional state and fully return to the working rhythm. It complicates the polygraph examiner's work, and after clarifying the reasons for the frequent stops and low participation of the examinee in the further conduct of the examination, it can be terminated or postponed to another day and time. If this syndrome is repeated next time, it can be confidently stated that one of the physiological methods used by the person to counteract such research is used.

2.3. Mental methods of counteraction. Methods of this group involve changing the functional state of the person under investigation using a polygraph when the body's reactions to a stimulus (irritant) are artificially suppressed. Psychological methods are based on the tight connections established between human mental health and its physiology. The human body is unique in its ability to selectively reflect both external and internal factors. Thus, the body can actively respond to only those stimuli that it actualises out of the many stimuli that affect it simultaneously, and vice versa, ignoring the rest of the stimuli that are not important to it. It allows for a purposeful and active influence on the physical and mental state, selectively orienting the reflective function of the mental to specific external or internal factors. A person can actively use this property in the course of polygraph examinations, setting a specific purpose. From the standpoint of psychological analysis, a psychophysiological examination using a polygraph is stressful for a person, since the purpose is complex (to hide certain information with words and behaviour and, therewith, not to "give away" a physiological reaction) and the person's behaviour is determined by poly-motivation. In this context, experts in this field argue that "such dichotomous states as hypertrophied interest or complete indifference to the testing situation adversely affect and distort the entire procedure, as the higher the level of motivation, the more pronounced the reactions and vice versa, the lower the level of motivation, the less pronounced the indicators are (over-motivation increases the level of activity and tension excessively, resulting in undesirable emotional reactions such as anxiety, excitement, stress, frustration, etc. and unmotivated causes apathy, boredom, indifference, passivity, etc)" [23].

In addition, the motives can be more or less opposed to each other, i.e., there is a "struggle of motives". This phenomenon can throw a person off balance for a while and cause a more pronounced stressful state than during a regular survey. The "internal disorder" can be eliminated by searching for an

additional motive that would allow a person to make a final decision about the form of behaviour. In such conflict situations, the greatest difficulty is in developing an additional motive, which frequently results in a refusal to master the situation and a passive submission to the course of events. Such a situation can be avoided by using mental self-influence designed to control emotional and autonomic reactions, which can be used by the person being examined on a polygraph. The most common psychological methods of counteraction are imagery, hypnosis, biofeedback, placebo, rationalisation, dissociation, mental stress, personality traits, and mental disconnection [21]. Their detailed characteristics are presented in Table 1.

■ **Table 1.** Mental methods of counteracting psychophysiological research using a polygraph

Imagination	A sensory-visual image of objects or phenomena of reality that is stored and reproduced in the human mind without their actual impact on the senses. This refers to the process and result of the mental reproduction of images of objects and phenomena that do not affect the human senses at a particular moment [21]. The individual is immersed in memories that can evoke positive emotions, and their physiology enters a state of calm
Hypnosis	A temporary state of consciousness is defined by sharp concentration and susceptibility to suggestion. It is frequently compared to ordinary short-term sleep, but this is not the case, since the state of hypnosis occurs as a result of the special effects of the hypnotist or purposeful self-hypnosis, unlike natural sleep [21, p. 43]. The outcome of successful hypnosis depends both on the skills of the hypnotist and on the hypnotisability of the subject and the characteristics of their body. People who are in a state of hypnosis retain their memory, but in this state, they do not lose the ability to lie or resist the suggestion
Biological feedback	A set of physiological, preventive and therapeutic procedures during which a person is provided through an external feedback loop, organised mainly using a microprocessor or computer equipment, with information about the state and changes in particular physiological processes [21, p. 11]. To some extent, this kind of biological feedback is used by a polygraph examiner when presenting a stimulating test to the subject by their first or last name, using the method of known falsehood. Knowing about this method from other available sources, the person tries to use it to influence their physiological indicators by observing the graphs of a computer polygraph in real-time
Placebo	This method of counteraction is multidirectional in its application. It is used, for example, during drug trials to prevent psychotherapeutic effects. It is a change in a person's state due to their belief in the efficiency of the probable impact of a specific neutral thing, and the brain, through self-hypnosis, adjusts its work rather than the work of other organs [21, p. 64]. Unscrupulous subjects of polygraph examinations demonstrate their awareness of the procedure, but their minds are elsewhere, drawing distracting pictures of the past in their imagination
Rationalisation	The unconscious desire of an individual to logically justify their ideas and behaviour even when they are irrational. Rationalisation serves as a mechanism of psychological defence, in which only that part of the perceived information is used in a person's thinking, and only those conclusions are drawn that make one's behaviour appear well controlled and not contrary to objective circumstances [21, p. 71]. The rationalisation is an attempt to establish harmony between the desired and the actual situation, i.e. to explain behaviour that is not explained by an objective analysis of the situation, or an attempt to justify a failure or mistake
Dissociation	A mental process that belongs to the defence mechanisms of the mental system. It involves distancing oneself from unpleasant experiences: a person begins to perceive what is happening to them as if it were happening to someone else, not to them personally [21, p. 28]. A person can resort to dissociation already during the interview before the survey
Mental stress	Mental stress involves a prolonged mental workload and directly affects mental activity, as it can impair the functions of memory, thinking, attention, and perception [1]. Excessive brain activity causes tachycardia, increased blood pressure, changes in the electrical activity of the heart muscle and brain, and increased pulmonary ventilation and oxygen consumption. The long-term process of such functional changes in the body causes the development of inhibitory processes in the central nervous system, a decrease in attention, and fatigue, which complicates the procedure for conducting a polygraph examination
Features of the ndividual	A set of personality traits determined by a person's social nature. Each of the subjects is primarily a subject of socio-cultural life, which is developed in the context of social relations, communicative interaction, and subject activity. By engaging in specific cultural, historical, and other relationships, a person acquires specific individual characteristics that indicate a tendency to oppose polygraph examinations [1]
Imaginary disconnection	The most effective way of suppressing psychophysiological reactions is when a person tries to completely ignore the content of the questions and answer them automatically, switching their attention to some real or fictional object [1]

Note: compiled based on the analysis of scientific encyclopedic literature and the author's practical research

2.4. Pharmacological methods of counteraction. These methods are the result of using some pharmacological agents by the subject. An individual who has to be examined using a polygraph will try to conceal some information from the initiator (customer) of such a procedure, it is quite obvious that they can

use pharmacological agents as a way to counteract the examination. As a result, emotional tension is reduced, and memory begins to suffer due to the impaired functioning of nerve cells that enable the storage and reproduction of information. The intensive development of the pharmaceutical industry has increased the range and possibilities of using drugs that vary in time and effect, which remove people from the normal physiological rhythm, depressing or exciting their nervous system. This condition allows them to be temporarily or permanently distracted from pressing issues and demonstrate insincerity in their actions and thoughts. Polygraph examiners use a special test to determine the state of a person who has voluntarily agreed to participate in a psychophysiological examination using a polygraph. Based on its results, the polygraph examiner receives specific information about the candidate's condition. The current practice of polygraph examination demonstrates the presence of the following most popular types of pharmacological drugs used to counteract the relevant studies:

– *antidepressants* (Latin *antidepressantia*; Greek anti – against + Latin *depressus* – depressed) (imipramine, fluoxetine, citalopram, trazodone, etc.) are psychotropic substances that can improve mood, relieve tension, anxiety or stimulate mental activity. They are commonly used to treat neuroses and mental disorders [21]. A significant number of such drugs are synthetic, using which can cause serious side effects on the human body, and their use should be performed under close medical supervision. In the case of an overdose of antidepressants, a hyper reaction to a stimulus question is possible, even including the appearance of non-decaying curves on computer polygraphs. Two states are possible: the first is when the skin-galvanic response curve is within the normal range, but one of the stimuli activates its state of continuity. The second condition is when, in the case of an increased dosage or overdose of stimulant drugs, a "pendulum" phenomenon can be observed even when the "background" is recorded. Unfortunately, the presence of this phenomenon cannot serve as a ground for a polygraph examiner to decide whether the examinee will oppose the procedure, as it may be a normal reaction to their weakened nervous system. Using antidepressants will necessarily be reflected in computer polygraphs, as the graphs of the curves will change due to an increase in heart rate, which will cause the human body to quickly fatigue. Cardiac arrhythmia, dizziness, severe headaches, increased sweating, increased body temperature, body tremors, impaired coordination, and nausea are possible. The external signs of the examined person will be evident, which will affect their increased emotional arousal or, on the contrary, a decrease in reactions to activity and loss of interest in everything around them. Excessive anxiety, irritability, unusual coordination of movements, gestures, illogical statements, etc. can occur;

– *barbiturates* (Lat. *barbiturate*) (barbamil, veronal, papaverine, luminal, etc.) are hypnotic drugs, called hypnotics. The action of barbiturates is designed to depress the central nervous system. They are commonly used in medicine as sedatives, hypnotics, and anticonvulsants [21]. Depending on the purpose, these and other types of such drugs are divided into groups of the ultra-short, medium, and long-acting. Considering their availability on the market, they can be used for purposes other than their intended ones, including as a possible pharmacological method of counteracting a psychophysiological examination using a polygraph;

– *neuroleptics* (Greek: *νευρον* – nerve, nervous system; Greek: *ληψη* – abstinence) (aminazin, tizerzin, leponex, melleril, etc.), the purpose of which is a calming effect. Like barbiturates, drugs of this group are used for medical purposes, but their availability allows for non-medical use, which is used by unscrupulous candidates for polygraph examinations for a specific purpose [21]. The result of using neuroleptics is a decrease in the patient's reactions to internal and external stimuli, which is reflected in a decrease in affective tension, suppression of irritation and fear;

– *analgesics* (from the Greek *ἀν* – without, against + *ἄλγησις* – pain) (analgin, ibuprofen, pentazocine, etc.), or painkillers, is a drug of natural, semi-synthetic or synthetic origin intended to relieve pain – analgesia. The principle of action of this group of drugs is based on blocking the human central nervous system, which significantly complicates the polygraph examiner's psychophysiological examination using a polygraph [21]. An overdose of these drugs can cause dizziness, weakness, headaches, euphoria, and even hallucinations in the subject. Physiological reactions of a person under the influence of analgesics are unpredictable and even in some cases inadequate;

– *tranquilisers* (from Latin *tranquillo* – to calm) (elenium, seduxen, nozepam, phenazepam, etc.) are psychotropic drugs that can eliminate or mitigate neurotic manifestations, fear, anxiety, emotional stress, sleep disorders. They distinguish themselves from other similar pharmaceuticals, such as neuroleptics and antidepressants, by the absence of pronounced side effects and are well tolerated by their users [21]. Their action is targeted at the subcortical areas of the central nervous system of individuals, and the result of using tranquilisers is well reflected in computer polygraphs. Thus, they can reduce the frequency and amplitude of the respiratory curve, pulse rate, and amplitude of the skin reaction but do not disturb the ratio of response to neutral and meaningful questions. This allows differentiating reactions from any test format. Persons who had taken

tranquilisers in therapeutic doses on the eve of a psychophysiological examination using a polygraph demonstrated clear reactions that were reflected in the curves of computer polygraphs and did not affect their decoding by polygraph examiners. However, their adverse effects on the human body exist and demonstrate the process of reducing the "activity" of the centres of the reticular formation, limbic areas of the brain, and as a result, the overall activity of the cerebral cortex. An overdose of tranquilisers causes adverse reactions in the form of calmness, reduced anxiety, fear, euphoria, or drowsiness, which thereby reduces the quality of the polygraph examination;

– *opiate group drugs*. A drug (from the Greek *narkoticos* – one that causes numbness; dizziness) is a substance of natural or artificial substances that can cause physical dependence due to the replacement of one of the substances involved in natural metabolism, and mental dependence. Opium – a potent drug obtained from sun-dried milky juice extracted from unripe capsules of the opium poppy (Papaver somniferum). Contains about 20 alkaloids. In conventional medicine, due to its high content of morphine alkaloids, it was used as a powerful painkiller. In general, narcotic drugs affect the nerve centres of the brain and can produce mood elevation or excessive drowsiness, morbid, unusual cheerfulness – euphoria, and sometimes impaired consciousness. Therewith, drugs of the opium group, which include natural and synthetic substances containing morphine-like compounds, are "sedatives" and inhibit the functioning of the human brain. Using natural narcotic substances of the opium group results in withdrawal symptoms, which are expressed in anxiety, tension, or irritability.

2.5. Chemical methods of counteraction. They can be divided into two groups. The first – as chemically produced narcotic drugs (cocaine, heroin, LSD, amphetamines). The second – as chemicals for external and internal use (fatty acids that are part of various cosmetic creams, formaldehydes, glues, deodorants) [21]. Both groups of chemicals are not classified as medicines, although the development of the medical industry does not exclude the possibility of using for their own needs cocaine, heroin and amphetamines, etc. Using chemicals causes several problems both for human health and for the polygraph examination procedure. In particular, they cause a violation of the natural electrical resistance of the skin, which reduces the sensitivity of impulses transmitted from the body of the examinee to the polygraph sensors, and then through the registration channel to the computer polygraph. The application of various chemicals to the palms and extremities of the hands establishes a protective film invisible to the eye, therewith, visible to the polygraph as an ultra-sensitive scientific and technical device. The absence of skin-galvanic reaction indicators on the computer polygraph curve sharpens the polygraph examiner's attention to determine the real cause, which is either a malfunction of the sensors serving this channel or using an external chemical method by the examinee to counteract such a testing procedure. No less problematic for conducting psychophysiological examinations using a polygraph are chemicals used internally by unscrupulous individuals, including narcotic drugs such as cocaine, heroin, LSD, amphetamines, and household products such as glue, deodorants, and solvents. Their use (sniffing) in the human body causes an unpredictable reaction (excitement, inhibition, rejection) and reduces the ability to perceive information, remember and reproduce it.

2.6 Behavioural (communicative) methods of counteraction. The term behaviour is a collective generic term. For polygraphy, the most significant interpretation is that it refers to visible manifestations of behaviour that can be observed and internal states associated with external manifestations. Behaviourism is one of the areas of psychology that replaced empirical psychology and explains human behaviour by mechanical, reflective acts in response to external stimuli. Sociability (from the Latin *cjmmunicabilis – connecting, communicating*) is a person's ability to communicate and establish social ties, contacts, and fruitful interaction with other people. Communicability is a derivative of the word communication (from the Latin *communicatio* – unity, transmission, connection, message, related to the verb *communico* – to make common, to communicate, to connect, derived from the Latin *communis* – common) – a process of information exchange between two or more persons, communication through verbal and non-verbal means to transmit and receive information.

From these concepts, behavioural (sociability) is derived, which in polygraphy can be used by an unscrupulous examiner as a way to counteract. It is manifested in the attempt of such a person to influence the polygraph examiner and the assessment of the results of the examination in a unique way. It can be manifested in:

– an attempt to covertly influence the polygraph examiner by providing them with information that is distracting from the subject of the examination;

– openly ignoring or sabotaging the rules and process of conducting a polygraph examination;

– demonstration of untimely reactions of the body (crying or laughing while the polygraph examiner is familiarising themselves with the general rules of this examination procedure), etc.

A significant difficulty in detecting behavioural (sociable) counteraction is when a person uses methods of purposeful change in the functional state and actively manages physiological and behavioural reactions.

A unique way of such counteraction is the appearance of sharp pain in internal organs (heart,

stomach, kidneys) or head, teeth, and joints with a demonstration of moaning, shouting, crying, gestures, unauthorised removal of sensors in the middle of the test recording, etc. Such emotional and physical movements appear in the examinees abruptly after the start of the examination, when the polygraph examiner starts asking questions that threaten their condition, and before that everything was normal. Admittedly, one should not state unequivocally that this is a manifestation of opposition to the study, as a sudden change in a person's health can occur, particularly in a situation of high emotional stress, but one should not dismiss the human skill of disguising oneself from a threatening situation. In this case, the polygraph examiner stops the examination and, at the person's request, reschedules it for another day and time.

There are cases when, in the course of an examination that has already begun, people remember their urgent matters and begin to put pressure on the polygraph examiner, pushing them to accelerate the completion of the testing procedure. The polygraph examiner must demonstrate the firmness of character and inform the examinee that they will listen to the advice given to them, but they do not guarantee the quality of their work, which can significantly affect the assessment of the results obtained and the possibility of a mistake resulting from non-compliance with the requirements of this procedure [24].

Situations of communicative influence on a polygraph examiner using psychological techniques in the form of cajoling, bribery, and physical threats, including blackmail and intimidation, are no exception. In general, such forms of influence on a polygraph examiner are legally punishable activities, and the examinee is warned about them. In the event of any of the above situations that complicate the process of further conducting the examination, the polygraph examiner stops the examination and informs the initiator (customer) of their decision with justification.

Using any of the methods of counteracting polygraph examinations by insincere persons demonstrates the emergence of specific signs that can be detected and expose the "tricksters". In an attempt to influence the objectivity of the results, a person commits specific actions that leave appropriate traces of reflection, which allow stating opposition to the polygraph examination [25].

The resulting traces of reflection will manifest themselves in different ways in each case, in particular:

– there can be a change in the behavioural reactions of the examinee, which is achieved by biting the lips, pressing on the tips of the fingers and toes, placing sharp objects under body parts, using nervous finger movements, artificial stuttering, delaying answers (pauses) to questions posed by the polygraph examiner or, on the contrary, their false start;

– short-term switching of one's activity from the research procedure to other vital processes, when the physical presence of a person briefly replaces the intellectual one. Thus, the person is present during the research procedure, but their mind is elsewhere;

– replacement of one load with another (artificial replacement or artificial stimulation). Redistribution of behavioural reactions from one activity to another, in particular, replacing excessive physical activity with using tonic drinks, foods, or drugs.

The above-mentioned countermeasures that can be used by the examinees in the process of conducting psychophysiological examinations using a polygraph can be divided into two conditional groups in terms of reflecting their features: a) direct mechanical action; b) indirect (remote) activity process.

The features of the first conditional group of countermeasures include:

– artificial change in respiratory parameters. An artificial decrease in the depth or frequency of breathing will necessarily result in forced breathing, which is easily differentiated on the pneumogram curves. A polygraph examiner should be aware that the ratio between inhalation and exhalation is a relatively constant value;

– counteraction with fingers. It can be performed in different ways, for example, by pressing your fingers on the surface of a table, the armrest of a chair, or the knees. Prevention of this type of countermeasure is based on the correct positioning of the subject's body. Thus, the person should sit in a comfortable chair, preferably in a chair specially designed for such studies, with the hands partially hanging from the armrest. This position deprives the examinee of the support under the fingers, which in turn prevents them from using resistance to the psychophysiological examination with the polygraph;

– counteraction by biting the tongue. This method is easy to track if the polygraph examiner's testing methodology is such that it allows for a clear record of the time the examinee responds to the question (stimulus);

– counteracting by tightening the sphincter muscles ("clenching" the anus). It is detected by using special sensors to collect information, which is located on the seat of the chair and act as a tremor cushion [1].

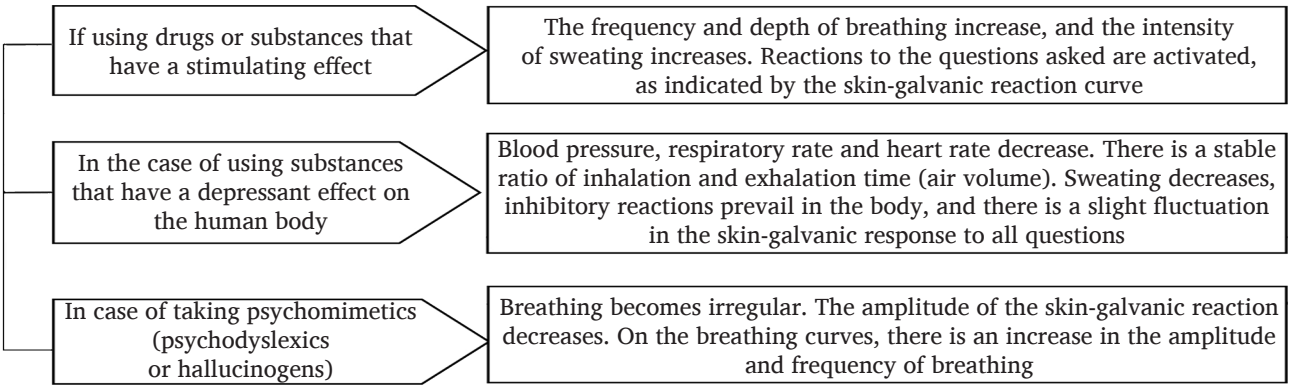
Signs of the second conditional group of counteraction include:

– *signs of a person's use of mental methods of counteraction* (adverse attitude to the examination procedure; manifestation of distrust of anyone, even the polygraph examiner; inducing adverse emotions, etc.) *The result of using mental coping techniques causes* a sharp drop in heart rate or blood pressure immediately before the start of the questions and maintains them at a low level throughout the test. The practical absence of physiological reactions on a computer polygraph during the test recording process is no exception;

– signs of using pharmacological methods of counteraction (*when using sedatives and hypnotics; taking stimulants; taking tranquilisers; using various solvents (chemicals); using narcotic substances and their precursors, etc.*) The results of using pharmacological countermeasures by the subject cause a significant activity of their physiological reactions to questions (stimuli) or, on the contrary, a sharp decrease in vital processes, including the appearance of apathy to everything around them and the procedure for conducting psychophysiological research using a polygraph, in particular;

– signs of short-term switching of their activities as a way of counteraction in the form of active and passive physical processes. The first one – in the form of tension of the individual's brain activity to control their physiological reactions, which are designed to block behavioural reactions to the questions posed by the polygraph examiner. The second – as a passive process of participation in the polygraph examination procedure, when a person demonstrates a relaxed state of their body by using relaxation techniques;

– signs of replacing one load with another as a way to counteract the study (artificial replacement or artificial stimulation). Artificial replacement of physical activity by stimulating the trophic (nutritional) function of the nervous system with appropriate foods, drinks, drugs such as tea, coffee, cocoa, chocolate, tonic drinks and tobacco products, and pharmacological drugs, in particular: ascorbic acid, dibasol, ginseng and Eleutherococcus prickly, Chinese Schisandra, neurantine, phenamine, etc. To some extent, they stimulate the processes of the human body and cause an increase in physiological reactions due to increased blood circulation in the vessels and increased pressure, short-term liveliness and activity of the individual, and rapid recovery of the body. However, one should be careful with their use, since when taking and using such and other stimulants to improve mental performance, it should be remembered that they stimulate the body's reserves, but usually do not restore them. Repeated use of these stimulants after some time will no longer be able to give a positive result and will cause the opposite effect [1] (Fig. 2).



■ **Figure 2.** The main consequences of stimulant use

Source: author's development

The majority of polygraph examiners [9; 17; 19] in their practice frequently use both tests common in the world practice of polygraph examination and tests developed by themselves to detect the resistance of persons examined using a polygraph. The test below is based on a search format and provides preliminary information for further decision-making [1]. A modification of this test is used, for example, in the case of repeated testing, when the polygraph examiner could not decide based on the results of the first examination due to suspicion of possible opposition from the examinee (Table 2).

■ **Table 2.** A sample test for detecting opposition to a polygraph examination

No. s/n	**Test questions**
1.	Have you prepared to prevent me from checking you in any way today?
2.	Have you prepared to deceive me in any way today?
3.	Have you slept more than six hours today?
4.	Have you received advice from professionals on how to deceive a polygraph?
5.	Have you ever received advice on how to deceive a lie detector?
6.	Have you ever received advice on how to deceive a lie detector?
7.	Have you been looking for ways to cheat on a polygraph online?

Table 2, Continued

No. s/n	Test questions
8.	Have you read any special literature on how to deceive a polygraph? Did anyone train you to learn how to lie on a polygraph?
9.	Have you used any drugs today?
10.	Have you used any drugs in the last twelve hours?
11.	Have you smelled anything illegal today?
12.	Have you smoked anything illegal today?
13.	Have you used any drops today?
14.	Have you had any injections today?
15.	Have you taken any pills today?
16.	Have you taken any sedatives today?
17.	Have you lubricated your fingers with anything today?
18.	Have you used deodorants today?
19.	Have you consumed strong alcohol in the last 24 hours?
20.	Have you had any alcohol today?
21.	Are you sure I'm easy to deceive?

Such specially prepared tests allow the polygraph examiner to understand the manifestations of psychophysiological reactions of a person in the process of conducting a polygraph examination who demonstrates unstable physiological reflections of their body, which can be a consequence of their purposeful opposition to such a specific procedure.

Conclusions

Modern practical polygraphy focuses on urgent and problematic issues that arise in its field. One of them is opposition to psychophysiological examination using a polygraph, which is committed by insincere persons who voluntarily pass such a procedure at the initiative of the customer. This adverse phenomenon should be thoroughly explored, and effective methods of counteracting its spread should be developed. In this context, the category of counteraction is defined as deliberate and conscious actions of the person undergoing the audit designed to distort the results of the said procedure.

It is noted that the counteraction is designed to distort the results of the study, i.e., to change or conceal the information sought by the initiator of the study.

The author provides a thorough analysis of the existing techniques and methods of counteracting the psychophysiological examination, which is used by insincere persons undergoing this procedure with the deliberate purpose – to circumvent the polygraph and deceive the polygraph examiner.

It is proved that there are precise reflections that indicate using the phenomenon of counteraction in polygraph examinations by insincere persons, and they are reflected through specific available signs. They can be divided into two conditional groups in terms of reflecting these features: both direct mechanical action and indirect (remote) activity. The most common ways to counteract the polygraph examination procedure are physical (mechanical), physiological, mental (imagery, hypnosis, biological feedback, placebo, rationalisation, dissociation, mental stress, etc.), pharmacological, chemical, and behavioural.

To detect opposition to the psychophysiological examination using a polygraph, which is committed by insincere persons undergoing this procedure, polygraph examiners are recommended to use special marker tests that have proven to be effective in practice. The results of the application of these marker tests are used to make the polygraph examiner's decision regarding both the person under examination and the further conduct of this procedure.

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Теоретико-прикладні засади феномену протидії проведенню психофізіологічних досліджень із застосуванням поліграфа

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■ **Анотація**. Актуальність дослідження зумовлена тим, що в умовах сьогодення в практиці психофізіологічних досліджень фахівці-поліграфологи дедалі частіше стикаються з феноменом протидії з боку досліджуваних осіб, які таким чином намагаються викривити або спотворити результати, отримані на підставі використання інструментальних методів психодіагностики. Висвітлення й аналіз різних способів протидії проведенню цих досліджень з боку нещирих осіб й ознак, які вказують на їх застосування, і становить мету цієї наукової статті. Основними складовими методологічного інструментарію є діалектичний метод наукового пізнання реальних явищ, а також загальнонаукові та спеціальні методи поліграфології. Обґрунтовано прийоми та способи протидії проведенню психофізіологічних досліджень із застосуванням поліграфа через відповідні ознаки, які на них вказують. Встановлено, що нині найпоширенішими формами протидії проведенню психофізіологічних досліджень із застосуванням поліграфа є фізичні (механічні) способи, які мають зовнішні фізичні вияви через спрямовану механічну дію досліджуваної особи та виконують відволікаючу функцію від процедури інструментальної перевірки. Розглянуто фізіологічні способи, які передбачають зміну досліджуваною особою свого психофізіологічного стану, що спричинено надмірним фізичним навантаженням на організм, виконуваним чи застосовуваним напередодні проведення поліграфологічного дослідження, що викликає втому або ж демонструє виснаженість сил людини. Зауважено, що на підставі виявлених таких ознак і способів протидії поліграфолог приймає рішення щодо часу перенесення процедури дослідження особи або подальшої відмови в її проведенні. Практична значущість роботи полягає в тому, що обґрунтовані в ній способи протидії процедурі проведення дослідження, ознаки психофізіологічних реакцій, до яких вдаються нещирі індивіди, сприятимуть уникненню помилок у роботі поліграфолога, одержанню високого рівня достовірності результатів проведення досліджень із застосуванням поліграфа

■ **Ключові слова**: детекція брехні; поліграфолог; поліграфологічне дослідження; психофізіологічні реакції; приховування інформації; обман; експертиза

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Criminalistics characterisation of criminal offences related to domestic violence

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■ **Abstract**. Combating domestic violence has become a relatively recent issue. Compared to other criminal acts, domestic violence has for many centuries been considered, by religious standards, traditions and customs of peoples, a purely family affair. Despite all the adverse manifestations and consequences of such violence, not all countries have criminalised such actions to the present day. Improving the process of investigating domestic violence remains a challenge, even though significant progress has been made. The purpose of the research is to explore and develop a structure for the forensic characterisation of criminal offences related to domestic violence, which is the starting point for establishing an effective methodology for their investigation. The research uses scientific methods (analysis, modelling and heuristic) to explore the methods of investigation of various criminal offences, which resulted in determining the levels of forensic characteristics of the criminal offences being explored and systematising its main and most significant elements. In addition, the analysis of court practice has allowed the conclusion that during the pre-trial investigation, the facts of the connection between a criminal offence and domestic violence are not established or procedurally fixed, and therefore are not considered by the court. The investigator should strive to prevent such a situation. From the very first steps of the investigation, it is necessary to establish and record the facts of systematic violence in the family circle. And the knowledge of specific elements of forensic characteristics and their correlations is the foundation for choosing the tactics of investigation, its qualified management and planning

■ **Keywords**: investigation; method of commission; investigation process; procedural law; unlawful acts

■ Introduction

Despite its long history, domestic violence is an under-researched criminal offence, as criminal liability for its commission in Ukraine appeared only in 2019, and in many countries of the world, this offence is not considered criminal, mainly in the East. Researchers from the United States note that since the 1970s, intimate partner violence has received increasing attention at the national and global levels in their country [1], but there are still gaps in this research [2].

Among the Ukrainian scholars who have explored this issue, the following should be highlighted: I.A. Botnarenko [3], I.V. Hloviuk [4], T.V. Ishchenko [5], R. Kiflyuk [6], O. Pchelina [7], Yu. Slukhayenko [8] etc. In addition, researchers from many other countries have devoted their studies to the prevention and investigation of domestic violence: T.E. Moffitt [9] – UK, L. Eriksson [10] – USA, R. Erbaş [11] – Turkey, S. Caman [12] – Sweden, P.R. Vieira [13] – Brazil, R. Shinwari [14] – Germany, etc.

The overwhelming majority of studies deal with the psycho-physiological characteristics of the offender or victim, the motives for committing domestic violence, the mechanism of conflict initiation, means of preventing violence, rehabilitation and psychological work with participants in domestic violence. However, few people mention criminal offences committed both during such violence and as a result of it. The number of such offences is quite large – it is the murder of intimate partners, forced marriage, sexual exploitation of both children and adult family members, various types of fraud, torture and torture, cruelty to animals and many other criminal offences related to domestic violence. Thus, the issue of developing effective mechanisms for organising and conducting pre-trial investigations of such facts is relevant.

Scientific support of the pre-trial investigation of criminal offences is essential for the organisation and effective conduct of the investigation by the

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investigator, who transforms the results of scientific analysis into effective investigative tools and measures.

The concept of forensic investigation includes forensic data at the beginning of the investigation in a holistic approach to the case, reflecting all possible data sets and information that can be relevant to the investigation [15].

Accordingly, the purpose and objective of the research are to identify and summarise the main and most significant elements of the forensic characterization of criminal offences related to domestic violence which quantitatively and qualitatively define such actions. It requires the identification of features that qualitatively describe both the process of violence, its course and criminal outcome. However, the identification of such signs will be important for the pre-trial investigation only if their close correlation is established, which is crucial both for the correct qualification and for the choice of investigation tactics. Thus, these elements themselves serve as the foundation for the investigator to determine the algorithm of actions from the first steps of the investigation.

Literature Review

The study of the scientific establishment of the doctrine of investigation methodology and forensic characterisation was based on the works of scholars such as V.P. Bakhin [16], V.K. Veselsky [17], I. Hora [18], A. Volobuev [19], A. Ishchenko [20], L. Kerik [21], A.N. Kolesnychenko [22], V. Pyaskovskyi [23], B. Shchur [24], S. Cherniavskyi [25] etc.

Disputes over the very definition of "forensic characterisation", its structure, the number and weight of its elements, and its practical significance for the study of criminal activity to counteract and prevent it continue to the present day. Disputes over the very definition of "forensic characterisation", its structure, the number and weight of its elements, and its practical significance for the study of criminal activity to counteract and prevent it continue to the present day. However, the statement of V. Shevchuk [26], who in his research concluded that the forensic characterisation of criminal offences should be explored depending on the type of offence, is appropriate. The author states: "the forensic characterisation of crimes is not a "forensic relic of the past", it is not an "illusion" or a "forensic phantom", but a real scientific category of forensics, which is based on the development of the most optimal and effective methods of investigating offences" [26, p. 64]. S.S. Cherniavskyi notes: "the first and main structural element of the information and cognitive model of any forensic methodology, the core of its retrospective level is the forensic characterisation of the offence" [25, p. 139].

In addition, notably, the vast majority of modern scholars (I. Hora [18], T. Ishchenko [20], V. Pyaskovskyi [23], B. Shchur [24], S. Cherniavskyi [25], O. Pavlyuk [27]) are unanimous in the fact that the criminalistic characterisation is a fundamental element in the development of the investigation methodology, but the opinions of scholars on the definition of the very concept of criminalistic characterisation vary. Despite the differences in the wording of the definition of the subject matter of forensic characterisation, differences in the development of its structure, its importance and its place in the structure of the criminal investigation methodology, etc., these authors argue that forensic characterisation should serve and correspond to the practice requirements.

The primary requirement for the investigator's activities during the pre-trial investigation is to obtain as much information as possible, which is precisely to agree with the position of V.A. Zhuravel [28], who notes that it is the forensic characterisation which is an information model and occupies a fundamental place in the investigation methodology. The author notes that, depending on the specific type of criminal offence, its features form such an information model, and the interrelation of these features forms the corresponding system. In addition, notably, the purpose of a criminalistic characterisation is both to establish and develop forensic versions and to establish the evidence base [28, p. 213].

S. Cherniavskyi [25] defines the functional purpose of a forensic characteristic in the presence of a specific activity. The scientist refers to the generalisation of a significant amount of information that allows asserting specific features inherent in a particular type of criminal offence, with the establishment of correlations between them, provided that a significant amount of criminal offence materials, court decisions and sentences are processed and systematised [25, p. 145].

In agreement with this position, their work will be used to develop a forensic characterisation of criminal offences related to domestic violence. After all, the rapid development of society, legislative changes, intensification of activities to ensure the rights and freedoms of citizens, and criminalisation of specific violent acts establish the preconditions for continuing research into improving the structure of the forensic characterisation of some types of criminal offences as a fundamental element of the criminal investigation methodology.

Materials and Methods

To achieve this purpose, general scientific methods such as analysis and synthesis, induction and deduction, analogy, and modelling were used. Using the method of materialistic dialectic, the author explores the historical process of establishment, design and development of both the concept of criminalistic characterisation of a criminal offence and its structural elements. It, in turn, allowed rejecting subjective perception and,

based on criminal law characteristics, to identify levels of forensic characterisation of criminal offences related to domestic violence.

Using the dialectical method allowed for establishing and investigating the root causes and patterns of the emergence of forensically relevant information, the links between the sources of this information, and the established elements of forensic characterisation, and, as a result, establishing new elements that are important for the pre-trial investigation process. In addition, a specific sociological method was used to summarise existing research.

The empirical foundation of the study is the statistical data of the National Police of Ukraine [29], data from the Unified Report on Criminal Offences published by the Office of the Prosecutor General of Ukraine [30], and data from the Unified State Register of Court Decisions [31]. Thus, to identify new, essential elements of criminalistic characteristics such as "connection with administrative offences" and "systematic commission of domestic violence", the methods of analysis and synthesis of materials from judicial and criminal proceedings in this category of cases for the period from 2019 to 2022 were used.

Results and Discussion

With the development of society, which includes both the improvement of the economic and social spheres and the human rights sphere, new criminal offences inevitably appear, as the improvement of the system of protection of human rights and freedoms results in the definition of actions that for many years were considered purely private matters as violent and unlawful. It primarily concerns the sphere of family relations. Considering the relative originality of domestic violence-related offenses in the field of criminal justice, there is a necessity to establish an effective methodology for their investigation, which includes research of the investigative, judicial and expert bases.

E. Orzhynska [32] rightly notes that the guideline for identifying and examining evidence in criminal proceedings is the specific data that constitute the system of forensic characterisation.

Speaking of criminal offences related to domestic violence, when summarising forensically relevant information to establish systemically dependent elements, difficulties arise due to the large array of both the types of offences themselves and the specifics of their elements. Such criminal offences have a complex aggregate nature and a wide range of forensically significant features at each stage of the manifestation of violent acts, which in turn are characterised by increasing manifestations, change and "improvement" of the tools and means of committing criminal acts, change in the attitude and attitude of the offender to the event, and, accordingly, change and increasing resistance to the perception of such a situation by the victim (author's conclusion). Thus, it is appropriate to distinguish separate levels of forensic characterisation, which in turn will serve to establish and develop micro methods for investigating criminal offences committed as a result of domestic violence.

R.L. Stepaniuk [33] notes that establishing and using correlations between elements of the forensic characterisation of a specific group of crimes, when solving problems of detection and investigation of crimes is a laborious task. Similar difficulties arise when researching criminal offences related to domestic violence.

The issue of differentiating forensic characteristics into separate levels is of practical importance only when exploring criminal offences that have significant differences in the mechanism of commission, the degree of dependence between individual elements, and the weight and significance of established elements. Thus, A.N. Kolesnychenko, V.O. Konovalova & A.F. Volobuev distinguished full, incomplete and general levels of criminalistic characteristics of offences [19, p. 22-26; 22, p. 178; 34, p. 20].

S.S. Cherniavskyi [25], in addition to analyzing the content of the scientific discussion in the literature on the classification of criminalistic characteristics of crimes, considers it appropriate to classify the levels of criminalistic characteristics using the philosophical categories of "single", "special" and "general". Thus, he refers to a specific object (phenomenon) or process with specific inherent features, i.e. a specific crime, as a single level. A special level includes a specific group of criminal offences that are united in a particular way and intent but have differences in the mechanism of commission. And the last, broader level is the general level, which covers the patterns that arise during the commission of criminal offences combined into a particular type or class [25, p. 144].

R.L. Stepaniuk [33], using the example of economic crimes, provides facts that contribute to this situation, which can be transformed into criminal offences related to domestic violence. Thus, first, the author indicates the connection between illegal behaviour and changes in the regulation sector. Such changes force criminals to adapt to legal conditions, inventing ways to commit a criminal offence, and traces of the crime and other elements of forensic characteristics change accordingly [33, p. 177]. Accordingly, the fight against domestic violence and its consequences, in particular, and the investigation of criminal offences related to them, is a relatively new process that is still in its developmental stage. With the development of society and the increase in the level of technology, the methods of committing and concealing criminal offences are changing, which is reflected in the mechanisms of their commission and trace evidence, and, accordingly, in the correlations of the elements of forensic characteristics.

Secondly, when developing a forensic characterisation of specific types of criminal offences, one should consider the fact that a significant number of offences do not go to trial, as their latent nature prevents the collection of evidentiary information and sometimes even the establishment of the fact of a criminal event. This circumstance, according to R.L. Stepaniuk [33], prevents a systematic analysis of many types of crimes [33, p. 177]. The situation is similar to criminal offences related to domestic violence. In addition to the victim's reluctance to report domestic violence to law enforcement agencies, due to the established stereotypes that it is "the victim's fault" or out of shame, it can be noted that law enforcement officers themselves often dissuade victims from reporting such cases. The public human rights organisation "La Strada" notes: "58% of law enforcement officers believe that most reports of domestic violence are false [35]. The survey among police officers, judges and prosecutors was conducted in late 2016 and early 2017 jointly with the Geneva Centre for the Democratic Control of the Security Sector and with the support of the National School of Judges of Ukraine, the Academy of Prosecutors of Ukraine and the National Police of Ukraine [35]. According to "La Strada", four out of ten police officers believe that domestic violence – is a private matter. This figure is much higher among judges and prosecutors. "Almost 85 per cent of judges consider reconciliation in the family to be their main task, not punishment of the offender" [35].

The next factor that confirms the necessity of differentiating criminalistic characteristics into specific levels is the commission of a specific number of different criminal offences combined with one purpose. Accordingly, the number of practically relevant elements of forensic characterisation will be greater. It is relevant for criminal offences related to domestic violence, as such criminal offences are usually characterised by a combination of several forms of violence – psychological and physical, economic and psychological, and sometimes psychological, economic and physical. Accordingly, in such cases, various criminal offences are combined.

Thus, the following levels should be distinguished in the forensic characterisation of criminal offences related to domestic violence:

1. The general level of forensic characterisation of criminal offences related to domestic violence: the definition of the structural elements of forensic characterisation is based on the legally established classification of forms of domestic violence – physical violence, sexual violence, economic violence, and psychological violence.

2. A special level of forensic characterisation of criminal offences related to domestic violence: the definition of the structural elements of forensic characterisation is based on the criminal law classification of criminal offences – criminal offences related to domestic violence; crimes related to domestic violence.

3. A single level of forensic characterisation of criminal offences related to domestic violence: determination of the structural elements of the criminalistic characterisation and their correlations is based on the inherent features of a specific type of criminal offence – homicide as a result of domestic violence; torture and ill-treatment related to domestic violence; driving to suicide as a result of domestic violence; human trafficking related to domestic violence; corruption of minors as a result of domestic violence; rape related to domestic violence; exploitation of children (part 3 of the Article 150 of the Criminal Code of Ukraine [36]) as a result of domestic violence; infliction of grievous bodily harm during domestic violence, etc.

In addition, notably, no matter what level of criminalisation a criminal offence related to domestic violence belongs to, the issue of defining its system remains relevant. Therefore, a separate controversial issue that affects the understanding of the meaning of a forensic characteristic in the methodology of criminal investigation is the determination of the quantitative and informational value of its elements, and necessarily the correlation between these elements.

Although the doctrine of the criminalistic characterisation of a criminal offence, and, accordingly, its structure, began to develop in the middle of the last century, as noted by B.V. Shchur [24] S.S. Cherniavskyi [25], & V.M. Shevchuk [26], it still requires thorough research nowadays. As E. Orzhynska notes [32]: "a qualitative investigation ends with obtaining a sufficiently complete and detailed forensic characterisation of a particular criminal offence" [32, p. 101]. Depending on the type of criminal offence, its participants, its conditions and its mechanism of commission, it is necessary to identify the most typical elements of criminalistic characterisation for each type. O.O. Shkuta [37] believes that an unchanged system of elements cannot be applied to each investigation.

In the textbook "Criminalistics" [23], the general elements of forensic characteristics are defined concerning various criminal offences, such as: the subject of the criminal offence, the method of committing and concealing the criminal offence; tools and means of committing the criminal offence; a typical "trace pattern"; the identity of the offender; the identity of the victim; time, place and setting of the criminal offence. However, the changes in society, legislation, and investigative and judicial practice that are currently occurring in the field of combating domestic violence allow identifying both these elements and additional, interdependent characteristics that arise during the commission of criminal offences related to this type of violence.

Thus, there is a demand to determine the information characteristics of criminal offences that indicate a connection with domestic violence. The analysis of the materials of investigative and judicial activities allows [4; 31], the author of the research, to identify specific information, in the forensic sense, categories of criminal offences under investigation, which must be considered when determining the structure of the forensic characterisation:

– the age of the participants in a criminal event that occurred as a result of domestic violence (the perpetrator and the victim) – minors, juveniles, adults and the elderly. Determining the age of the person will allow the investigator to model the mechanism of the event, identify sources of evidence and choose the tactics for conducting investigative (search) actions, etc;

– status of the offender in the family – a person who has committed a criminal offence related to domestic violence can be both an abuser and a person who has been subjected to systematic violence;

– type of violence: physical, sexual, economic, psychological, and family violence; in turn, each form of violence is characterised by separate methods of commission;

– social conditions – the level of social and material security of the family. Understanding the level of social conditions allows suggesting versions of the motives for the offence, determining the offender's capabilities to commit and conceal criminal acts;

– the method of commission and, accordingly, concealment. Criminally significant is the choice of the method of committing a criminal offence related to domestic violence, and the understanding of the chosen methods of committing domestic violence, its systematic nature and the manifestation of increasing aggression and force of violence. It is the possibility of systematic concealment of the consequences of domestic violence that increases the abuser's confidence in their actions and increases the feeling of impunity;

– selection of tools for committing a criminal offence. Again, notably, the choice of tools for committing a criminal offence allows for a conclusion to be drawn about the personal characteristics of the offender, the "convenient" form of domestic violence for the offender, the understanding of whether the offender is an abuser or a victim of domestic violence, etc;

– motives for committing violent acts – in addition to being mandatory for proving guilt, determining the motive for the crime contributes to the identification of accomplices, duration and systematic nature of violent acts, affects the qualification of a criminal offence and the establishment of aggravating or mitigating circumstances;

– criminal law characterisation of a criminal offence – will allow the investigator to identify signs of a crime or criminal offence, determine the degree of danger and adverse consequences, etc;

– the conditions of the place of residence: rural area, city or metropolis. According to the results of the study of judicial practice, manifestations of domestic violence in rural areas are less hidden, and information about the systematic nature is more readily available in the testimony of witnesses (neighbours, friends, colleagues, etc.). The forms of violence used vary (mostly physical violence), as do the motives for committing them;

– the systematic nature of violent acts. It is the presence and recording of the regularity of violence that allows for the correct qualification of a criminal offence and the collection of the necessary evidentiary information proving the connection between a criminal offence and domestic violence;

– the presence in the history of violence of recorded cases of administrative offences related to domestic violence.

As can be seen, all of these information-significant features are interdependent and interrelated. It is this information that contains the forensic features of the incident and is crucial for choosing the methods and tactics of pre-trial investigation, and proposing and testing investigative versions. Considering the wide range of informational and forensic features of the criminal offences under investigation, notably, the completeness of the elements of a forensic characterisation will depend on the level (defined above) of the forensic characterisation.

In addition, these information-significant characteristics indicate the classically accepted elements of forensic characterisation. However, in the author's opinion, it is appropriate to implement some changes and additions. First, the concept of the "identity of the perpetrator" requires expansion, as both misdemeanours and crimes can be committed during domestic violence, thus, it would be more appropriate to use the term "identity of the offender".

Secondly, there is a demand to define such quantitative characteristics as the "connection of a criminal offence with administrative offences" and the "systematic nature of violent acts" as elements of a criminalistic characterisation.

It is explained by the fact that during the investigation of domestic violence cases, it is mandatory to prove the systematic nature of such actions, and it is the identification of evidence of systematicity that allows the investigator to conclude that the criminal offence is related to domestic violence.

The importance and necessity of establishing and, accordingly, procedurally fixing the "systematic nature of violent acts" are noted by other scholars exploring the issue of domestic violence in administrative law [38-40]. Thus, O.V. Drozdova & K.G. Zarytska [38] note that the investigator must establish evidence of the presence or absence of facts and circumstances, the commission of domestic violence (as a criminal offence), namely its systematic nature [38, p. 680].

Criminal law scholars provide more detail on the meaning of systematicity itself. Thus, according to M.I. Bazhanov [39], if the unlawful actions are an expression of a particular adverse trend in the behaviour of the guilty person, i.e., the commission of an act more than twice (i.e., three or more) [39, p. 56]. O.O. Dudorov & M.I. Khavronyuk [40] define systematicity: "it means the constant repetition of identical or similar actions (or inaction), each of which in itself can give the impression of insignificance, but in aggregate they have an extremely adverse effect on the victim, the intensity of this effect may depend on both the degree of aggressiveness of each act and the number" [40, p. 78].

It is the research of scholars in the field of administrative and criminal law that allows asserting that such categories as "connection of a criminal offence with administrative offences" and "systematic commission of violent acts" are of important forensic importance and, in turn, characterise the event from the quantitative and qualitative side. In other words, these elements are mandatory in the system of forensic characterisation of criminal offences related to domestic violence.

■ Conclusions

Considering the above, based on the interpretation of domestic violence in the legislation and the forensic classification of criminal offences related to domestic violence, and having identified the correlated interrelated forensic and informational features which specifically affect the planning and organisation of pre-trial investigation of the explored category of criminal offences, it is necessary to divide their forensic characteristics into levels:

– general level: criminal offences related to domestic violence committed in the form of physical violence / sexual violence / economic violence / psychological violence;

– special level: criminal offences related to domestic violence / crimes related to domestic violence;

– single level: homicide related to domestic violence; torture and ill-treatment related to domestic violence; driving to suicide as a result of domestic violence; human trafficking related to domestic violence; corruption of minors as a result of domestic violence; rape related to domestic violence; exploitation of children (part 3 of the Article 150) as a result of domestic violence; infliction of grievous bodily harm during domestic violence, etc.

In addition, understanding the knowledge and considering the interdependence of the elements of a forensic characterisation allows the investigator to determine the cause and effect of a criminal event, which ensures efficiency in identifying, collecting and processing evidence. Therefore, the structural elements of the forensic characterisation of a criminal offence related to domestic violence are:

1. The object of a criminal offence.
2. Method of committing and concealing a criminal offence.
3. A trace picture.
4. Identity of the victim.
5. Identity of the offender.
6. Motive for committing a criminal offence.
7. Place, time and circumstances of the criminal offence.
8. Connection of a criminal offence with administrative offences.
9. The systematic nature of violent acts.

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Криміналістична характеристика кримінальних правопорушень, пов'язаних з домашнім насильством

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■ **Анотація**. Боротьба з виявами домашнього насильства набула актуальності досить недавно. Порівняно з іншими кримінальними діями домашнє насильство багато століть вважалося, з огляду на релігійні норми, традиції та звичаї народів, суто сімейною справою. На сьогодні не всі країни криміналізували такі дії, попри всі негативні вияви та наслідки зазначеного насильства. Удосконалення процесу розслідування фактів домашнього насильства залишається актуальним навіть з огляду на значні досягнення в цьому напрямі. Метою статті є дослідження та розроблення структури криміналістичної характеристики кримінальних правопорушень, пов'язаних із домашнім насильством, яка є початком для створення дієвої методики їх розслідування. У роботі, завдяки застосуванню наукових методів (аналізу, моделювання, евристичного), досліджено методики розслідування різноманітних кримінальних правопорушень, що сприяло визначенню рівня криміналістичної характеристики досліджуваних кримінальних правопорушень, проведенню систематизації основних і значущих її елементів. Аналіз судової практики дозволив дійти висновків, що під час досудового розслідування не встановлюються або не мають процесуального закріплення факти зв'язку кримінального правопорушення з домашнім насильством, відповідно їх не враховує суд. Слідчий повинен прагнути не допускати такої ситуації. З перших кроків розслідування необхідно встановити та зафіксувати факти систематичності вчинення насильницьких дій у родинному колі. Знання визначених елементів криміналістичної характеристики та їх кореляційних зв'язків є підґрунтям для обрання тактики розслідування, його кваліфікованої організації та планування

■ **Ключові слова**: розслідування; спосіб учинення; процес розслідування; процесуальне право; протиправні дії

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Modern possibilities of using unmanned aerial vehicles by Police authorities and units: Analysis of foreign and Ukrainian experience

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■ **Abstract**. The relevance of the research subject is conditioned upon the scientific originality and practical significance of using modern capabilities of unmanned aerial vehicles by police authorities and units. The relevance of the research issue is that the provisions of the current legislation defining the legal basis for using unmanned aerial vehicles by police authorities and units are mostly formally defined. Based on this, and considering that the law enforcement system has encountered new challenges which constantly require the introduction of the latest methods and means of countering crime, including using modern achievements of digital, technological, scientific and technical progress, the purpose of this research is to analyse the foreign experience of using unmanned aerial systems by law enforcement agencies, and based on this, to develop proposals for improving the current legislation in the part concerning using UAVs. The research methodology includes a combination of general scientific and special methods that allow for defining assumptions and drawing conclusions. The research examines the relevant issues of the day concerning using the technical capabilities of unmanned aerial systems in the course of performing the tasks assigned to police agencies and units. In particular, the author examines the international experience of some technologically advanced countries (the USA, Great Britain, Germany, France, China and Israel) in using modern capabilities of unmanned aerial vehicles by law enforcement agencies. Attention is devoted to the development of the aviation industry of Ukraine in terms of the design of Ukrainian unmanned aerial vehicles, and the prospects for their implementation in the activities of the National Police. The author outlines the main prospects for using unmanned aerial vehicles in the activities of police agencies and units. In particular, those related to the protection of public order, road safety, detection, suppression and counteraction to criminal and administrative offences, and protection and defence of human rights and freedoms, life and health. The scientific originality and practical significance of the research are that it highlights the current possibilities of using unmanned aerial vehicles by police authorities and units, outlines some issues of a working nature which require resolution, and, based on international experience, identifies the areas for improvement of the current legislation on using unmanned aerial vehicles by the National Police

■ **Keywords**: unmanned system; robotic complex; drone; law enforcement agencies; criminal offences; crime investigation

■ Introduction

According to the National Security Strategy of Ukraine, approved by the decision of the National Security and Defence Council of Ukraine on 09/14/2020 [1], the introduction of the latest technologies in the activities of law enforcement agencies is one of the priority areas of national security policy.

Considering this, the efficiency of police agencies and units depends to a large extent on their qualitative use of technical science [2, pp. 3-4; 3, pp. 16-19].

A particular place among modern robotic systems and innovative technologies that can be used effectively by law enforcement agencies is occupied by unmanned aerial vehicles (hereinafter referred to as UAV, drone). It is primarily explained by their wide functionality, which allows combining the automatic piloting system with the receipt and transmission of information in real-time by using modern equipment for navigation, aerial photography and video recording (multispectral, magnetic, large-scale survey, photogrammetry, etc.), video monitoring (video

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surveillance), mapping, 3-D modelling, infrared and thermal imaging of terrain, premises, structures, land and water surfaces.

The procedure for using technical means installed on UAVs that have the photo and video recording functions by police bodies and units is regulated by Section VI of the separate Instruction approved by the Order of the Ministry of Internal Affairs of Ukraine No. 1026 dated 12/18/2018 [4]. However, the provisions of this section are mostly formally defined and blanket, forcing it to refer to other regulations.

The Laws of Ukraine "On the National Police" [5] and "On Operational and Investigative Activities" [6] do not provide a detailed answer on the grounds and procedure for using UAVs by police authorities and units, and only state that a police officer has the right to use special means to perform their duties" (Article 45 of the Law of Ukraine "On the National Police", Article 19 of the Law of Ukraine "On Operational and Investigative Activities").

The complexity of this issue is that according to Article 42 of the Law of Ukraine "On the National Police", UAVs are not classified as special technical means that police officers are entitled to use to perform their duties. In addition, unlike the Law of Ukraine "On the State Border Guard Service" [7], Section IV of the Law of Ukraine "On the National Police", entitled "Powers of the Police", does not contain any information on using aircraft, including UAVs, by police within their powers [5].

In the Criminal Procedure Code of Ukraine (hereinafter – the CPC) [8], this issue remains open. Thus, according to its provisions, "procedural actions during criminal proceedings can be recorded on a data carrier on which procedural actions are recorded through technical means" (Article 103 of the CPC of Ukraine). "In case of recording of procedural actions during the pre-trial investigation through technical means, this must be indicated in the protocol" (Article 104 of the CPC of Ukraine). "A specialist may be invited to participate in the inspection who has the right to take measurements, photographs, sound or video recordings, compile plans and diagrams, and make graphic images of the inspection of a place that is relevant to criminal proceedings" (Articles 71, 237 of the CPC of Ukraine).

Considering the above and the fact that the law enforcement system has encountered new challenges which constantly require the introduction of the latest methods and means of combating crime, including using modern achievements of digital, technological, scientific and technical progress, the purpose of this research is to analyse the foreign experience of using unmanned aerial systems by law enforcement agencies, and to develop proposals for improving the current legislation in the part related to using UAVs by the National Police.

In this regard, notably, in the legal literature, the discussion of problematic issues related to using UAVs by law enforcement agencies is a relatively new area of research. Some of their aspects are reflected in the scientific works of V. Korshenko [9], N. Pavlyuk [10], S. Moslenko, S. Zelenskyi [11], A. Movchan, M. Movchan [12], H. Korotenko [13], etc. Undoubtedly, the scientific and theoretical developments of these authors are essential for solving problematic issues related to using UAVs by law enforcement agencies but they do not fully cover the subject of the study. In addition, the analysis of this literature suggests that using UAVs by police agencies and units has not been explored at the level of foreign experience. Considering this, the following is a more detailed analysis of the foreign experience of using UAVs by police agencies and units and based on this analysis, proposals for improving the current legislation, the provisions of which determine the legal basis for using UAVs by police agencies and units of Ukraine.

Materials and Methods

The regulatory framework of the research is the current legislative and subordinate regulations, the provisions of which regulate specific issues regarding the rights, duties and powers of law enforcement agencies in terms of using UAVs, namely: The Air Code of Ukraine [14], the CPC of Ukraine [8], the Laws of Ukraine "On the National Police" [5], "On Operational and Investigative Activities" [6], "On the State Border Guard Service" [7], the Traffic Rules approved by the Resolution of the Cabinet of Ministers of Ukraine No. 1306 of 10/10/2001 [15], the National Security Strategy of Ukraine enacted by the Decree of the President of Ukraine of 09/14/2020 No. 392/2020 [1], the Instruction on using technical devices and technical means with photo and film shooting, and video recording functions by police authorities and units approved by the Order of the Ministry of Internal Affairs of Ukraine No. 1026 of 12/18/2018 [4], etc.

The theoretical basis of the research is the scientific works of scholars and practitioners in the fields of criminal procedure and forensics who have explored individual issues related to the subject of research.

Research methodology. The author of the study used theoretical research methods. The study is based on the diagnostic method of cognition of social and legal phenomena and concepts in their development and interdependence. In particular, this method was used to explore and analyse regulations, analytical materials, concepts and opinions of authors on individual issues within the subject of the research. The author used descriptive, analytical, and dogmatic methods to analyse interpretations of legal categories, definitions, clarifications of the terminology, and proposals for improving the current legislation on the subject of the research. The comparative legal and

formal legal approaches were used to analyse the regulations governing the activities and powers of police authorities and units, and individual issues related to using UAVs by police authorities and units. The modelling method was used to develop conclusions and proposals for improving the current legislation.

Results and Discussion

1. Foreign experience in using UAVs by police authorities and units. Using robotic systems in the work of police authorities and units began in 2009. Nowadays, it is increasingly possible to encounter such terms as "police robot" or "police robotics" [16-18], which are commonly understood as programmable mechanisms capable of performing tasks assigned to police authorities and units in remote (automatic) mode.

Considering the above and the functional capabilities and technical features of unmanned aerial systems, the term *"police drone"* may be used to define an unmanned aerial vehicle used by police authorities and units to perform and solve their tasks.

1. Using UAVs by the USA police

It is considered that the USA police were among the first to use drones in law enforcement. American law enforcement agencies are the first to use a drone armed with a stun gun to arrest a pursued criminal [19]. In 2015, the North Dakota police proposed to equip drones with nitrous oxide gas, explaining their initiative by the fact that using police drones allows real-time monitoring and control of aggressive crowd behaviour from the air, which in turn reduces the necessity for ground regulation and reduces the risk of injury to police officers [17].

Using UAVs by the police resulted in public and human rights criticism of Americans, motivated by numerous cases of violation of constitutional rights and freedoms regarding the illegal acquisition of conferencing information and information about the secrecy of personal and family life by law enforcement agencies. For example, in July 2020, the Minnesota police used backup drones to conduct video surveillance and video recording of nude vacationers (nudists) on one of the beaches to further prosecute them [18]. Evidently, the data obtained through a drone is not open, and therefore its acquisition, storage, processing and transmission require precise regulation.

The problem is that the USA, in each state separately, has its legislation, including on using UAVs by police. It is explained that the *Federal Aviation Administration (FAA)*, which is authorised to grant permits for using drones by police in the US airspace, has not established any federally defined rules that would regulate using drones by US police officers, and the procedure for storing and disclosing information obtained through unmanned aerial systems [20]. In this regard, the resolution of these issues was entrusted to the competence of local legislative authorities in each state separately. In practice, this circumstance has caused legal conflicts explained by the fact that each state has defined its own separate rules for using drones by police, which differ significantly from each other. [21]. For example, in 2020:

– four states (Florida, Idaho, Minnesota, and South Dakota) have authorised using UAVs by emergency workers, including those managing forest fires;

– two states (Minnesota and Missouri) have banned using UAVs over private property, including correctional and psychiatric facilities, and crowded areas such as sports stadiums;

– two states (Idaho and Minnesota) have authorised law enforcement agencies to use UAVs for specific purposes, such as monitoring the traffic situation and inspecting road traffic accidents (hereinafter referred to as "RTAs"), conducting search and rescue operations, and for training purposes;

– one state (Vermont) – has banned law enforcement agencies from using UAVs to identify individuals, except in cases of search and rescue operations, including forest fires, floods, storms, etc;

– three states (Florida, Massachusetts, and Virginia) have allocated funds for the certification of programs and public-private partnerships related to unmanned aerial vehicles;

– one state (Virginia) has authorised local authorities to regulate the takeoff and landing of UAVs in the territory under their control. Previously, settlements did not have such powers [21].

This circumstance forced the US authorities, at the federal level, to adopt several regulations on using UAVs by law enforcement agencies. In particular, according to the so-called "Part 107" of the federal rules [21], only a certified operator can fly a drone, with a special permit from the Civil Aviation Authority, and only in cases of visibility, during the daytime, without posing a threat to the objects and population located within the perimeter of its flight.

In addition, according to the decision of the U.S. Supreme Court adopted according to the Fourth Amendment of the U.S. Constitution, called the "Bill of Rights" [22], using drones in law enforcement can only occur in cases of recording criminal activity and subject to a court order, except in cases of using drones in emergencies and natural disasters.

In this regard, some human rights activists have expressed the opinion that using UAVs by law enforcement agencies will ultimately allow improving the legislation on the protection and enforcement of constitutional rights and freedoms of citizens, as it will encourage society to demand broader guarantees from the state to ensure the protection of constitutional privacy rights [23].

In January 2020, the US government decided to ban using drones made by the Chinese company DJI. In October of the same year, the U.S. Department of Justice vetoed the purchase, and use of unmanned aerial vehicles by government agencies from foreign companies considered a threat to national security, thus supporting its manufacturer [23].

In addition, the US police use drones in more complex operations, such as surveillance of potentially dangerous criminals. In particular, in June 2018, Axon, a world leader in software (platform) for drones used by law enforcement agencies, announced the supply of patrol drones to the police under the Axon Air program [24; 25]. According to this program, all police UAVs will be connected to cloud-based online storage, which will receive and analyse all the information from the surveillance cameras of the drones used by police units.

In addition, Taser International announced that it had granted US police permission to use its developments to equip drones with stun guns. In this regard, the US law enforcement agency believes that: "using drones armed with Taser stun guns will eliminate the risk of injury or death to police officers during dangerous operations, such as the apprehension of potentially armed criminals. Therewith, the public's rejection of the idea that drones can be a type of weapon is an obstacle that must be overcome with understanding" [17; 26].

2. Using UAVs by the police of Great Britain and Germany. The first successful operation of quadrocopters by the British police became known in February 2010, when the Merseyside police were using an AirRobot AR100B equipped with video and thermal imaging surveillance systems to detect a car thief in thick fog [27]. Similar drones are still used in the Great Britain. It is known that the technology of the device was originally developed for military intelligence needs. In this regard, it is practically silent and can work at night, transmitting video images in real-time.

In March 2014, Sussex County Police announced a pilot project using Aeryon Skyranger drones to patrol and monitor visitors to Gatwick Airport. The investor in this project was a private non-profit organisation established in 1948 to develop police practice called the "Association of Chief Police Officers of England, Wales and Northern Ireland". In total, this project cost £45,000, of which £35,000 was spent on equipment and £10,000 was spent on the training and education of four police operators [28].

In 2019, a project to use police drones for traffic control was launched in Great Britain's capital. According to Scotland Yard's management, the purpose of this project is to identify and prosecute offending drivers who endanger the lives and health of road users by their actions. When recording a traffic offence, the drone transmits the information to the police crew for further documentation of the offence and termination of illegal actions committed by the driver of the vehicle [29].

In 2008, the Saxony police launched its first project to document and prevent football hooliganism, which was the first time that German police units used the Sensocopter UAV from the German defence company Diehl BGT Defense, which manufactures weapons [30].

Nowadays, police drones are an integral part of the German police's equipment. They are used during mass events, to search for people and free hostages, and to monitor railways and other critical infrastructure. UAVs have been widely used in the detection of illegal cannabis crops, the detection and investigation of other criminal offences, and various operations by special police units, including ensuring security and order during political events at the international level [30].

3. Using UAVs by the Chinese police. In China, police drones equipped with loudspeakers have been widely used to inform citizens about the bans and restrictions imposed due to the COVID-19 quarantine and to deliver medicines to people in need. In addition, according to statistics from open information sources, China has one of the largest video surveillance systems in the world, with more than 170 million video surveillance cameras, each of which is connected to a single face identification system (database) [17].

In addition, China is considered to be one of the leaders in the production of drones for both commercial (domestic) needs and law enforcement purposes. Thus, for example, DJI drones have been widely used in the activities of the National Police. In addition, DJI drones are used in reconnaissance missions by both Ukrainian and aggressor military personnel [31]. In 2021, the company launched an investment initiative to establish a plant in Zakarpattia, Ukraine, to produce drones for agricultural purposes. The first production facilities are expected to be launched in the second half of 2023 [32].

4. Using UAVs by the French police. Therewith, using drones by the French police during the COVID-19 pandemic has resulted in several lawsuits initiated by the League for Human Rights and La Quadrature du Net, a French legal group promoting digital rights and freedoms of citizens [33].

Demanding that the leadership of the Paris police immediately take measures to stop using drones by subordinate law enforcement officers, representatives of civil society organisations claimed that in this way the police grossly violates the right to privacy and family life of citizens and neglect personal data protection. In this regard, the French Themis declared the police's actions to use UAVs for video

surveillance without prior court authorisation to be illegal. In justifying its decision, the French court emphasised that using drones by the French police was outside the legal framework, which requires law enforcement officers to obtain a court decision to collect confidential information about citizens [33].

5. Using UAVs by the Israeli police. One of the centres for the production of unmanned aerial vehicles is Israel. Thus, for example, according to open-source data, the Israeli security industry has more than 350 companies employing more than 45,000 workers. Total exports of goods produced by these enterprises amount to $7.4 billion, which is approximately 12% of the country's exports, with a population of about 10 million people [34].

In addition, this circumstance has had a positive impact on the development of military-related industries, including those related to the production of light drones for the police. Thus, for example, Bluebird has managed to develop a micro UAV that weighs only 0.5 kg and can fly for two hours. Therewith, the specified weight of this complex includes a battery, a camera, a parachute, and all the necessary equipment for pursuit and patrolling [35].

According to Bluebird representatives, "in the future, every police car will be equipped with such an unmanned system". Currently, the cost of this drone is $15,000 and includes a high-quality video camera for daytime shooting, an infrared camera for use in dark conditions, and a panoramic camera that allows focusing on individual objects or specific targets [35].

6. Ukrainian experience of using UAVs by police. Ukraine can replicate the success of the Israeli state in the design and production of high-tech unmanned aerial vehicles [34]. Ukraine not only has a remarkable aviation history, but it is still one of the few countries in the world with an aviation industry capable of competing with the world's leading manufacturers. Currently, Ukraine is making attempts to provide state support for UAV manufacturing companies and start-ups. Thus, for example, the Ukrainian strike and reconnaissance unmanned aerial vehicle "PUNISHER" developed by "UA Dynamics" has recently been successfully tested. According to open information sources, this drone is considered one of the cheapest in the world [34].

Considerable interest was demonstrated by the Ukrainian "Sokil-200" attack drone designed by the "Luch" design bureau. The UAV can be equipped with four 50 kg missiles and fly for 24 hours at a speed of 150 to 200 km/h. According to the international classification, the "Sokil-200" is close to the American Predator and the Israeli Hermes [36].

In addition, Ukrainian aircraft engines have proven themselves in the military production of the North Atlantic Alliance member countries. Not an exception to this list is the well-known Turkish company "Baykar Makina", which produces Bayraktar [36]. Thus, for example, the developers of the Bayraktar Akinci drone established a new record for the height of flight of a drone equipped with a Ukrainian-made engine that allowed the UAV to fly to a distance of 10.668 km above the ground. These characteristics allow the drone to remain undetected by enemy medium- and short-range air defence systems [36].

All this demonstrates that Ukraine is capable of becoming one of the world's leaders in the production of unmanned aerial vehicles and their systems, which will eventually become the foundation for the introduction of Ukrainian UAVs into law enforcement.

Currently, Ukraine continues to take steps to introduce unmanned aerial vehicles into the work of the National Police. Thus, for example, the Patrol Police Department has established an aerial reconnaissance unit equipped with DJI drones. The robots assist police officers in detecting criminal offences, such as illegal amber mining, illegal cannabis cultivation, illegal deforestation, and poaching, detecting forest fires, searching for people in forest or mountainous areas, monitoring roads to detect and stop traffic offences, etc. Soon, the police plan to establish special aerial reconnaissance groups in each region separately [17].

The State Border Guard Service of Ukraine has had a positive experience with drones, which are widely used in monitoring the state border of Ukraine. This method of monitoring the state border has become particularly important in the border areas with the aggressor country, and the frontline zone. In addition, drones are effectively used to detect smugglers and illegal migrants in the remote mountainous areas of Ukraine [17].

All of this, as a result, indicates that nowadays, the world is witnessing a trend of involving technical achievements of mankind, in particular, in the fields of artificial intelligence and robotics, in all spheres of human activity. The development of scientific and technological progress and the introduction of new technologies into human activity will inevitably have side effects. Sooner or later, humans will have to delegate moral decision-making to automatic artificial intelligence systems. If the risks are not controlled, the establishment of artificial intelligence may become the last technological achievement of mankind.

Considering this, lawyers should already consider the provisions of those regulations governing the grounds for using UAVs by police authorities and units, and the procedure for obtaining, storing and disclosing classified information obtained through them.

7. Analysis and proposals for improving the current legislation. To ensure an appropriate level of road safety at the state level, it is necessary to introduce new, modern technical means of monitoring, recording and controlling road safety.

Recently, there has been a trend towards a significant increase in the number of wheeled vehicles and traffic intensity on Ukrainian roads. It is confirmed by official data provided by the State Service of Ukraine for Transport Safety [37]. According to the data, as of 2021, the road transport system consisted of more than 10 million vehicles, including more than 7 million passenger cars, about 300 thousand buses, about 2 million trucks, and more than 1 million motor vehicles. This circumstance increased the number of road accidents and their adverse consequences. For example, according to the statistics of the Ministry of Internal Affairs of Ukraine, in 2021, more than 155 thousand traffic accidents occurred on Ukrainian roads, which is 14% more than last year. Therewith, about 31,000 road users sustained injuries of varying severity, and 2,500 people died as a result of RTAs [38].

According to the World Bank's estimates presented in the explanatory note to the draft Law of Ukraine "On Amendments to Certain Legislative Acts of Ukraine on the Inclusion of Personal Transport in the Unified Transport System of Ukraine and Improving Road Safety" [39], even though the dynamics of road deaths decreased by 9% last year, Ukraine's annual losses as a result of RTAs amount to about USD 5 billion, which is a disappointing indicator for Ukraine's national security in both social and economic terms.

Thus, at the state level, the issues of preventing road accidents, preventing RTAs, and preventing deaths among road users remain relevant. In addition, the provisions of the National Transport Strategy of Ukraine for the period up to 2030 [40] emphasise this, and the lack of a precise regulatory framework for using UAVs and controlling their use, particularly in areas of transport infrastructure, is among the main factors that contribute to high mortality and injuries as a result of RTAs.

Technical means of surveillance include glider-type UAVs, which are capable of remote, aerial, real-time operation, regardless of the time of day or terrain:

– identification of the state license plate of a moving vehicle whose driver violates or has violated the Traffic Rules;

– identification of wanted vehicles and persons driving them;

– traffic control, particularly in areas with a high accident rate;

– instant transmission of the received information to the operator at the road safety management and control point for further processing by the relevant units of the National Police.

The list is not exhaustive. The technical capabilities of unmanned aerial systems are much broader and allow for effective measures to be implemented:

– searching for and pursuing road users if they attempt to leave the place of an accident in which they were involved;

– detection of illegally parked wheeled vehicles in places where such parking is prohibited by traffic rules;

– traffic control on particular sections of streets and highways where it is technically impossible to install a stationary surveillance system.

In addition, UAVs can be used to monitor traffic flow, to control and analyse the traffic situation. Traffic monitoring using drones ensures prompt detection of congestion and traffic accidents with subsequent transmission of the data to the operator for the latter to make an appropriate decision and, in case of detection of wanted vehicles, to pursue them until they are stopped and detained by the police.

Thus, using UAVs allows timely detection of vehicles whose drivers violate traffic rules (e.g., speeding, driving on the oncoming lane, driving on the roadside, etc.), recording the fact of the violation, identifying the vehicle's state registration number, and transmitting the information to the nearest patrol police unit to take the necessary measures to stop the offence on time and bring the perpetrators to legal responsibility.

According to the head of the Patrol Police Department, O. Biloshytskyi [41], the most common cause of car accidents is speeding, which accounts for more than 40% of all accidents with victims and fatalities. Other causes include violations of manoeuvring rules, rules for crossing intersections and pedestrian crossings, and failure to maintain a safe distance. Therewith, the number of RTAs involving fatalities and injuries has decreased threefold on road sections equipped with traffic cameras. Thus, while in 2020, there were an average of 123 RTAs with victims and fatalities on particular road sections, this number dropped to 44 after the installation of photo and video recording cameras.

Currently, according to the Ministry of Internal Affairs of Ukraine [41], there are 236 automatic fixation cameras on Ukrainian highways. In the future, the Ministry of Internal Affairs plans to increase this number to the required 2,000 in conjunction with cameras installed on so-called car phantoms.

Considering this, notably, using UAVs to monitor traffic rules can have a psychological impact on participants. Since, noticing a drone in the air and being aware of the legal responsibility for the violation, vehicle drivers will subconsciously reduce their speed and become more disciplined, which will have a positive impact on road accident statistics [12].

Considering this, it would be appropriate to supplement the Traffic Rules of Ukraine [15] with a new information and guidance road sign with the number "5.70.1." and the title "Photo and video recording of traffic violations from an unmanned aerial vehicle", which would inform road users that it is possible to control traffic violations on the specified section of the road through special technical means installed on an unmanned aerial vehicle (see Fig. 1).

■ **Figure 1.** The image of the proposed project of the information sign is numbered "5.70.1. – photo and video recording of traffic violations from UAVs"

Using unmanned aerial systems can occur when police officers are recording RTAs. Since photo and video recordings of the scene from the air will greatly facilitate the process of learning about the past event and establish the prerequisites for a better mental reconstruction of the situation and circumstances of the event. In addition, the drone will significantly increase the inspection time, which will have a positive impact on the time it takes to clear the roadway section from the traffic jam caused by RTA.

As is known, an inspection of the scene of an incident refers to urgent investigative (detective) actions, the main purpose of which is to identify and remove traces of a criminal offence, tools and means of its commission, property obtained as a result of its commission, search for suspects in hot pursuit, establish the location of missing persons, and identify caches, burial grounds and other illegal burials. In these conditions, technical and forensic means, to which belong UAVs, are of particular significance in the process of protocoling and recording evidence.

The most efficient use of glider-type drones is possible during the inspection of open and large areas of the terrain, where it is necessary to reproduce the event in detail, establish its exact location, take aerial photographs (aerial video) and mark the exact coordinates of the location of traces, objects, parts, corpses, buildings, structures and other forensically significant information found at the scene of the event [10].

The detection of sources of forensically relevant information using UAVs allows for more accurate recording during protocoling and confiscation, as using aerial photography or aerial video recording allows for top-down analysis of the scene, which enables the investigator to better understand and model the event that occurred (past event).

The technical capabilities of most unmanned aerial systems allow for 3-D modelling of the surface of the area under inspection. Therewith, it is not necessary to have a special laser scanner. The terrain is reconstructed using a high-resolution camera with a global positioning system and automatic height control and monitoring. Drawing up a 3-D model during the inspection of the scene allows the investigator to more objectively assess the event of the criminal offence and propose plausible investigative versions [13].

Using UAVs in criminal proceedings should not be limited to the implementation of surveillance functions. The technical capabilities of drones can be useful for inspecting hard-to-reach areas, buildings, terrain, etc. Therefore, the author recommends using glider-type UAVs during searches with the involvement of a specialist as an operator who must ensure proper control of the drone and the technical devices with which it is equipped.

In addition, the literature describes cases when investigators use the capabilities of UAVs to deliver procedural mail to addressees located at a significant distance from the point of departure or in a remote area [42, p. 6-10; 43, p. 87-90]. Such mail can include material evidence, inspection materials, materials on the appointment of forensic examinations, etc. Therewith, it should be mentioned that the UAV's range is limited, and depending on the model, type of powerplant, weather conditions and cargo weight, it can be up to 30 minutes.

Depending on the specific modification, on average, the payload of a multicopter can range from 0.5 to 3 kg at a flight speed of up to 70 km/h. There are modifications with a much higher payload capacity. These include the British-made Malloy Aaeronautics T150 skimmers. Each of these UAVs is capable of delivering up to 68 kg of payload over a distance of up to 70 km. These drones are in service with the Armed Forces of Ukraine, due to military support from the UK government, as part of a Western aid package and Ukraine's transition to NATO weapons and standards [44].

The efficient use of UAVs by police officers can occur when ensuring the protection of public safety and property, the safety of individuals and public security and order, including the recording of offences related to non-compliance with curfews during martial law, etc.

Thus, considering the above, in the author's opinion, the provisions of Section IV of the Law of Ukraine "On the National Police" [5] should be supplemented with a separate paragraph that would define the legal grounds for police officers to use UAVs in the performance of their duties. The text of this clause could be as follows: "*To ensure public safety and order, control compliance with traffic rules, monitor the traffic situation, protect facilities and property located on these facilities, protect human rights and freedoms, their life and health, and during operational and investigative activities and procedural actions related to obtaining information relevant to the detection, investigation and prevention of criminal offences, police officers have the right to use UAVs.*

A UAV operator can be a specialist police officer who has undergone appropriate UAV operator training and who holds a certificate confirming their right to operate a UAV.

UAVs used by police officers in the performance of their duties must be registered in the relevant State Aircraft Register of Ukraine.

Using UAVs by the police is possible only if the Department of State Aviation Regulation of the Ministry of Defence of Ukraine provides prior permission to conduct flights.

Police officers are prohibited from using UAVs at night, in adverse weather conditions, and if it poses or may pose a threat to the life or health of others and/or damage or destroy their property.

Using UAVs to obtain classified information is performed based on the relevant court decision, according to the procedure established by the Constitution and the Criminal Procedure Law of Ukraine".

The presence of this provision will allow supplementing Article 8 of the Law of Ukraine "On Operational and Investigative Activities" [6] with the following text: *"Operational units in the course of operational and investigative activities have the right to use UAVs on the grounds and in the manner prescribed by the Law of Ukraine "On the National Police".*

Specific regulation is required by the Law of Ukraine "On the National Police" [5], which would establish the legal basis for using special technical means to combat offending drones by police. The text of this provision could be as follows: *"To protect and defend human rights and freedoms, their life and health, police officers have the right to use special systems (means, devices) of the gun, radio-electronic and laser type designed to neutralise UAVs".*

Using UAVs during pre-trial investigations requires separate regulation in the provisions of criminal procedure law. Thus, considering the fact that a UAV is an aircraft belonging to sources of increased danger, in the author's opinion, paragraph 5 of Chapter 3 of the CPC of Ukraine [8], entitled "Other Participants in Criminal Proceedings" should be supplemented with a separate provision *"Specialist UAV Operator"*, which would establish the legal grounds for involving a UAV operator in conducting procedural actions, and define their powers (rights, duties) and responsibilities.

Problematic issues regarding the technical capabilities of using UAVs as a technical and forensic tool require further research. For example, some of them include the fact that the takeoff, landing and flight of a drone are significantly affected by meteorological factors, in which using a UAV is extremely undesirable. In severe weather conditions caused by rain, hurricane, hail, fog, snow drifts, etc., using ultralight, lightweight, and small drones is virtually impossible. Thus, before each UAV use, the specialist operator must familiarise himself with the actual and expected meteorological data, which, if ignored, can result in unforeseen circumstances, including accidents resulting in loss of life or damage to property. Therefore, in the event of a sharp deterioration in weather conditions, the police officer should immediately stop the UAV flight [12; 13; 45].

One of the disadvantages of the unmanned aerial vehicle system is its relatively low efficiency in dense urban areas, where it is very difficult to monitor objects, particularly when they are in motion.

UAVs are very useful technical and forensic tools that should not be limited to inspecting the scene of an accident. The modern development of information technology allows UAVs to be equipped with special digital equipment that can identify persons wanted in the video stream or those entered in the relevant law enforcement databases as active participants in mass disorders, persons involved in terrorist activities, organised crime and banditry, model their 3-D images and store the information in the relevant information resources. Using such systems can be especially effective during public events, sports competitions, protests, mass disorders, and other crowded places where it is technically impossible to install stationary surveillance systems.

Using UAVs can occur during search operations to locate missing persons, in particular, when it comes to densely planted areas, forests, mountainous areas and other hard-to-reach or dangerous places. The priority area for using UAV capabilities is to establish the facts of poaching, illegal mining, illegal logging, illegal planting of narcotic plants, etc.

Conclusions

Thus, considering the above, the following conclusions can be drawn, namely:

1. In real-time conditions, UAVs are no longer the prerogative of the military alone; they are actively used by police around the world to perform their tasks. It allows for increasing the efficiency of law enforcement agencies in identifying and recording forensically relevant information. Due to its multi-functionality, using UAVs in law enforcement and forensic activities allows for relatively low financial costs to effectively accomplish tasks that were previously required using a large number of personnel and small aircraft. Using drones eliminates the risk of accidents involving explosive or fire hazards, injuries, injuries or deaths to participants in such operations.

2. The technical capabilities of UAVs allow for efficiently implementing measures to prevent criminal and administrative offences by aerial monitoring of the road situation, main pipeline facilities and railway transport. The specific features of this monitoring include using both analogue and multichannel video recording in real-time, which is capable of simultaneously monitoring several spectral ranges (visible, infrared, radar, thermal imaging, etc.), which allows tracking objects both at night and in poor visibility conditions.

3. Therewith, UAVs are a source of increased danger, using which, if incompetent, can result in irreparable consequences for people, society and the state in general. Thus, using UAVs, including by police agencies and units, requires precise regulation, which forces legislators to supplement the provisions of the Laws of Ukraine "On the National Police" and "On Operational and Investigative Activities" and the provisions of the Criminal Procedure Code of Ukraine on this issue.

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Сучасні можливості використання безпілотних літальних апаратів органами та підрозділами поліції: міжнародний і вітчизняний досвід

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■ **Анотація**. Актуальність теми дослідження обумовлена науковою новизною та практичною значущістю використання сучасних можливостей безпілотних літальних апаратів органами та підрозділами поліції. Затребуваність проблематики дослідження полягає в тому, що норми чинного законодавства, які визначають правові підстави використання безпілотних літальних апаратів органами та підрозділами поліції, здебільшого мають формально визначений характер. З огляду на зазначене та зважаючи на те, що перед правоохоронною системою з'явилися нові виклики, що постійно потребують упровадження у свою діяльність новітніх методів і засобів боротьби зі злочинністю, що передбачають застосування сучасних досягнень цифрового, технологічного та науково-технічного прогресу, метою цієї статті є аналіз міжнародного досвіду використання органами правопорядку безпілотних авіаційних систем та розроблення пропозицій щодо вдосконалення чинного законодавства стосовно використання БпЛА поліцейськими. Методологія дослідження полягає у використанні сукупності загальнонаукових і спеціальних методів, завдяки яким сформульовано припущення та висновки. У статті досліджено актуальні питання сьогодення, що стосуються використання технічних можливостей безпілотних літальних комплексів під час реалізації завдань, покладених на органи та підрозділи поліції. Зокрема, розглянуто міжнародний досвід деяких технологічно розвинутих держав світу (США, Великої Британії, Німеччини, Франції, Китаю, Ізраїлю) щодо використання сучасних можливостей безпілотних літальних апаратів органами правопорядку. Акцентовано на розвитку авіаційної галузі України щодо розроблення українських безпілотних літальних комплексів, а також перспектив їхнього впровадження в діяльність Національної поліції України. Окреслено основні перспективи використання безпілотних літальних апаратів у діяльності органів і підрозділів поліції, зокрема пов'язаної з охороною громадського порядку, безпекою дорожнього руху, виявленням, припиненням і протидією кримінальним та адміністративним правопорушенням, а також охороною та захистом прав і свобод людини, її життя та здоров'я. Наукова новизна та практична значущість статті полягає в тому, що в ній висвітлено сучасні можливості використання безпілотного літального апарату органами та підрозділами поліції, окреслено деякі питання проблемного характеру, що потребують вирішення, а також на підставі міжнародного досвіду визначено напрями вдосконалення чинного законодавства щодо використання безпілотних літальних апаратів Національною поліцією України

■ **Ключові слова**: безпілотна система; роботизований комплекс; дрон; правоохоронні органи; кримінальні правопорушення; розслідування злочинів

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Problems of administrative liability for domestic violence against children

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■ **Abstract**. The scientific research reflected in the content of this study is devoted to the main theoretical, legal and practical issues of administrative liability for domestic violence against a child. The purpose of the study – outline the specific features of protection of a child's right against domestic violence in Ukrainian legislation and identify the factors which indicate the necessity to distinguish domestic violence against a child as an administrative offence with more serious consequences, and, accordingly, to apply a more severe penalty to the offender. According to the purpose and specifics of the subject matter of the study, the author has applied a set of methods: philosophical methods – dialectical, phenomenological and others; general scientific methods: systematic, induction, deduction of analysis, synthesis, analogy, comparison; and methods of a specific legal science: comparative-legal, legal statistics, legal generalisation, legal analysis, formal-legal etc. The study examines the definition of domestic violence under Ukrainian law and summarises some ways to counteract this phenomenon. It is emphasised that the Code of Ukraine on Administrative Offences does not distinguish between the specifics of administrative liability for domestic violence against an adult and a child. However, according to statistical studies, the number of children suffering from domestic violence is increasing every year. It highlights the relevance of the study. The practical value is that the study identifies and characterises the main theoretical, legal and practical issues of administrative liability for domestic violence against a child, and develops substantiated proposals for amending Article 173-2 of the Code of Administrative Offences

■ **Keywords**: juvenile rights; the principle of the best interests of the child; object; subject; objective side; subjective side; Article 173-2 of the Code of Administrative Offences

■ Introduction

Protecting children from domestic violence is not a new challenge for society, as since ancient times parents have disposed of their children at their discretion, and their immoral actions have been subject to universal condemnation. Children are the most vulnerable category of society, particularly sensitive and unable to protect themselves, thus, with the development of statehood, powerful mechanisms to counteract violence against children have been established in each country and at the international level. Domestic violence against them is the most dangerous and widespread nowadays. Domestic violence is a phenomenon that the entire civilized world is fighting against. The protection of children from domestic violence is reflected in international standards [1] and national legislation. National regulations are designed to promote the all-round development of the individual, guarantee their rights and freedoms, and ensure social security and protection of all members of society, regardless of age.

Section II of the Constitution of Ukraine [2] explicitly defines the rights, freedoms and obligations of a person and citizen, including their content, including children. In addition, children have additional juvenile rights [3, p. 10], which are based on the principle of the best interests of the child, as defined in the content of the Law "On Protection of Childhood" [4], and specify the rights and freedoms of the child and define the concept of basic terms. In particular, the age and social criteria of a child as a person under the age of 18 or who has not acquired the rights of an adult before, due to the circumstances specified in the legislation, are highlighted. Ensuring the personal requirements of the child, according to their physiological characteristics (gender, age,

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health status), social status (family characteristics, life experience, intellectual development, ethnicity and family culture), and considering the child's opinion in decision-making, if the child is capable of voicing it by their level of development and age, is the foundation of the principle of ensuring the best interests of the child. In addition to the above, it is crucial that all government agencies and social institutions surrounding the child should ensure safe living conditions for children, i.e., their general requirements. In the author's opinion, the above-mentioned is the foundation for the establishment and functioning of the state organisational and legal mechanism, part of which is the determination of administrative liability for offences against children. In the administrative legislation of Ukraine, there are some theoretical, legal and practical problems with establishing liability for such unlawful acts.

For the first time, in 2003, the Code of Administrative Offences of Ukraine [5] (hereinafter – CAO) introduced a provision on domestic violence or failure to comply with a protective order. This provision reflected Article 173-2 [6], which stated that any intentional actions of a physical, psychological or economic nature that could have caused or caused damage to the mental or physical health of the victim or failure to comply with a protective order by the person to whom the order was issued.

In 2008, 2015 and 2021, several amendments were made to Article 173-2 of the CAO [5]. The content of the administrative rule now includes domestic violence, gender-based violence, failure to comply with an urgent restraining order, or failure to report the place of temporary residence. In practice, the author considers that the content of the provision has become more voluminous and has acquired a broader meaning. However, the legislator has not yet defined the specific features of administrative liability concerning a child in the content of this provision.

Recently, children in Ukraine have suffered greatly from violence, including domestic violence. The Code of Ukraine on Administrative Offences [5] defines administrative liability for violent acts committed against a child in several provisions, in particular, Article 180 of the CAO [5] establishes the liability of parents or persons in loco parentis for the actions or inaction of these persons that caused the child to become intoxicated – it provides for a fine of six to eight tax-free minimum incomes. In addition, Article 184 of the CAO [5] provides for liability for the failure of parents or persons in loco parentis to perform their child-rearing duties. Such evasion is subject to administrative liability – a warning or a fine of one to three tax-free minimum incomes.

Article 173-2 of the CAO [5] defines the general principles of domestic violence, and liability for unlawful acts applies to both adults and minors over 16 years of age. In addition, the identity of the victim is not specified, and it can be either an adult or a child. Thus, Article 173 2 of the CAO [5] provides for liability in the form of a fine, community service and administrative arrest, without identifying the victim. In the author's opinion, there is a necessity to improve Article 173-2 of the CAO [5] with a distinction between the victim and the type and amount of administrative penalty for committing domestic violence against a child.

Countering domestic violence in the twenty-first century has acquired new forms. At the international and national levels, mechanisms for counteracting this phenomenon are constantly being improved, and the number of scientific studies is increasing. The political doctrine based on the protection of human rights and human-centeredness is explicitly manifested in the works of Y.O. Shabanova [7], who considers a person as a dual entity where the human is simultaneously manifested as meaning (idea) and existence (form). These postulates became the foundation of the concept of counteracting domestic violence. After all, the comfortable living of each family member in their own home and familiar conditions is the purpose of a civilized society. The analysis of international experience in combating domestic violence [8] indicates that the legislation of the United States and EU countries, compared to Ukraine, provides for stricter measures against perpetrators, which affects the reduction of violations, but does not guarantee their complete absence.

Some problems of combating domestic violence against children were considered by: K. Levchenko & O. Shved [9]. In her comprehensive study, scholar N. Lesko analysed some urgent problems of administrative liability for domestic violence against children [10]. V. Mykolaets, T. Matselyk & N. Novytska in scientific research comprehensively reviewed and outlined the interdisciplinary nature of the problem of domestic violence against children [11].

Despite the wide development of this subject, no sufficient attention has been devoted to the specific theoretical, legal and practical problems of domestic violence against children and the specifics of administrative responsibility: no distinction has been made between domestic violence against children, which emphasises the relevance of the subject under development.

The purpose of the research is to examine the concept of domestic violence in the administrative legislation of Ukraine and the content of the provision provided for in Article 173-2 of the CAO [5]. To explore the theoretical, legal and practical problems of administrative liability for domestic violence against a child. To characterise the factors that indicate the necessity to distinguish domestic violence against a child as an administrative offence with

more serious consequences and, accordingly, to apply a greater penalty to the offender. To justify the necessity of amending Article 173-2 of the CAO [5].

Materials and Methods

Considering the current problems of public life, the research area was chosen, and a subject was identified as relevant and in demand of scientific knowledge and practical improvement. The information on the subject was reviewed and the necessary materials were selected. To objectively explore the subject of the research, the author conducted a set of scientific activities which, following the scientific style, are gradually reproduced in the content of the research. At the beginning of the work, to ensure the reliability of the results and conclusions obtained, the statistical data reflected in the case law report, and journalistic sources of information were analysed. The next step in the research was to explore the content of the provisions of international documents and national regulations that are of scientific interest on the subject. Thus, the regulatory framework for this work is: The UN Convention on the Rights of the Child [1], the Constitution of Ukraine [2], the Code of Administrative Offences of Ukraine [5], the Law of Ukraine "On Preventing and Combating Domestic Violence" [12], the Law of Ukraine "On Childhood Protection" [4]. After analysing empirical data, practical sources and regulations, the author summarises the research of scholars who have comprehensively explored the problems of domestic violence. After all, the problem of domestic violence is not new and has been addressed by scientists in various fields. The author analyses some relevant proposals of scientists, provides their generalisations and conclusions, and substantiates practical proposals for improving the content of Article 173-2 of the CAO [5]. To conduct a comprehensive study of the subject matter, considering the specific features of the research, the author used a special set of general and special methods of scientific knowledge. Each method was used to achieve the purpose. Several philosophical methods are used in the interconnection, and theoretical methods are used in general scientific methods. In particular, using the dialectical method, the author has explored the essence of administrative liability for domestic violence against a child through the prism of change and development of this phenomenon, and the relationship between the existing standard and the author's proposals. The phenomenological method was used to develop the hypothesis and the author's definition of originality. The author uses the methods of analysis and synthesis and their branch-specific variants to clarify theoretical, legal and practical problems in the field of cognition. When exploring the subject of research in general, the methods of induction and deduction were helpful. The statistical method proved to be essential, as it helped to process official statistical data [13]. Using the comparative-legal method, the author compares legal liability for domestic violence in Ukraine and other countries of the world, in particular, in the EU, the USA and Ukraine. The method of abstraction is used for deep cognition, which consists of the mental separation of special, significant features, signs, and relations of all elements of the subject of research. The formal-legal method is used in the analysis of regulations. The specific analysis of regulatory documents was performed using the method of legal analysis. A detailed legal analysis was conducted in Article 173-2 [5]. The author considers and analyses its structural elements (object, subject, objective and subjective sides). The method of generalisation was used to develop and present the conclusions, and the author's generalisations and practical proposals in this research. All of these methods, which the author emphasises, have been applied comprehensively.

In exploring this problem, the author used anthropological, hermeneutical, and epistemological approaches to analyse scientific achievements and substantiate conclusions.

Results and Discussion

The Law [12] defines the forms of domestic violence, which can be expressed in both active and passive forms of inaction. There are the following types of domestic violence: physical, sexual, psychological, and economic. Such manifestations of violence are called domestic violence in cases where it is committed in the family or on the territory of a common residence or between relatives. Also between current or previous spouses, or between other persons who live (lived) together as a family. Threats of the above-mentioned violence can be its manifestation.

For acts that are not socially dangerous, such as foul language, threats, shouting, slapping, deprivation of housing (the list is not exhaustive), administrative liability is provided, and the offender's actions are qualified as domestic violence under Article 173-2 of the CAO [5]. To prove the offender's guilt and bring them to justice, a district police officer, juvenile prevention inspector, or patrol police officer drafts an administrative report that is sent to court.

For professional qualification of an act when bringing a person to administrative responsibility for committing domestic violence, it is essential to correctly identify all elements of the offence. In particular, the existence of an object, which is public relations in the field of human and civil rights protection. As outlined above in this research, children have all the rights that adults have, and additional children's rights are based on the principle of ensuring the best interests of the child.

The objective side is expressed in the intentional commission of any actions or omissions of a physical, psychological or economic nature that caused damage to the health of the victim. Failure to comply with an urgent restraining order and failure to notify the relevant units of the National Police of Ukraine of the place of temporary stay in case of its issuance is recognised as an offence [12], i.e. both action and inaction have specific manifestations in the commission of an offence, which occurs in the research. The content of the provision highlights gender-based violence, i.e. discrimination against a member of a close person based on their gender. An important element of the objective side of this offence is the consequences and the causal link between the act (inaction) and the consequences. Forms of manifestation of an act as a threat to: physical violence; psychological violence; economic violence, including any manifestation of domestic violence in the presence of a child.

All manifestations of sexual violence against a child are subject to criminal liability.

The subject is general (part 1 of the Article) or special (part 2 of Article 173-2 of the CAO [5]).

Subjects of domestic violence must be current or previous family members. Article 3 of the Family Code of Ukraine [14] defines a family as:

– persons living together are interconnected by rights, obligations and common life;

– spouses who live together or separately for valid reasons (due to study, work, medical treatment, the necessity to care for parents, children, etc.);

– child, even if they do not live with their parents;

– a single person.

Legislation on preventing and combating domestic violence clearly defines the persons who can be subjects [12] of the offence studied.

The subjective side is determined by the attitude to the consequences and is characterised by the presence of guilt in the form of intent. The presence of guilt in the form of intent and a causal connection between the action and the consequences is required.

Paragraph 2 of Article 173-2 [5] defines a qualifying feature – the commission of this offence by a person who has previously committed such an offence and was subject to an administrative penalty within a year for any violation provided for in paragraph 1 of this Article. In the author's opinion, it would be appropriate to include domestic violence against a child as a qualifying ground.

Domestic violence is an interdisciplinary phenomenon. Psychologists, sociologists, educators, lawyers, and other researchers are trying to understand it and develop effective levers of counteraction. Contemporary scholar O.S. Dmytrashchuk [15], in her study, thoroughly examines international experience in combating domestic violence, including against children. Emphasises the interesting experience of Poland in terms of communicating to the community the decision to punish a person for domestic violence. Highlights the equally interesting example of the United States and some Asian countries that have developed and successfully used a comprehensive approach to combating domestic violence against children and delineate responsibility for domestic violence against children by using harsher penalties.

The Code of Administrative Offences of Ukraine [5] contains several provisions, which have been discussed above, that provide for the administrative liability of parents and other family members for child abuse. Article 173-2 [5] additionally defines gender-based domestic violence against women but does not specifically mention violence against a child, who is a more vulnerable human being and requires additional protection. In the author's opinion, any unlawful intentional acts (action or inaction), if the victim is a child, should be offences that have an additional qualifying feature and a more severe administrative penalty. When imposing an administrative penalty, in addition to the above actions, it is necessary to consider the failure to report one's whereabouts when such an order is issued if the offender has harmed a child and the child is a victim of domestic violence.

The research consists of two parts. Part two provides for several qualifying features and a more severe administrative penalty, but the author proves the necessity of its improvement.

Women and children are the most common victims of domestic violence. Children frequently become victims or witnesses of abuse, which significantly traumatises their mental health and is a manifestation of violence [16]. The provision that currently provides for liability for domestic violence considers the status of women but does not explicitly mention children.

Part 2 of the Law of Ukraine "On Preventing and Combating Domestic Violence" [12] defines a child victim of domestic violence as a person under the age of 18 who has been subjected to domestic violence in any form, and a child who has witnessed domestic violence. By adopting this provision, the legislator has taken a positive step towards protecting children's rights against violence and abuse, however, in practice, when determining the status of a victim of domestic violence, law enforcement agencies face certain problems that, in the author's opinion, can be solved by the proposed amendments to the legislation.

According to the statistics of recent years, an increase in cases of domestic violence has been recorded in Ukraine [17]. In 2021, 56% more citizens reported cases of domestic violence to the National Police than in 2020. In addition, 10% more administrative protocols were compiled, and 19% more urgent restraining orders were issued against offenders. In addition, the number of offenders registered increased

by 11%. While in 2020 there were 209,000 reports of domestic violence, 3,400 of them were from children, which is 1.63% of the total number of reports.

Human rights organisations and qualified lawyers emphasise the necessity to improve the work of the relevant state bodies and courts in establishing the facts of domestic violence where children are victims. After all, with the entry into force in 2018 of the Law of Ukraine "On Preventing and Combating Domestic Violence" [12], the concept of "child witness = child victim of domestic violence" was introduced into the national legislation, meaning that law enforcement officials must declare such a child a victim of domestic violence by the established procedure. These positive changes reflect the development of juvenile policy in Ukraine and the protection of the best interests of the child. Significantly, the improvement of Ukrainian legislation in this area is based on international approaches to the legal regulation of juvenile justice and juvenile prevention [18].

According to the Convention on the Rights of the Child [1], the state is obliged to ensure the physical, intellectual, mental, spiritual, and moral development of minors. Therefore, the state's multidimensional activities should be based on the development and implementation of measures to protect and safeguard childhood – relevant legislation and systematic, coordinated activities of authorised state bodies that protect the rights and interests of minors from factors that harm their health and development. According to research by leading scientists around the world, domestic violence has an adverse impact on a child's development and education [19].

Among the positive achievements of society in protecting children from domestic violence in Ukraine are several theoretical and practical problems. In particular:

– mechanisms for identifying child witnesses of domestic violence have not yet been developed (children who witnessed domestic violence are not marked by police officers in protocols as victims of domestic violence, and authorised state bodies do not always report such cases);

– the law does not provide for a mandatory psychological examination of a child subjected to domestic violence;

– the Code of Ukraine on Administrative Offences [5] does not systematise the provisions reflecting manifestations of domestic violence against children;

– article 173-2 of the CAO [5] does not distinguish between the specifics of liability for domestic violence against a child and an adult;

– the appropriateness of administrative penalties for domestic violence against children has not been reviewed and improved.

Having explored the online databases of the Unified Register of Court Decisions (Article 173-2 of the CAO [5]) for the entire period of 2020 [20], regarding the specifics of the responsibility of offenders for committing domestic violence against a child, notably, 67 out of more than 400 decisions proved the person's guilt, which is not a comforting indicator.

It is crucial for this research to summarise the findings of the Analytical Center of the Ukrainian Women Lawyers Association, which explored court decisions on bringing a person to justice for domestic violence in 2020. Their findings, based on the analysis of statistical data [13], proved that during this period, only 17% of the total number of court decisions concerned children of domestic violence victims, and in almost 15% of cases, the child was not considered a victim, although the violence was committed in their presence.

In most decisions, the courts limited themselves to the wording contained in the protocol. According to statistics for the entire period of 2020 [12], a fine is most frequently imposed by the court for committing unlawful acts against a child under Article 173-2 of the CAO [5] – in more than 70% of cases. The amount of the fine is determined by an administrative rule of UAH 170 to 680, depending on the frequency of domestic violence. 23% – community service.

Studies have demonstrated that 30% of cases of domestic violence against children are committed when the perpetrator is intoxicated, and 40% of cases of domestic violence against children are repeated [12], which, in the author's opinion, is an indicator of improper preventive activities of authorised state bodies and police units.

The author considers the circumstances that prompted Ukraine to impose martial law to be favourable for domestic violence against children. Stressful situations in which adult relatives find themselves are the impetus for systematic alcohol consumption and, under their influence, using domestic violence against the most vulnerable children. The difficulty of access to families with children living in the territories where hostilities are occurring and in the occupied territories for representatives of the relevant state institutions gives rise to an imaginary permissiveness of adults, which can manifest itself in intentional domestic violence against children. Thus, the subject of the research is particularly relevant nowadays [21].

In addition, clause 11 of part 1 of Article 67 of the Criminal Code of Ukraine [5] defines the commission of a crime using martial law as an aggravating circumstance. In addition, in the author's opinion, it would be appropriate to supplement Article 35(5) of the Code of Ukraine on Administrative Offences with a provision concerning using martial law.

The author's proposals regarding the necessity of improving Article 173-2 of the CAO [5] are substantiated, in particular, that Part 2 of this Article should be supplemented and outlined in the following wording: *"The same actions committed against a child or a person*

who has been subjected to an administrative penalty for one of the violations provided for in part one of this Article – entail community service for a period of forty to sixty hours or administrative arrest for up to fifteen days."

In the author's opinion, clause 5 of Article 35 of the Code of Ukraine on Administrative Offences [5] requires amendment, which should be stated in the following wording: *"committing an offence using the conditions of martial law or in conditions of natural disaster or other extraordinary circumstances"*.

Any person, and, in particular a child, should be reliably protected by the state from all adverse manifestations, including violence. The constant dynamics of improving the existing legislation in line with new challenges is an appropriate response for a state that cares about human rights.

Conclusions

As a result of a comprehensive synthesis of statistical data and theoretical developments, the author identified the main theoretical, legal and practical problems of administrative liability for domestic violence against a child. The provisions of international standards and national legislation are considered. The research examines the content of particular provisions of the Code of Ukraine on Administrative Liability, which provide for the prosecution of violent acts against a child.

In addition, the author considers it appropriate to exclude the application of an administrative penalty in the form of a fine under Part 2 of Article 173-2 of the CAO on the basis that the payment of a fine in the vast majority of cases is an expense from the family budget, which reduces the costs of development and household necessities of the child, and this contradicts the principles of the modern juvenile policy of Ukraine.

The author of the research develops recommendations for changing the current version and improving the laws, namely Article 173-2 of the CAO and Article 35(5) of the Code of Ukraine on Administrative Offences.

Thus, a number of the above and other theoretical, legal and practical problems that arise in modern Ukrainian society require special attention from the state and improvement of the administrative and legal mechanism for counteracting the adverse consequences. The proposed changes, in the author's opinion, can become an additional guarantee of the prevention of domestic violence against children.

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Проблеми адміністративної відповідальності за вчинення домашнього насильства щодо дитини

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■ **Анотація**. Наукове дослідження присвячено розгляду основних теоретико-правових і практичних проблем адміністративної відповідальності за вчинення домашнього насильства щодо дитини. Метою статті є окреслення особливостей захисту права дитини від домашнього насильства в законодавстві України та виявлення чинників, які свідчать про необхідність виокремлення домашнього насильства щодо дитини як адміністративного правопорушення з більш тяжкими наслідками, і, відповідно, застосування суворішого стягнення до особи порушника. Згідно з поставленою метою та специфікою предмета дослідження, автор застосував комплекс методів: філософських – діалектичний, феноменологічний та інші; загальнонаукових методів – системний, індукції, дедукції аналізу, синтезу, аналогії, порівняння; методів конкретної правової науки – порівняльно-правовий, правової статистики, правового узагальнення, правового аналізу, формально-юридичний тощо. У роботі розглянуто визначення домашнього насильства за законодавством України, узагальнено окремі шляхи протидії цьому явищу. Наголошено, що в Кодексі України про адміністративні правопорушення донині не розмежовано особливості адміністративної відповідальності за домашнє насильство щодо дорослого та щодо дитини. Водночас, за даними статистичних досліджень, з кожним роком збільшується кількість дітей, які потерпають від домашнього насильства. Зазначене свідчить про актуальність дослідження. Практична цінність полягає в тому, що за результатами дослідження було виокремлено й схарактеризовано основні теоретико-правові та практичні проблеми адміністративної відповідальності за вчинення домашнього насильства щодо дитини, а також сформульовано обґрунтовані пропозиції стосовно внесення змін і доповнень до ст. 173-2 КУпАП

■ **Ключові слова**: ювенальні права; принцип найкращих інтересів дитини; об'єкт; суб'єкт; об'єктивна сторона; суб'єктивна сторона; стаття 173-2 КУпАП

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The subject of money laundering as a starting point for an effective investigation

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■ **Abstract**. The relevance of the subject is the necessity to correctly identify the subject of money laundering during the investigation, in the context of the current version of the Criminal Code of Ukraine. The purpose of the research is to define modern approaches to determining the subject of property laundering. The research methodology includes general scientific methods, in particular, analysis, synthesis and generalisation, to determine the characteristics of the subject of the crime; special research methods, namely, formal-logical and comparative-legal – to determine the specifics of the subject of the crime at the current stage of development of legal science and the regulatory framework. The result of the research is a generalisation of positions on the location of the crime object among the elements of forensic characterisation and the importance of its clarification. The author describes legislative innovations and their impact on the identification of the subject of a criminal offence. The types of property that can be subject to legalisation are defined. The research describes the problems faced by investigators in the course of investigating property laundering related to an atypical object of crime – a "virtual asset". The author outlines approaches to establishing the subject of a criminal offence in modern realities, the possibility of its transformation and further clarification, and the involvement of persons with specialised knowledge. The connection between the person of the offender and the object of the crime is described. The author considers the possibilities of using international cooperation to clarify the subject of property legalisation and its identification

■ **Keywords**: object of the crime; legalisation; illegal benefit; virtual asset; cash, international cooperation, property rights

■ Introduction

Nowadays, there is a rapid growth of innovative technologies that affect both everyday life and other areas, including the economy. One of the most dangerous threats to the proper functioning of the state is money laundering. In particular, it is reflected in the national policy of Ukraine, in particular, in the statement on the importance of combating money laundering and the adoption of appropriate strategies that should be consistent with the current Criminal Procedure Code of Ukraine [1]. The issue of developing modern mechanisms in the system of combating (laundering) the proceeds of crime and developing an action plan in this area remains relevant since the current strategy [2] is designed for the period up to 2023. Using innovative technologies by criminals in this area is occurring faster than inventing effective methods to counteract them, detect crimes they have committed and successfully investigate them. Changes in Ukrainian legislation contribute to the successful fight against money laundering, but they only declare specific provisions and do not provide tools for investigators. In addition, regulations in this area are often inconsistent with each other, in particular, using outdated terminology, which causes misunderstandings in the activities of investigators, which should be regulated precisely and unambiguously. A successful pre-trial investigation begins with the investigator's awareness of the nature of the unlawful actions and the ways and means to document them. The investigation process, in any case, must comply with the requirements of the applicable criminal and criminal procedure laws. Generally, investigators are engaged in the investigation of several different criminal offences that may have various objects and subjects and are not narrowly specialised in the investigation of a particular crime. Thus, the key to an effective start of an investigation is to identify the elements

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of the forensic characterisation of the crime that is being investigated. The starting point for this is to identify the object of the crime. Currently, the issue of identifying the subject of property laundering is almost unexplored. On the one hand, it is explained by the fact that scientists include this issue in studies that cover a wider range of elements of forensic characterisation. On the other hand, the signs of the subject of property laundering have changed since 2019 and have not yet become a common subject of scientific discussion. In such circumstances, it is justified to use the practical recommendations of international experts in the field of combating money laundering, considering the provisions of the current regulations of Ukraine. A good example of such recommendations is the Manual on the detection, investigation and prosecution of money laundering, edited by Council of Europe experts Ian Richardson and Ignacio de Lucas Martin [3]. The relevance of this subject can hardly be overestimated, in particular, due to the amendments to the Criminal Code of Ukraine [4] that were made in 2019, which replaced the definition of "money laundering" with "property laundering", which explicitly affects the definition of the object of the crime, and the above-mentioned development of technology, which has established a completely new type of property – "virtual asset". Thus, it is important for investigators conducting pre-trial investigations of money laundering to have a correct understanding of the features of the object of this crime, and the current possibilities for its clarification. It is virtually impossible today to conduct an effective investigation of money laundering without involving specialists in the field of information technology, virtual assets, etc., and without using the possibilities of international cooperation. The above indicates the necessity to identify modern, innovative approaches to determining the subject of property laundering (legalisation), considering the current version of regulatory documents and the state of development of information technology both in Ukraine and worldwide.

The fact that the object is one of the key elements of the forensic characterisation of crimes is noted in their scientific works by A.A. Bessonov [5], N.M. Negrych [6] etc. The object of the crime induces a person to commit criminal acts and motivates them to commit them; it influences the choice of the method of committing the crime, the environment, place and time of its commission. In addition, as noted by N.M. Negrych [6], the object is connected by a double relationship with the offender and the characteristics of their personality.

In their research on the general understanding of the concept of the object of the crime, A.A. Muzyka & E.V. Lashchuk [7] refer to it as an optional feature of a criminal offence and note that the object of the crime is defined as the material value in respect of which a crime is committed.

The scientific originality of the research is conditioned upon the identification of relevant tools and methods for determining the object of property laundering. There is a necessity to use qualitatively new approaches to pre-trial investigation. It is essential to use information technology and international cooperation in planning tactical tasks and ways to solve them. Currently, the correct identification of the object of property laundering is the key to a successful investigation. The object of this crime includes currency values, virtual assets, other property, and property rights and obligations. To identify them, it is necessary to involve specialists and use the possibilities of international cooperation

The issue of the object of property laundering has been understudied, and therefore the purpose of the research is to summarise the approaches to the general definition of the object of crime and to develop a modern understanding of the object of a particular type of criminal offence, considering its regulatory definition, and to identify its characteristic features and the tools and methods for its practical clarification by investigative officers.

Materials and Methods

At this stage of the development of Ukrainian society, the legal framework and information technology, not enough attention has been paid to the issue of determining the object of the crime. Determining the object of a crime is of great practical significance in the work of investigators. To conduct a professional and exhaustive investigation of a crime, it is necessary to have a sufficient theoretical base of knowledge about the relevant element of forensic characteristics for its correct determination in each case, which makes the study of this issue relevant nowadays.

The object of the crime is explored in the research in stages. First of all, the author analyses the understanding of the concept of the object of crime and its characteristics. The author analyses the available scientific materials and positions on understanding the characteristics of the object of crime and their features. Further, the author establishes the connection between the scientific approach to understanding this element of forensic characterisation and the current regulatory framework and identifies its specific types. The author distinguishes between the classical approach to determining the object of a crime and its most common types. In addition, attention is devoted to new types of items that can be used by criminals nowadays. Finally, the author identifies the impact of information technology development on clarifying the object of a crime and clarifies the possible practical use of this knowledge in the activities of an investigator.

The study used the current regulatory framework of Ukraine, in particular the Criminal Code of Ukraine (CC of Ukraine) [4], the Criminal Procedure Code of Ukraine (CPC of Ukraine) [1], the Civil Code of Ukraine (CC of Ukraine) [8], the National Accounting Regulation (Standard) 1 "General Requirements for Financial Reporting" approved by the Order of the Ministry of Finance of Ukraine No. 73 dated 02/07/2013 [9], the Law of Ukraine "On Currency and Currency Values" [10], the Law of Ukraine "On Prevention of Corruption" [11], which allowed identifying and generalising the vision of the "legislator" on the definition of the object of the crime and served as a foundation for the theoretical substantiation of its mandatory features; materials of the case law of the High Specialised Court of Ukraine for Civil and Criminal Cases on the consideration of a court case under Part. 1 of Art. 209 of the CC of Ukraine [12], which demonstrates practical experience in establishing the subject of property laundering; analytical materials of the Academy of Financial Monitoring [13], which allowed comparing scientific achievements with the practice of its use by the authorities directly involved in combating money laundering (legalisation) of the proceeds of crime. In addition, the author analysed the scientific works of A.A. Muzyka & E.V. Lashchuk [7], and A.A. Bessonov [5], which explore the general concept of the object of crime; N.M. Negrych [6], V.G. Lyseitseva [14], where the object is described as an element of the forensic characterisation of a particular type of crime.

In addition, to provide an opportunity to apply theoretical approaches to understanding the subject of money laundering in the practical activities of investigators, the research used the practical guide by Ian Richardson and Ignacio de Lucas Martin [3], which summarises the European experience in combating money laundering.

The research methodology includes general scientific and special methods. In particular, the author used analysis, synthesis and generalisation, which allowed identifying the characteristics of the object of the crime and different approaches to its understanding and highlighting the features common to the object of property laundering committed in different ways, and the relationship of these features to the wording used in the current regulatory framework. In addition, the analysis identified some specific features of the object of money laundering, which allow for determining its particular type. By generalising, the author identified the optimal most general definition of the object of money laundering. Using special research methods, in particular, formal-logical and comparative-legal methods, allowed identifying the features of the object of crime at the current stage of development of legal science and regulatory framework, identifying the shortcomings and ambiguities in the wording of dispositions of regulations relating to the object of property laundering, and allowed establishing the importance of theoretical research for using the results obtained in the practical activities of investigators.

Results and Discussion

However, considering this position, it should be concluded that the object of the crime is in any case defined as a material benefit for the offender, which they use to satisfy their needs, and therefore always has a specific monetary value. As a rule, considering the banking system and currency policies of developed countries, this monetary expression is always traceable. However, the process of this tracking depends on the investigator's understanding of the mechanisms and capabilities of these systems and the theoretical training of the investigating body's employees.

Thus, the object of the crime significantly affects other elements of forensic characterisation and determines the methodology of investigation of a particular crime.

The classification of the object as an optional characteristic has a more criminal law colouration, as it is based solely on the current provisions of criminal law. The tasks of criminalistics are quite different in terms of methods of investigating a specific type of crime, in particular, money laundering. For an investigator, establishing and clarifying the object of a crime is one of the primary tasks that subsequently determines the area of investigation, the tactics of particular investigative actions, and the choice of subjects to be involved in the investigation to establish complete and objective data on the criminal offence.

However, along with scientific definitions, first of all, to clarify the object of the crime under investigation, and thereby further determine the methodology of its investigation, one should refer to the regulatory statement of the disposition of a particular article.

Thus, Article 209 of the CC of Ukraine [4] states that legalisation (laundering) of the proceeds of crime is the acquisition, possession, use, and disposal of property in respect of which the actual circumstances indicate that it was obtained by criminal activity, including the execution of a financial transaction, a transaction with such property, or movement, changing the form (transformation) of such property, or performing actions designed to conceal or disguise the origin or ownership of such property, the right to such property, its source, or location, if these actions are committed by a person who knew or should have known that such property was obtained directly or indirectly, completely or partially, by criminal activity.

This version of the article has been in force since 12/06/2019, and has changed compared to the previous version, including the definition of the object of this crime.

According to the wording of Art. 209 of the CC of Ukraine [4], which was in force until 12/06/2019, the legalisation (laundering) of proceeds of crime is the performance of a financial transaction or transaction with funds or other property obtained as a result of a socially dangerous illegal act that preceded the legalisation (laundering) of proceeds, and the performance of actions designed to conceal or disguise the illegal origin of such funds or other property or possession thereof, rights to such funds or property, sources of their origin, location, movement, change of their form (transformation), and the acquisition, possession or use of funds or other property obtained as a result of a socially dangerous illegal act that preceded the legalisation (laundering) of proceeds.

The wording of the articles is intentionally quoted verbatim, as their wording is the base and support for further theoretical discussions and scientific substantiation of the possibility of identifying a specific type of property as the subject of money laundering. In addition, it is the base for the investigation of a crime by employees of practical investigative units since, in their activities, they primarily use the wording of the elements of a criminal offence available in the disposition of specific articles of the CC of Ukraine [4].

Notably, the new version of the article refers to the object of the crime by a different term, namely, replacing "income" with "property". Such changes are advisable since analysing the definition of property provided in the Civil Code of Ukraine [5], the author concludes that it is broader and includes the concept of income. The introduced changes are of great significance for the methodology of investigating this type of crime, as they affect the identification of criminally significant features and the search for links between the elements of its forensic characteristics and serve to develop and test investigative versions. It further affects the optimisation of the crime detection and investigation process.

Thus, based on the content of Art. 209 of the CC of Ukraine [4], the object of this crime is a property in respect of which the actual circumstances indicate that it was obtained by criminal activity.

Notably, one of the main features of property being the object of a crime was its actual origin from another crime. Currently, such a feature has disappeared, and it is not necessary to find a person guilty of a so-called "predicate" crime, it is sufficient to have "actual circumstances" that indicate that it was obtained by criminal activity.

These changes in the understanding of the subject of money laundering are extremely progressive for Ukraine, but it will take time to implement them in practical law enforcement. Even though there are still disputes about the presumption of innocence in money laundering cases, the author of the research believes that the current version of the Criminal Code of Ukraine [4] is a step towards the European model of combating money laundering, and the issue of the necessity to establish the so-called "predicate" is a relic of the old legal system.

Considering this wording of the provision of the CC of Ukraine [4], it is necessary to elaborate on the definition of "actual circumstances", since they are a mandatory component of the object of the crime and this component affects the investigation of money laundering since without its establishment, the corpus delicti of the criminal offence will be absent. Thus, at the initial stage of the investigation, the investigator must have some information that contains circumstances that indicate that the property that is the object of the crime was obtained by criminal activity. In the future, in addition, the investigator is obliged to establish a sufficient scope of such factual circumstances.

Regulatory documents do not define the concept of factual circumstances, however, the Academic Dictionary of the Ukrainian Language [15] defines the word "factual" as "true", "real", and "corresponding to facts, reality". A "circumstance" is a phenomenon, event, or fact that is related to something, accompanies something, or affects something.

Notably, the CPC of Ukraine [1] uses such wording as factual data, i.e., valid, true information about the quality of a circumstance.

Thus, factual circumstances can be established by obtaining factual data, i.e. evidence.

Thus, the new version of Art. 209 of the CC of Ukraine [4] did not deprive the investigator of the necessity to collect evidence of the illegal acquisition of property that was subsequently legalised but only changed the necessity to achieve the sufficiency of such evidence for sentencing.

At its core, the task of the CC of Ukraine [4] is to ensure the protection of legal relations regulated by other branches of law. The relations between people regarding property – property relations – are regulated by the Civil Code of Ukraine [8], and it is to this regulation that the term "property" should be referred.

Considering that the term "property" is defined by the Civil Code of Ukraine [8], the conclusion is that as an object of a criminal offence, it should be understood in the civil law sense, considering some nuances.

Civil law [4] defines property as a special object as a thing, a set of things, and property rights and obligations. Things are defined as various objects of the material world that satisfy people's demands and for which civil rights and obligations can arise.

Thus, the subject of legalisation (laundering) of property obtained by an official in the form of an illegal benefit is of particular importance, as it depends both on the wording of Article 209 of the CC of Ukraine [4] and on the very concept of an illegal benefit.

According to the Law of Ukraine "On Prevention of Corruption" [16], the following can be considered

illegal benefits: money, other property, advantages, privileges, services, intangible assets, and any other benefits of an intangible or non-monetary nature.

Thus, when determining the object of property legalisation, the definition of property provided in the Civil Code of Ukraine [8] should be considered and combined with the definition of illegal benefit. Considering this, the object of legalisation, in this case, can be money or other property, and property rights and obligations.

Notably, this crime does not include advantages, benefits, services, intangible assets, or any other benefits of an intangible or non-monetary nature, as they are not included in the concept of property and can only be the object of a criminal offence of obtaining an illegal benefit.

In addition, the analysis of Art. 209 of the CC of Ukraine [4], conducted by the Academy of Financial Monitoring [10], correctly states that the object of this crime cannot be things withdrawn from free circulation, in particular weapons and ammunition, explosives and radioactive substances, narcotic, psychotropic and potent or poisonous substances. If such things are used as the object of a criminal offence, they cannot be the objects of money laundering, as they are the objects of other crimes.

According to the National Accounting Regulation (Standard) 1 "General Requirements for Financial Reporting" approved by the Order of the Ministry of Finance of Ukraine No. 73 dated 02/07/2013 [9], cash (money) means cash, funds on bank accounts and demand deposits. An analysis of Article 192 of the Civil Code of Ukraine [8] allows understanding that money (funds) includes the monetary unit of Ukraine, the hryvnia, and foreign currency.

Thus, if it is established that the object of a particular crime, namely a particular fact of property legalisation, is money laundering, the construction of witness versions and their verification will be connected with their characteristics, which will affect the typical traces of the crime that will be associated with money (withdrawals from a bank account by a particular person, transfer of non-cash funds from one person to another, provision of financial assistance, etc.)

In her scientific works, V.G. Lyseytseva [14] notes that the main purpose of the legalisation of criminal proceeds is to convert cash into non-cash form, providing it with the appearance of being obtained from legitimate sources. Thus, it identifies cash as the predominant object of property laundering. However, considering the development of the latest methods of investigating this type of crime, which encourages criminals to invent new ways to conceal the crime, and technological progress, the laundering of property other than cash is becoming more widespread.

While the term "cash" does not raise any problems with its understanding, the concepts of other property, and property rights and obligations, deserve more detailed attention.

Civil law defines property as objects of the material world, as it may seem at first glance, and such concepts as currency values and virtual assets, which are now deeply involved in all spheres of people's lives and are of particular importance, including for the detection of property legalisation and the choice of tactics for its investigation.

Thus, according to Article 1 of the Law of Ukraine "On Currency and Currency Values" [10], currency values are the national currency (hryvnia), foreign currency and precious metals.

Notably, the currency is understood in the form of banknotes or funds in bank accounts, and as electronic money denominated in hryvnia or any other foreign currency.

Particular attention should be paid to the concept of "virtual asset", which is provided in the Law of Ukraine "On Prevention and Counteraction to Legalisation (Laundering) of Proceeds of Crime, Terrorist Financing and Financing of the Proliferation of Weapons of Mass Destruction" [16], namely, clause 13, part 1, article 1 of the Law states that a virtual asset is a digital expression of the value that can be traded in a digital format or transferred and can be used for payment or investment purposes.

Therewith, Article 46 of the Law of Ukraine "On Prevention of Corruption" [11] requires persons submitting declarations to the National Agency for the Prevention of Corruption to indicate crypto assets, in other words, a virtual asset. Thus, a virtual asset has already been recognised by law as a type of property, and therefore it may be the object of a crime under Article 209 of the CC of Ukraine [4].

The significance of understanding the properties of cryptocurrencies as a criminal object and their use is confirmed at the global level, in particular, this issue was one of the main ones discussed at the meeting of the G20 leaders in Osaka in 2019.

Thus, technological progress, in particular, the removal of the possibility of obtaining illegal benefits from purely material things, establishes new challenges for law enforcement and other agencies and institutions that are called upon to combat the legalisation of illegally obtained property. These challenges are related to the necessity of using specialised knowledge in the field of information technology and engaging relevant specialists to effectively detect and investigate this type of crime.

In addition, it should be noted that using electronic funds, virtual assets, or crypto assets as a subject of property legalisation blurs the boundaries for criminals and results in the fact that separate traces of a crime that are subject to detection can be under the jurisdiction of different countries. This circumstance requires the investigator to have a thorough

understanding of the characteristics of such an object of the crime, the possibility of its transformation and ways to withdraw it outside the country, and, thus, develop a line of investigation that will include the involvement of foreign law enforcement agencies.

The issue of using virtual assets as a subject of property laundering and their tracking is quite relevant in Ukraine, and therefore the main areas of development of the system for preventing and counteracting the legalisation (laundering) of proceeds of crime, terrorist financing and financing the proliferation of weapons of mass destruction in Ukraine for the period up to 2023 and the action plan for their implementation, approved by the Order of the Cabinet of Ministers of Ukraine No. 435-p of 05/12/2021 [2], it is noted that new challenges in the field of combating the legalisation of criminal proceeds are, in particular, used by criminals of the latest information technologies, and virtual assets that contribute to the anonymity of their activities. Thus, the lack of legal regulation of the virtual assets sector is considered to be one of the main factors contributing to money laundering, and the legal regulation of the virtual assets sector is defined as one of the main areas of national policy in this area.

Notably, according to the online publication CryptoMisto [17], Ukraine is among the top 3 countries in terms of cryptocurrency adoption.

Property rights and obligations deserve special attention in determining the object of legalisation of property obtained by criminal activity, considering that they are not objects of the material world in themselves, which causes some difficulties in their identification, and, thus, in establishing the possibilities of their legalisation. In this case, each fact of legalisation should be approached separately and the question of whether it occurred at all, or whether there was no attempt to legalise it, and such rights or obligations remained in the original state in which they were acquired, should be explored.

N.E. Blazhivska [18] concludes that the concept of "property" is not limited to the right of ownership of material objects but can be expressed in the form of the right to a thing and the binding right of claim, which may arise from contractual and non-contractual obligations.

Considering this, the author believes that the right to property or property obligations related to it can be the object of illegal benefit, and, subsequently, legalisation, if a person receives, for example, the right to claim a debt or the right to obtain ownership of the real estate in the future as an illegal benefit. Thus, the way to legalise it is to register the ownership of the apartment or to recover money from the debtor.

Such a characterisation of the object of the crime requires establishing the method of committing the crime and a connection with the person of the offender.

In addition, note that to correctly identify signs of money laundering, it is necessary to bear in mind that a person receives criminal income from property that they did not previously own. Therefore, the funds or property of individuals and legal entities that were received by a person on the legitimate ground, but which they illegally withheld, concealed, or failed to transfer to the state in the presence of an obligation to do it, cannot be the object of an offence [19].

Thus, for example, the Ruling of the High Specialised Court of Ukraine for Civil and Criminal Cases of 07/14/2011 [12], following a cassation appeal by the prosecutor, reversed the verdict of the Uzhhorod District Court of the Zakarpattia region of 08/04/2008 and the Court of Appeal of the Zakarpattia region of 03/29/2011 against R. in part of the conviction under part 1 of Article 209 of the CC of Ukraine [4], and the proceedings in this part were closed based on paragraph 2 of Article 6 of the CPC of Ukraine [1] for lack of corpus delicti.

The ground for this decision was the official origin of the funds incriminated as the object of legalisation (obtaining a loan from a bank), which were later used by the convict to purchase a car.

Conclusions

Thus, to determine the object of property laundering, it is not enough to refer solely to the disposition of the said article, which significantly narrows the possibility of its correct determination in the course of the investigation of a criminal offence. In each case, it is necessary to consider technological progress and its impact on changes in legislation, including criminal, civil, anti-corruption and anti-money laundering legislation. Important measures during the investigation to clarify the object are the involvement of information technology specialists and using the possibility of international cooperation.

In addition, in the current realities, efficiency in the activities of investigators is of particular importance due to the limitless options for transforming the object of property legalisation. Currently, cash or other property can be transformed into virtual assets within a very limited period, which in turn can be instantly moved to other countries, with virtually no control by government authorities.

Thus, the most appropriate and complete definition of the object of the crime is currency values, including cash, virtual assets, other property, and property rights and obligations.

Thus, the establishment of the specific features of the object of legalisation of the property obtained by criminal activity and its characteristics is a determining factor for the effective detection and further investigation of the crime, which affects the establishment of the method of legalisation, the circumstances of the crime, their connection with the person of the

offender and is a determining factor for organising and planning the investigation of this crime, and the establishment of national policy for the next period should include specific measures to counteract the legalisation of virtual assets that can be obtained in the form of an illegal benefit. Such measures should be comprehensive and combine the activities of various authorised state bodies to achieve specific results exclusively in the legal field and include practical aspects of clarifying the object of property laundering.

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Предмет відмивання майна як передумова здійснення ефективного розслідування

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■ **Анотація**. Актуальність теми полягає в необхідності правильного з'ясування предмета відмивання майна під час розслідування в умовах дії актуальної редакції Кримінального кодексу України. Метою статті є визначення сучасних підходів до з'ясування предмета відмивання майна. Методологія дослідження містить загальнонаукові методи, зокрема аналіз, синтез та узагальнення – для з'ясування характеристики предмета злочину; спеціальні методи дослідження, а саме формально-логічний і порівняльно-правовий – для з'ясування особливостей предмета злочину на сучасному етапі розвитку правової науки та нормативної бази. Результатом дослідження є узагальнення позицій щодо місця предмета злочину серед елементів криміналістичної характеристики та важливості його з'ясування. Описано новели законодавства та їхній вплив на з'ясування предмета злочину. Визначено види майна, які можуть бути предметом легалізації. Описано проблематику, з якою стикаються слідчі під час розслідування відмивання майна, яке пов'язане з нетиповим предметом злочину – «віртуальним активом». Окреслено підходи до встановлення предмета злочину в сучасних реаліях, можливості його трансформації та подальшого з'ясування, а також залучення осіб зі спеціальними знаннями. Описано зв'язок особи злочинця з предметом злочину. Розглянуто можливості використання міжнародного співробітництва для з'ясування предмета легалізації майна та його ідентифікації

■ **Ключові слова**: предмет злочину; легалізація; неправомірна вигода; віртуальний актив; готівка; міжнародне співробітництво; майнові права

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