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INTRODUCTORY ARTICLE

Juliusz Piwowarski, Lyubomyr I. Sopilnyk

POLISH SCHOOL OF SECURITY CULTURE AND DEFENSE. AN OUTLINE OF THE CONCEPTION OF MARIAN CIEŚLARCZYK

Abstract

Security is based on fixed values that are preserved in three dimensions, individual and social, and external and internal to a particular entity. Those dimensions are: mental (spiritual and psychosocial) organizational and legal, and material. A phenomenon of the most pluralistic structure, thus adequate to attributes (transdisciplinarity, interdisciplinarity) of security studies discipline is security culture. The phenomenon itself, which is called security is being identified in dependence of the context as one of following concept: a state without threats, a value, a development process, a function of development, and finally – as certain social construct. In the article presented was the problem that is a prolegomena to recently created in Poland research discipline, i.e. security studies. The authors of the article are publishing their scientific transmission in the context of serving the peace, and also the security, constructive scientific and research cooperation. It refers to two schools of higher education, which actively cooperate. One of them operates in Poland (Cracow, European Union), the latter in Ukraine (Lvov – CIS*)

Keywords

Security, science, three pillars of security, defense

Introduction

Nowadays, when it comes to widely defined security and the future of the world, which is related to it, we are facing a dilemma of probable clash of various cultural circles. The conception of Samuel Huntington[1] refers to that. This conception however does not exclude another possibility – the cooperative security which is a result of a consensus between differing civilizations. An indirect possibility are alliances between particular cultures or even only countries, which belong to culturally different civilizational circles as in the example of America and Japan. Possible is also an alliance between representatives of Euro-American west civilization and orthodox cultural circle.

An example for such cooperation was joint action of Poland and Ukraine due to efficient organization of EURO 2012, and finally – analogic, though in a smaller scope, cooperation, that fruited with this article related to problem of the security studies area. The article is a result of common researches of authors from the School of Higher Education in Public and Individual Security „APEIRON" in Cracow (Poland) and University of Business and Law in Lviv (Ukraine).

The concept of security is an epiphenomenon of threats phenomena, therefore to reveal a complete definition of security, has to be done a recapitulation of this relevant for the security culture scope of undertaken issues and aspects.

It is known that the security[2], which is a subject of a new scientific discipline of securitology[3], may be comprehended as the

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* (j. ang.) Commonwealth of Independent States - CIS, (j. pol.) *Wspólnota Niepodległych Państw*,
(j. ros.) *Sodrużestwo Nezawisimych Gosudarstw* – SNG,

[1] S.P. Huntington, *Clash of Civilizations and the Remaking of World Order*, Simon & Schuster Paperback, New York 1996.

[2] J. Arnoldi, *Risk*, Public. Policy Press, Cambridge 2009; Cf.: J. W. Vincoli, *Basic Guide to System Safety. Second Edition*, Published by John Willey & Sons, New Jersey 2006; *Implementing Safety Management Systems in Aviation*, A. J. Stolzer, C. D. Halford, J. J. Goglia, Published by Ashgate Publishing Company, Burlington USA 2011; *System Safety. Engineering and Management*, H. E. Roland, B. Moriarty, Published by John Willey & Sons, New York 1990; *Safety and Reliability in System Design*, M. Larson, S. Hann, Publishing Ginn Press, Needham Heights 1989.

state** without threats*, we treat it also as specific and highly important for a man ***value (and a ***need*** at the same time) that meets all the other needs, such as ***need of lack*** (*basic* needs) and *need of development* (*meta-needs* with *self-realization* on the top of the needs). It also is being defined as a ***development process*** or a ***function of development***, thanks to which we realize our social and personal development (which is also a *meta-need* of a man) and finally – we interpret the *security* as ***social construct***, resulting from social interdependence and interaction.

Authors of the article propose a brief definition of the *security culture* phenomenon [*Definition of the security culture by Piwowarski – Sopilnyk*]

Security culture is the whole of material and non-material output of the mankind that serves its widely understood – military but also non-military – defense. It consisted of three following dimensions: spiritual and intellectual, organizational and legal, and material. *Security culture* serves the mankind by realizing following purposes:

1. **Maintenance (cultivating) of the non-threats state for an entity;**
2. **Restoring the *security*, when lost in result of appearance of particular threat of an entity;**
3. **Rising up to the highest levels the multiascpectual comprehended security of certain entity (*comprehensive security*).**

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[3] L. F.Korzeniowski, *Securitologia. Nauka o bezpieczeństwie człowieka i organizacji społecznych*, EAS, Kraków 2008, p. 23 and 33; J.Piwowarski, A. Zachuta, *Pojęcie bezpieczeństwa w naukach społeczno-prawnych*, Wyższa Szkoła Bezpieczeństwa Publicznego i Indywidualnego „Apeiron", Kraków 2010; F. Škvrda , *Vybrané sociologicke otázky charakteristiky bezpečnosti v súčasnom svete*, [in:] K. Čukan, a. kol. *Mládež a armada*, MO SR, Bratysława 2005, p. 41; L. Hofreiter , *Securitológia*, Akadémia ozbojených síl gen. M. R. Štefánika, Liptowski Mikulasz 2006, p. 19; L. F. Korzeniowski, *Securitologia na początku XXI wieku*, „Securitologia", 2007, no. 5, p. 186; J. Matis, *Sociálno-pedagogické aspekty prípravy bezpečnostného manažéra*, „Securitologia" 2008, no. 7; В.И. Ярочкин, *Секюритология – наука о безопасности жизнебеятельности*, Ось – 89, Moskwa 2000; J. Janosec, *Sekuritologie – nauka o bezpiečznosti a nebezpiečznosti*, „Vojenské rozhledy", 2007, no. 3.

Security culture accompanies human development since the dawn of time regardless of whether we are aware of that or intuitively create this phenomenon.

Culture versus culture of security and defense

Discussing the security culture, one needs to begin with the basis of functioning of human groups, communities and entire societies. The basis is the culture[4], which was being built by the mankind for long, diligent and not always safe centuries**. Culture is the whole of elements that are fixed over the time material and non-material output.**

Robert Scruton claims that „culture counts" [5]. This statement in the opinion of authors of the article does not sound in the globalization era strong enough, to not be reiterated more often. When it comes to the west cultual circle, and fraternal to it the circle of the orthodox culture, it seems that this duty should be particularly undertaken by residents of Europe, which is the home for the civilization of the West. However to be able to proclaim that „culture counts", one needs to start with himself.

In this scope western trends are often a false interpretation of freedom, which causes lowering of the level of many branches of European culture. „False freedom" frees a man from illusionary „fetters" that result from human duties of obeying the rules indicated by the culture (not imposed). Thus many Europeans frees themselves from social duties or burdens resulting from an aware responsibility. In situation when this kind of toxic freedom is being widely popularized, there is a threat that western culture may be squandered, and morality, to the detriment of security of people will be lend on the scrap heap of „anachronisms" and replaced with customs of barbarians, who daily use advanced

[4] *Culture* – the whole of material and non-material products: spiritual, symbolic etc. It is being comprehended mostly as the whole of material and non-material output of society. Cf. J. Kmita, G. Banaszak, *Społeczno-regulacyjna koncepcja kultury*, Instytut Kultury, Warszawa 1994, M. A. Krąpiec, *Człowiek i kultura*, Polskie Towarzystwo Tomasza z Akwinu, Lublin 2008.

[5] R. Scruton, *Culture Counts. Faith and Feeling in a World Besieged*, Encounter Books, New York 2006.

technology but mostly are defective in respect of morality, emotionally and intellectually. It is very actual for the West and at the same time wide subject, which requires separate elaboration, that is a modernized alternative for considerations started by Oswald Spengler[6] hundred year ago.

An expanded definition of security culture was proposed by Marian Cieślarczyk, according to whom the **security culture is: "a pattern of basic assumptions, values, standards, rules, symbols and beliefs that impacts the way of perceiving advantages, chances and (or) threats, the way of feeling of safety and thinking of it, as well as related to it way of behaving and acting (cooperating) of entities, which is learned and articulated in processes of widely interpreted education, including natural processes of internal integration and external adaptation, and other organizational processes, as well as process of strengthening widely understood (not only military) defense that serve relatively harmonious development of these entities and obtaining by them interpreted in the widest way security, with benefit for them and the environment"** [7]

Three pillars of security culture

The security culture as it was mentioned may be analyzed in three dimensions:

1. First dimension – consists of certain ideas, value system and spirituality of a human being[8];
2. Second dimension – refers to social impacts, organizations and legal systems, inventiveness, innovation etc.
3. Third dimension – ranges from all material aspects of human existence, which are a man's creation[9].

[6] O. Spengler, *Der Untergang des Abendlandes*, Bibliographisches Institut, Mannheim 2007.
[7] M. Cieślarczyk, *Kultura bezpieczeństwa i obronności*, Wyd. AP, Siedlce 2010, p. 210.
[8] Duchowość – pojęcie obecnie dostrzegane i opisywane przez naukę, jest ono szersze aniżeli pojęcie religii. Opisuje je między innymi; Por. P. Socha (ed.), *Duchowy rozwój człowieka*, Wyd. Uniwersytetu Jagiellońskiego, Kraków 2000.

Those components of security culture Cieślarczyk called „pillars of security culture”[10].

The scholar consecutively called them: mental and spiritual pillar[11], organizational and legal, and third – material pillar. Components of these pillars interpenetrate and so e.g. knowledge, which is part of the first pillar, apart from included in it values and rules respected by a man, is generally also an element of the second pillar that is of organizational and legal character, but also associated to technical thought. Assuming that the phenomenon of *the culture of security and defense* is not autonomic but is a result of impact of specific threats, analogically to three pillars of security culture which determines the ways of dealing with dangers, distinguished may be also those threats:

1. **First pillar of security culture** relates to such elements as:
   - Ideas[12] – threats, related to ideas, results above all from a contemptuous attitude toward them. An obvious example are totalitarian systems, which are based on depreciation of ideas associated above all to spirituality and religion.
   - Personality development[13] – need of development and self-improvement is one of the biggest needs and values for a man
   - Sense of life[14] – related to self-realization and various choices made in the scope of needs selection and values adequate to them. Reaching for higher values

[9] A. Kłoskowska, *Socjologia kultury*, PWN, Warszawa 2007, s. 103 i nast.; A. Kroeber, *Istota kultury*, PWN, Warszawa 2002, p. 195 and foll.

[10] M. Cieślarczyk, *Fenomen bezpieczeństwa i zjawisko kryzysów postrzegane w perspektywie kulturowej*, [in:] *Jedność i różnorodność*, E. Rekłajtis, B. Wiśniewski, J. Zdanowski (ed.), ASPRA-JR, Warszawa 2010, p. 96 and foll.

[11] P. M. Socha, *Duchowość – zarys koncepcji dla psychologii religii*, „Przegląd religioznawczy”, 1995, no. 1.

[12] Weaver R. M., *Idee mają konsekwencje*, Wydawnictwo Profesjonalnej Szkoły Biznesu, Kraków 1996.

[13] J. Piwowarski, *Rozwój osobowości jako przyczynek do konstrukcji autonomicznego systemu bezpieczeństwa*, „Kultura Bezpieczeństwa. Nauka – Praktyka – Refleksje” 2011, no. 2.

[14] J.M. Bocheński, *Sens życia i inne eseje*, Philed, Kraków 1993.

supports the process of self-realization, while the needs, we may call "superficial" generally make impossible the meaningful existence and reaching within it the state of self-realization.

- On the borderline of both first and second pillar is also another element: upbringing and education[15]. It is characteristic for the first pillar, as it is associated to teachings of tradition and moral attitude but also for the second as it is based on social relations.

2. **Second pillar of security culture** consists inter alia of following elements:
   - Social competences[16] – highly important for western and eastern systems, philosophical systems of Far East, which in globalization era adopted were also in the West.
   - Organization and management[17] – within this element in modern era appears a new kind of threats, violating the so called cybernetic security (cybersecurity), related to protection of the information against distortion or deformation.
   - Legal systems and functions of law[18] – threat may be posed by such variants of law, which are

[15] Cf: Янковська Л.А. Розвиток освітньо-фахового потенціалу регіону: теорія. Методологія, практика: Монографія. – Львів: Інститут регіональних досліджень НАН України, 2007; *Bezpieczeństwo i edukacja dla bezpieczeństwa zmieniającej się przestrzeni społecznej i kulturowej*, (ed.) R. Rosa, Uniwersytet Przyrodniczo-Humanistyczny w Siedlcach, Siedlce 2012.

[16] E. Aronson, *Psychologia społeczna. Umysł i serce*, Zysk i S-ka, Poznań 1997; cf.: M. Radochoński, *Osobowość antyspołeczna*, Rzeszów 2009.

[17] Cf.: J. Piwowarski, B. Płonka, *Etyka w administracji i zarządzaniu publicznym. Motywacje, realizacja, bezpieczeństwo*

[18] Functions of law: **Stabilizing and regulative function**; the law, due to establishing an order in various disciplines, such as: social order, economy and policy on the territory of the state, in which this system is in force, provides specific, stabilized level of order and security; **protective function** involves protecting values considered important by all people, who consists in society, protecting at the same time protecting the good of citizens of certain state; e**ducational function** of the law is based on shaping certain behavior of citizens, in accordance to the established rules, that within preventive actions help increasing of the socially perceived quality of life, and within sanctions, which are a result of infringement of the regulations – deters from committing or reiterating illegal acts; **dynamizing (catalytic) function**– in socio-legal sense is based on using legal tool to carry

incompatible with the conception of *natural law* and the role of ten functions of law, which is a primal ethical basis of sense of law regulations in favor of protecting and developing rightfulness of a man in relations with others.

3. **Third pillar of security culture** is related to following elements:
    - Economy – economic threats may generate existential threats such as poverty and derivative phenomena. On the other hand threats resulting from existing of economic factor in human's life may have a negative influence on the level of security in the area of the first pillar, since exposing the role of economic factor as dominant (such as *profit*) may cause a decline or decrease of values system, and hence lead to social threats.
    - Ecology – it is related to nature, which does not belong to the culture, but also in some way depends

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out, in accordance to other functions of law (i.e. stabilizing and regulative function of law), changes in certain areas of life necessary in specific moment; for instance imposing of local administration after the change of the regime, that is after arrangements of the Round Table (1989), **distributive function** is about separation of both certain goods, and burdens, which are elements necessary for proper, harmonious functioning of the state; **repressive function** of the law regards to those tasks of state that focus on determination of penalty in cases of committing illegal actions, which are considered crimes or offences. Simultaneously this function pursues preventive actions – it is to scare, that is to demobilize, potential criminals. Helpful for that is also very important aspect of inevitability of penalty for committed crimes; **control function** of the legal system results in transparent determination of what is in accordance with the law and what is not. In other words, the system of law is a social control tool leading to righteousness of people's behavior; **organizational function** is based on creating with the system of law of organizational frames for public authorities, organization of society and for public and non-public administration; **culture-creating function** of law is defined as role of integrating the population of the specific state within the care, which is related to use of the system of law, for maintenance of historical durability, traditions of the nation and development of the culture and the art. This function, cooperating with the protective function, favors cultivation of relevant for specific society value system and its sense of identity; **guarantee and regulative function** is to define the borderline between the competences of the state administration, which works for the common good, and the rights of an individual, that defines the liberties. Regulation within the law system regards also possibilities of achieving compromise as desired and successful form of ending the social conflicts.

on the economic factor. Culture and civilization, which operate based on human greed, have a destructive impact on the environment by generating threats mostly to health security of a man and to the natural environment.

- Technogenic sphere – in great scope impacts the ecology. This sphere has also enormous significance for the culture of security and defense, as it consists of tools that are useful when threats of military or non-military threats appear. Devices of this sphere may be used to counteract the threats of the forces of nature, in case of cataclysms and disasters, which reasons are other inefficient or improperly used products of the technogenic sphere, hence they may pose a threats themselves.

The authors in order to stimulate mindfulness of a reader indicated only few, exemplary threats derived from three pillars of *culture of security and defense*. Obviously within the same areas we may find measures of counteracting all kinds of threats in larger account than above-mentioned examples.

Threats awareness of an experiencing entity

Security culture functions in four possible situations of awareness and potentiality of an experiencing entity, which are referred to perception of threats[19]:

1. The threat exists objectively – an entity is aware of a danger situation and is able to react.
2. The threat exists objectively – an entity is unaware of existing danger.
3. The threat exists objectively – an entity knows the situation, but has no possibility within one, two or three

[19] For comparison (authors of this article have used slightly different typology of cases than proposed here as comparative material scientific work by L.F.K.) L.F. Korzeniowski, *Podstawy nauk o bezpieczeństwie*, Difin, Warszawa 2012, s. 99.

pillars of security culture to react on currently occurring kind of threat.

4. The threat does not exist – in this case possible are two variants:
   4.1 certain entity may be aware of lack of danger; paradoxical, this situation may also pose danger – for instance threat of stagnation, caused with excessive comfort resulting from the lack of threats;
   4.2 or mistakenly: be sure of its existence, which unnecessarily lowers his level of security and at the same time limits possibilities of action.

Aforementioned four cases illustrates in a basic way the possibilities of occurring of four levels of awareness of the security state of certain entity.

Conclusion

1. Reflection of four dimensions of *security culture* are three pillars (mental, organizational and material) of widely understood and not simplified to only military approach of the feature of an entity, which is his defense.
2. Linking the phenomenon of security with the defense potential of certain entity creates a complimentary *dipol of security culture and defense*. It is close to description consisted in one of definition of security, which was formulated by a securitologist Leszek Korzeniowski: **"Security is an ability of creative activity of an entity and means an objective state based on lack of threats"** [20] [or its efficient neutralization – auth.].
3. Author of this article propose following definition of security [*definition of security by Piwowarski – Sopilnyk*]:

***Security* of a certain entity may be comprehended as desired state of lack or efficient control of various internal**

[20] L.F. Korzeniowski, *Zarządzanie bezpieczeństwem*, PŚB, Kraków 2000, p. 437.

and external threats to this object, ane as the value, which enables realization of all other needs, *values*[21] correlating to them, from the basic to most important, i.e. self-realization, or as *process* or *function*, which impacts on the freedom of development of the object of study, and finally – as such *social construct*, that meets all aforementioned conditions for existence of individual or collective entity.

4. Third and fourth way of understanding the concept of security (value, development process) allows to compare this phenomenon to one defined by Marian Cieślarczyk as *culture of security and defense* or even to risk a statement that they are identical in case of meeting assumptions of Kotarbiński and Rudnański, related to necessity of simultaneous occurring of praxeological and ethical factors as well as balance between them in *dipol of culture of security and defense* (which may be briefly defined with the term *security culture*).
5. *Security culture* is based on fixed values and processes of development reflected in its three dimensions: mental (spiritual), organizational (rational) and material in

[21] Krzyżanowski (L. Krzyżanowski, L. Krzyżanowski, *O podstawach kierowania organizacjami inaczej: paradygmaty, modele, metafory*, PWN, Warszawa 1999, p. 206) summes considerations on the concept of *value* as follows a) value is related with evaluation, assessing judgments; b) assessment aims to differencing between what is good and what is negative; this judgment may be expressed or not, may only be conceived; c) assessing entity is both an individual and collective, such as a team of professionals or society of family, local and bigger communities; d) subjects of the assessment are conceptions and real components of the reality, from ideas, through relations, certain states or events to features of persons and objects; e) value is a product of evaluation of specific object done by an entity, who evaluates it; f) it should be noticed, that in case of the concept of value, it is only about positive evaluation, not as in case of issuing a rate, when it can be negative, neutral or positive g) hence the concept of value is associated to defining a hierarchy of needs, preferring something in relation to other alternatives; h) underlined should be the fact that an evaluation aiming the assessment of value which may have individual as well as collective character and the fact that creating values is related to rational intelligence and emotional intelligence. Cf. J. Piwowarski, *Bezpieczeństwo jako stan oraz jako wartość*, [in:] *Bezpieczeństwo jako wartość*, Conference Proceedings of the Conference *Bezpieczeństwo jako wartość* dated 18 April 2010, Wyższa Szkoła Bezpieczeństwa Publicznego i Indywidualnego „Apeiron" w Krakowie, Kraków 2010.

individual and collective dimensions and in internal and external aspects referred to existence of certain entity (object of the study). Properly functioning first pillar containing ethical culture determines (*a necessary condition*) proper functioning of two other pillars.

6. As Leszek Korzeniowski notices on American and English universities essential content corresponding with the *security studies* discipline has a subject named "security culture" [22].

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Tadeusz Ambroży, Juliusz Piwowarski, Piotr Koteja

AN IMPACT OF INTERVAL METHOD STRENGTH TRAINING ON PHYSICAL FITNESS AS AN ELEMENT OF SPECIAL RESPONSE UNITS[1] SCHOOLING

Abstract

The article is of interdisciplinary character, which is specific for new research discipline i.e. *security science* (*securitology*). It is because security sciences are included in practical elements of security culture, which perfectly correspond with empiric search based on studies in physical culture, where there is no place for untestable in practice, highly speculative theories of doubtful quality. Members of antiterrorist units and other dispositional groups are officer, who daily risk their life so everyone else could safely work and then peacefully fall asleep. Such people requires hence a specialized preparation. It applies to both physical and psychological preparation on the highest level possible. The article is a result of researches related to physical activity and based on authorial program of interval training that, because of its efficiency, may be useful for specialized schoolings of dispositional groups members.

Keywords

dispositional group, security culture, physical culture, High Intensity Interval Training

Introduction

Article refers to specialized problematic, related to a phenomenon that is an important fragment of wider and wider

[1] *Special response units* – special dispositional groups, in other words special units, e.g. anti-terrorist and desant specjalne units. Cf.: J. Maciejewski, *Grupy dyspozycyjne. Analiza socjologiczna*, WUW, Wrocław 2012; *Mládež a armada*, Čukan K. (ed), MO SR, Bratysława 2005.

appearing in serious scientific discussions and elaborations of the ***security culture***[2]**.** This phenomenon is subject of securitological studies[3]. Physical culture is an element that is part of building and constant reconstruction of some of defined models, brought along with security culture[4] – this is a phenomenon that accompanies people for centuries. For hundreds of years mankind have been creating and improve it intensively within the fight for surviving and development in both individual and group dimension. During the processes of building the security culture very early appeared specialized groups of people, who had adequate psychophysical predispositions and so called moral (and volitional) dispositions to perform active protection – once of their tribesmen, now – fellowmen. Contemporarily such teams are defined with the term

[2] M. Cieślarczyk, *Kultura bezpieczeństwa i obronności*, Siedlce 2011, p. 40, 91; S. Jarmoszko, *Nowe wzory kultury bezpieczeństwa a procesy deterioracji więzi społecznej*, [in:] *Jedność i różnorodność. Kultura vs. kultury*, E. Rekłajtis, R. Wiśniewski, J. Zdanowski (ed.), Aspra-JR, Warszawa 2010; B. Malinowski, *Naukowa teoria kultury*, [in:] *Szkice z teorii kultury*, Książka i Wiedza, Warszawa 1958, p. 69; J. Matis, *Socialno-pedagogicke aspekty pripravy bezpecnostneho manazera*, „Securitologia" 2008, no. 7; J. Piwowarski, *Kultura bezpieczeństwa*, „Kultura Bezpieczeństwa. Nauka – Praktyka – Refleksje", Apeiron WSBPI, 2012, no. 12; R. Rosa, *Filozofia bezpieczeństwa*, Bellona, Warszawa 2011; J. Świniarski, *O naturze bezpieczeństwa*, ULMAK, Warszawa 1997; J. Stańczyk, *Współczesne pojmowanie bezpieczeństwa*. Jurczak W., *Znannja w oblasti biezpieki – skladowa czastina uniwiersitetskoi oswieteli*, „Bezpieka żyttedzialnosti", 2007, no 5. Pidgeon N., *Safety Culture and Risk Management in Organization*, Cardiff 1991.

[3] L. F.Korzeniowski, *Securitologia. Nauka o bezpieczeństwie człowieka i organizacji społecznych*, EAS, Kraków 2008, p. 23 and 33; J.Piwowarski, *Bezpieczeństwo jako wartość*, Wyższa Szkoła Bezpieczeństwa Publicznego i Indywidualnego „Apeiron", Kraków 2010; F. Škvrda , *Vybrané sociologicke otázky charakteristiky bezpečnosti v súčasnom svete*, [in:] K. Čukan, a. kol. *Mládež a armada*, MO SR, Bratysława 2005, p. 41; L. Hofreiter , *Securitológia*, Akadémia ozbojených síl gen. M. R. Štefánika, Liptowski Mikulasz 2006, p. 19; L. F. Korzeniowski, *Securitologia na początku XXI wieku*, „Securitologia", 2007, no. 5, p. 186; J. Matis, *Sociálno-pedagogické aspekty prípravy bezpečnostného manažéra*, „Securitologia" 2008, no. 7; В.И. Ярочкин, *Секюритология – наука о безопасности жизнебеятельности*, Ось – 89, Moskwa 2000; J. Janosec, *Sekuritologie – nauka o bezpiečznosti a nebezpiečznosti*, „Vojenské rozhledy", 2007, no. 3.

[4] T. Ambroży, *Kultura fizyczna a bezpieczeństwo*, [in:] Zeszyt Naukowy „APEIRON" no. 6; J. Piwowarski, T. Ambroży, *The impact of physical culture on realization of human security need*, [in:] *Medzinarodny Vedecko-Odbrony seminar*, wydanie pokonferencyjne, Akademia Ozbrojenych Sil, Liptowski Mikulasz 2012, p. 294-303.

dispositional groups[5], whereas their elite are undoubtedly special units, for instance antiterrorist units.

Physical and mental preparation of dispositional groups obviously required improvement of training methods for their members. This improvement was intensifying under the pressure of time, which is a parameter that, while facing the danger, becomes, along with a parameter of stress, of great catalytic meaning and this requires no further explanations. This is how the mankind began its purposeful activities for the physical culture and "in favor" of the security culture. We need to agree that it was much later, when the sport version of physical culture became an epiphenomenon of the culture security and defense. In all fairness – which is by the way of the security culture pillars – it has to be noticed that the sport pays its debt of gratitude to dispositional groups by offering them nowadays an enriched, in relation to a "rough" version, practical and theoretical apparatus of highly efficient training methods. An example is the *Kano paradox*. It caused improvement of the combat *ju-jitsu*, which has a medieval origin, by increasing possibilities of training martial techniques in sport training of *judo*. The same applies to methods of capacity preparations – with training of various kinds of stamina, and finally with strength training. An useful method for preparing members of dispositional groups, e.g. anti-terrorist units, are such forms of exercises as circuit training or interval training. Discussing the impact of this training on increase of some abilities of an anti-terrorist or a competitive athlete is the main part of this article that is supported by scientific researches of empirical character, which were carried out in the Institute of Security and Socio-Legal Studies of School of Higher Education in Public and Individual Security "APEIRON" in Cracow. *Notabene*, the preparation of an officer to perform direct counterterrorist actions suits, in general view, the conceptions of such physical training that are related to a specific form

[5] J. Maciejewski, *Grupy dyspozycyjne. Analiza socjologiczna*, WUW, Wrocław 2012; *Securitologia – uwagi socjologa. Bezpieczeństwo w kontekście społeczno-kulturowym*, [in:] *Bezpecnost a bespecnostna veda*, Hofreiter L. (ed.), Akademia ozbrojenych sil gen. M. R. Štefaniká, Liptowski Mikulasz 2009;

of a decathlon. However it is a subject for much wider elaboration, while here focus is on the area defined in the topic of the article and discussing researches and findings associated to the course of the process of interval training, and an impact of such training on the participant's organism.

The interval training method. Description of the research experiment method

During performing a short exertion (ca. 30 seconds), when there is no possibility of coming to an aerobic metabolism balance (steady state), the biggest cardiac ejection volume reaches the top after the end of the training. Close to maximal exertions (submaximal) work brings maximum effects of the heart function predominantly after several repetitions. The frequency of heart contractions reaches almost 180 beats per minute in the latest phase of work. The break time between consecutive repetitions lasted enough to reach 135 beats per minute. The method of such kind of training was called an interval method. A modern version of these exercises were developed by the group of scientist under the leadership of I. Tabata[6]. They have carried on an experiment that aimed to receive an answer for the question on an impact of prolonged moderate-intensity exercise and short-term maximal exercise on the aerobic and anaerobic capacity of organism. Examined were divided into two experimental groups. The first one for the time of 6 weeks for 5 days per week performed on the cycloergometer a training of intensity of 70% VO_2Max in the main part, which lasted for 60 minutes, and 50% VO_2Max in the warm-up part lasted 10 minutes. The second group also was planned to train in cycle of 6 weeks for 5 days per week on the cyclometer, however for 4 days that were exhausting trainings and the last, fifth, was dosed for 30 minutes and was not of high intensity (70% VO_2Max). The previous four were of

[6] I. Tabata, K. Nishimura, M. Kouzaki, Y. Hiray, F. Ogita, M. Miyachi, K. Yamamoto, *Effects of moderate-intensity endurance and high-intensity intermittent training on anaerobic capacity and VO2max,* "Medicine&Science in Sports&Exercise" 1996, Issue: Volume 28(10), p. 1327-1330.

supramaximal intensity and performed were with maximum capabilities. In the 1 Group VO_2Max was measured before and after the cycle as well as every once in a week during the program. The anaerobic capacity was ascertained in the fourth week and after the project. Experimental Group 2 right after warm-up on the same level and durability as the Group 1 has performed an exhausting effort that consisted of 7-8 series of exercises of supramaximal intensity. Every one of them lasted for 20 seconds and between them the examined were resting for 10 seconds. Anaerobic volume in Group 2 was ascertained before 2nd and 4th week and after the end of them, while the VO_2Max before 3rd and 5th week and right after the end of the cycle. In result after the end of bilinear six-week training cycle the experimental Group 2 had much larger growth of VO_2Max, which increased by o 7 ml · kg-1 · min-1 and the anaerobic capacity increased by 28%. The first group of moderate and longer intensity had little increase in comparison to Group 2. Their data were: VO_2Max 53 ± 5 ml · kg-1 · min-1 do 58 ± 3 ml · kg-1 · min-1, while the anaerobic abilities increased statistically insignificantly. Hence received were data of new way of four-minute training (interval variant) that has sensational results.

The main purpose of this article is an attempt to define the impact of such strength training in the first experimental group GE.I (exercises with own body resistance) on the level of motor abilities in the scope of strength and aerobic stamina, with the background of a training of a shuttle run in the second experimental group GE.II.

Results of both groups are compared to results of the control group TK.

Methodology of conducted researches

Research included following parameters:

- measurement of somatic features: body weight (kg), body height (cm);
- calculation of the weight-growth rate BMI;

- measurement of circumference of chest, arm, stomach, shoulder blade and thigh (in cm);
- measurement of adiposity of chest, arm, shoulder blade and thigh (in cm)
- measurement of efficiency with the Eurofit tests:
  - static force in hand – hand clenching (kg),
  - explosive force – long jump from standing (m),
  - functional force – bent arms overhang (s),
  - trunk strength – sit-ups from lying position (rep.),
  - speed – shuttle run 5x10 m (s);
- cardiorespiratory endurance – Cooper's run (min.).

All necessary measurements were made by members of research team twice. It was done before the beginning of training cycles and right after the end of the authorial exercises.

Research questions

In the work made was an attempt of answering four following research questions:

1. Is there any statistically significant difference in the scope of somatic features and motor abilities after 8 week training in group GE.I, GE.II and control group TK?
2. Is there any statistically significant difference in the scope of somatic features and motor abilities after 8 week training between groups performing the training GE.I and GE.II?
3. Is there any statistically significant difference in the scope of somatic features and motor abilities after 8 week training between the group performing the training GE.I and control group performing basic (standard) program of physical education (TK)?
4. Is there any statistically significant difference in the scope of somatic features and motor abilities after 8 week training between the group performing the training GE.II

and control group performing basic (standard) program of physical education (TK)?

The authors of this project feel obliged to inform at the moment of publicizing the course of researches and effects they have led to, that acceding to realization of the project used was own original and authorial program of training system. As a basis for this program in Institute accepted were rules elaborated by **Tabata Izumi**.

Formed were two experimental groups for which respectively used were symbols GE.I, GE.II. These groups were to perform three (3 t.u.) training units in every week-long mycrocycle. The planned duration of the experiment was eight weeks. Hence total number of training units was twenty four (24 t.u.).

Formed was third group that was to be a comparative reference system. Control group TK performed standard program of physical education lesson.

In the table I was presented authorial training program

Table 1. Conspectus of lesson unit including exercises for GE.I training

No.	Series	Description of the exercise/station
1.	20 sec. series of maximum exercise capacity 10 sec. break to change the station	Sit-ups from back lying position – abdominal muscles – e.g. by the ladder
2.	20 sec. series of maximum exercise capacity 10 sec. break to change the station	SP standing – supported squat – throwing legs to the back – back to supported squat – jump-up with arms above head – back to SP
3.	20 sec. series of maximum exercise capacity 10 sec. break to change the station	Abdominal muscles – From lying back leg lifts with bend and pulling knees to the chest
4.	20 sec. series of maximum exercise capacity 10 sec. break to change the station	From supported squat throwing legs alternately

5.	20 sec. series of maximum exercise capacity 10 sec. break to change the station	„Jumping Jacks”
6.	20 sec. series of maximum exercise capacity 10 sec. break to change the station	Bending arms in support lying forehead
7.	20 sec. series of maximum exercise capacity 10 sec. break to change the station	From lying back horizontal scissors
8.	20 sec. series of maximum exercise capacity 10 sec. break to change the station	From supported squat throwing legs to the back

Modified training plan for the second group GE.II: shuttle sprint run of length of the gymnasium touching the line with a foot. The same rules of number and duration of series as for GE.II. Control group (TK) – no activity. Standard program of physical education lesson.

Examined group consisted of adult men, students of School of Higher Education In Public and Individual Security “APEIRON” in Cracow, who aspire (group of people who expressed such declaration of will) to work in dispositional group of armed forces, police or other specialized uniformed formations. There are no persons who professionally do sport. Few cases of occurring recreational activities such as recreational strength training, football, basketball. The examined were stimulated with three trainings per week on every one of three lesson units per week of standard, 50 minutes duration. The general number of participants was 43. The first group GE.I consisted of 13 students, the second GE.II of 15 and TK group – 15 people. All of them were previously examined in terms of health. In examined groups were neither genetic nor acquired diseases. All participants were healthy and ready to begin an 8 week training mycrocycle. They were informed on proper diet during a short

lecture on basis hygienic and health principles. That were general information about prevail number of complex carbohydrates in diet and gaining energy mostly from them. All stimulant were prohibited. Recommended was regeneration during 7-8 hours of sleep and biological regeneration in every way possible. Reduced to minimum were other physical activities.

First examination of somatic parameters, Eurofit pre-tests and Cooper's run took place in the middle of February 2013, a week before the beginning of mycrocycle.

During somatic and motor features used were:

1. antropometer – length of the body;
2. body fat caliper – skin and fat folds;
3. anthropometric tape – circumference of muscles, long jump from standing;
4. medical scale – body weight
5. dynamometer – static force in hand
6. stopwatch with an accuracy of 0,001 sec. – straight arms overhang.

For 8 weeks assigned instructors performed training according to previously fixed rules (tab. 1). In case of sick leave or other random events, other instructor, who knew the subject of the experiment replaced him.

Before all measurements were done, demonstrated was with high precision how the exercise is to be performed or how one need to act during the somatic measurement.

General tool determining the level of increase or decrease of effort possibilities and level of fatness and musculature was a modified interval training. Detailed methods, which were to examine basis features of fitness before and after the mycrocycle, were motor tests. Methods of measurement were supposed to reveal changes of such motoric abilities. The aim was to show not only the force as a maximum moment, as in press of hand dynamometer, but also prolonged moment as in overhang on a stick or sit ups from lying position performed in an unit of time. In case of exertion applied was distance run that is a maximum capabilities in time of 12 minutes called the Cooper's test.

Detailed list of efficiency trials[7]:

1. long jump from standing as assessment of explosive strength;
2. trial of maximum local strength;
3. strength efficiency of abdominal muscles;
4. overhang on a stick in relation to functional strength of arms muscles;
5. shuttle run 10x5 meters with maximal speed and changes of direction in evaluation of locomotive speed;
6. Kenneth Cooper's test[8].

For evaluation of the effect necessary were pre and post motor tests but also anthropometric parameters. Here is a list of measurable somatic features:

1. evaluation of skin and fat fold of the chest on the armpit fold grasped obliquely;
2. evaluation of nipple circumference of the chest in horizontal and parallel to the base way, crossing anthropometrical points such as thelion and lower angles of shoulder blades.
3. evaluation of skin and fat fold of arm triceps. Grip point ranges half of the arm length while the arm is freely lowered and the gripped fold runs vertically;
4. evaluation of the biggest arm circumference in maximal tense of muscles; Anthropometric tape applied in the biggest arm spot perpendicularly to its long axis. Arm in slight abduction;
5. evaluation of skin and fat fold of abdomen. Grip of fold obliquely in one quarter of distance between omphalion and iliospinal points;
6. evaluation of abdomen circumference. Measurement line runs parallel and horizontally to the base crossing the point of omphalion;
7. evaluation of skin and fat fold of front of the thigh. Vertical fold of skin along the front center line of thigh

[7] H. Grabowski, J. Szopa, *Europejski test sprawności fizycznej*, AWF Kraków 1991.
[8] J. Talaga, *Sprawność fizyczna ogólna. Testy*, Zysk i S-ka, Poznań 2004.

surface in half of its distance i.e. between the kneecap and crossing point of middle line of the thigh with inguinal line running along groin;

8. evaluation of the biggest thigh circumference in muscle tension. Position of the tape is horizontal and parallel do the base and run right below the groin and buttock ;
9. evaluation of skin and fat fold right below the lower angle of shoulder blade in half of length between it and the spinal column;
10. evaluation of the weight-growth rate body mass index that is being calculated by formula: *BMI=body mass (kg)/body height (m)*^{2}.

Research findings and discussion

Results of researches on somatic and functional elements are presented in the table 2

"HIIT" training [*High Intensity Interval Training*] is defined as training of high-intensity exertion that is above 90% of HR max intermitted with regenerative sessions of low intensity character became highly exploit by athletes of many sport disciplines in past few years. It may also be used by those, who undertake recreation physical activity, but well prepared by initial training. Volume of the effort may vary from four even to thirty minute. Training may be realized in form of run, cycling, as well as strength training. Performing this training with resistance does not cause muscle hypertrophy[9].

[9] M.J. Gibala, S.L. McGee, *Metabolic Adaptations to Short-term High-Intensity Interval Training: A Little Pain for a Lot of Gain?* w: Exercise and Sports Sciences Reviews2008, Vol. 36, No. 2, p. 58-63.

Table 2. Changes of average value of parameters of circumferences (cm), and adiposity (cm), BMI (kg/m^2) and efficiency in turn of 8 week mycrocycle in examined groups and control group.

Group GE I (strength/endurance exercises) before and after the mycrocycle		Group GE II (Sprint) before and after the mycrocycle		Control group before and after (no microcycle)		Measurement method	Group of measur-ement
Before	After	Before	After	Before	After		
69,62	72,23	68,07	67,07	68,53	67,27	Hand clenching (kg)	Chosen EUROFIT tests
229,23	233,85	227,07	234,93	228,80	224,40	Long jump from standing (m)	
48,31	52,08	34,93	32,93	34,00	32,87	Bent arms overhang (s)	
25,69	27,85	24,60	26,33	25,73	25,47	Sit-ups from lying position in 30 sec.(s)	
17,92	17,54	20,13	19,13	19,00	19,60	Shuttle run 10x 5m	
2508,46	2583,85	2357,33	2445,33	2606,67	2571,33	Cooper's run w 12 min(m)	
86,54	85,46	88,67	87,20	90,43	90,87	Chest (cm)	CIRCUMFERENCES
29,15	28,69	31,33	30,87	31,87	32,13	Arm (cm)	
79,23	77,23	85,13	83,27	83,60	83,07	Abdomen (cm)	
52,15	51,00	55,20	55,53	56,20	56,27	Thigh (cm)	
1,12	1,00	1,28	1,16	1,19	1,22	Shoulder blade (cm)	FAT FOLDS
1,07	0,89	1,24	1,14	1,39	1,41	Chest (cm)	
1,34	1,20	1,63	1,49	1,33	1,35	Arm(cm)	
1,82	1,48	1,97	1,83	1,96	1,94	Abdomen (cm)	
2,05	1,97	2,28	2,23	1,85	1,76	Thigh (cm)	
19,64	19,25	21,91	21,40	21,75	21,91	Body mass (kg)/ body height (m^2)	BMI

In this work in most cases noted was decrease of circumferences, which may be a result of fat level decrease. Analyzing results of own researches stated was statistically significant impact of eight week training realized in group I and II on decrease of adipose tissue measured under shoulder blade, chest, arm and abdomen. Moreover noted was improvement of results in tests of physical fitness: in static (local) force measured with dynamometer, dynamic force measured with long jump from standing and functional force in group II (measured with bent arms overhang), strength of muscles in the middle part of the body measured with sit-ups from lying position, and locomotive force in group II (measured with shuttle run 10x5 m). Observed was also a relation with aerobic capacity. Results of Cooper's test (12 minutes of constant run) were much better

in “post” than “pre” test. However one cannot unambiguously objectively refer to the results of the studies, since none of compared groups did not performed additionally aerobic training of long effort. During efforts longer than few seconds ATP is being resynthesized from both aerobic and anaerobic processes. Ability of resynthesis may restrict efficiency in many disciplines. Training athletes using high intensity efforts should increase aerobic and anaerobic capacity[10]. Empiric evidences on influence of interval training on an adipose tissue are presented by Tremblay and others[11], who confirmed impact of interval training on decrease of subcutaneous adipose tissue. Analyzing physiology of effort one comes to conclusion that the better way of reducing fat body mass is above all prolonged training of low intensity. It is because one does not draw any attention to reactions intervening right after the training, i.e. post-exertional metabolism. In own studies proved was weight loss within evaluation of BMI factors. Both GE.I and GE.II group have reduced statistically significantly their body weight and BMI[12] rate locates tem in the group of desired values.

Conclusions

In result of researches carried out the research team is justified to formulate following conclusions:

1. There is a statistically significant difference in level of somatic features and motor abilities after 8 week training in group GE.I. Changes are related to increase of level of static force (measured by clenching the dynomemeter), dynamic force (measured by long jump from standing) strength of muscles in the middle part of the body (measured by sit-ups from lying position),

[10] J. I Medbø, I. Tabata, *Relative importance of aerobic and anaerobic energy release during short-lasting exhaustive bicycle exercise*, w: Journal of Applied Physiology 67, 1989, p. 1881-1886.
[11] A. Tremblay, J.A. Simoneau, C. Bouchard, *Impact of excercise intensity on body fatness and skeletal muscle metabolism*, w: Metabolism clinical and experimental, Volume 43, Issue 7, July 1994, p. 814–818, Elsevier, Quebec.
[12] S. Gołąb, M. Chrzanowska, *Przewodnik do ćwiczeń z Antropologii*, AWF Kraków 2007.

and functional force (measured by bent arm overhang). Observed was also an increase of cardiorespiratory endurance (measured by Cooper's test). Reduced were circumferences of muscles of chest, abdomen, thigh and skin and fat folds (shoulder blade, arm and abdomen).

2. There is a statistically significant difference in the level of somatic features and motor abilities after 8 week training in group GE.II. Increased was the level of dynamic force (measured by long jump from standing), functional force (measured by time of bent arms overhang), locomotive speed (measured by shuttle run 10x5 m), locomotive force in group II (measured by shuttle run 10x5 m), and cardiorespiratory endurance (measured by Cooper's test). Reduced were circumferences of muscles of chest, abdomen, thigh and skin and fat folds (shoulder blade, arm and abdomen) and BMI rate of examined.
3. There is a statistically significant difference in level of motor abilities after 8 week training program in groups performing the training GE.I and GE.II. The difference is an increase of functional force (measured by overhang) in favor of the group I. The difference relates also to locomotive speed (measured by shuttle run 10x5 m) in favor of the group II.
4. Experimental training, which does not engage directly free fatty acids during the training to producing energy or use relatively few of them, may have positive influence on burning an adipose tissue.
5. Stimulation with short trainings of anaerobic characteristic improves the short-term endurance, but also the long-term one, as it is proved by results of Cooper's test.
6. An additional element used in the scientific experiment was a clear accent of trainers on *motivating* the examined, associated to known from psychology need of rising own *self esteem*. In this case factors of realization of such need were: a) *self-esteem*; b) *reflected ego* c) – additionally –

*evaluation of the so called significant pers*on – i.e. the trainer. This element was treated as intellectualization of training process that has catalytic function for the quality of process in discussed case and an accent on reliable approach to force the intensity.

7. Envisaged is wider discussing of the presented scientific experiment of exerting an influence on people also in the context that is beyond this elaboration. It is about deepening of motivational activity of trainers dedicated to entrants of the training. It is done within methods for influencing people, described inter alia by Zimbardo. They are obviously situated in the area of security culture within skillfully constructed and conducted process of intellectualization. However it requires, in opinion of management of Institute of Security and Socio-Legal Studies further researches that are a continuation of realization of a wider project carried out in School of Higher Education in Public and Individual Security "APEIRON" in Cracow.
8. Training along with 15-20 minutes of warm-up and main part lasts ca. 50 (60) minutes (10-15 minutes of ending suppleness and relaxing exercises). Short time of work may be an alternative for long trainings with similar influences on functions of organism than in case of aerobic training.

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POLISH POLICE FORMATIONS AFTER THE SECOND WORLD WAR – HISTORY AND PRESENT DAY

Abstract

The article present a history of Polish Police formation since the Second World War. Presented were changes of the character and roles of the formation, which depended on the regime. Authors referred to acts of law in order to show, how did the attitude of the state to this formation changed over the time, but at the same time an important issue is relation of the Police and society. Discussed was also the subject of education and training of young Police stuff in contemporary conditions.

Keywords

Police, Citizens' Militia, Police School, communism

After the time of annexation, when Poland regain the autonomy and independence, established was also an unitary formation responsible for order and internal security of newly reborn country – the State Police. It consisted of 35,000 of officers that on the area not covered by the war were still to be subordinated to National Police Chief, whereas on the territory where the war took place to commander in chief. On the behalf of his, activities of police were to command by the chef of military police. These plans were never realized[1], due to the fast pace of German offensive that in a short time led to occupation of the entire country. Poland lost the independence again. However this not means that the polish police formation disappeared. On October 30, 1939 Higher Chief of SS and Police appointed to service all officers of the Police on the territory of General Government. The staff was completed with policemen expelled from the territory annexed to the Third Reich. Previous

[1] W. Pobóg-Malinowski, *Katastrofa wrześniowa*, Warszawa 1987.

regulations and service rules were still in force. Formally this formation was reactivated under the name of Polish Police of General Government on December 17, 1939[2]. German impose on this service an obligation of full current protection and public order. According to H. Himmler's orders German police was to intervene only, when the German interests required it. Regular activities of the Polish Police included: preventive and interventional patrols, supervision over a sanitary condition, circular motion regulation, service on railway stations, and supervisory over registration of residence obligation. Moreover there were also: passive air-defense and basis training of Jewish Order Service, which performed internal service in ghettos. Polish policemen were also to participate along with Germans in round-ups, escorting people to transitional camps, manhunts, and protection of forced labor camps. They were forced to assist in executions and participate in counterinsurgency operations[3]. Very few privileges had Polish Police in relation to uniformed and civil Germans – possible only in the event of murder. An intervention was allowed in the state of utmost necessity and in case of absence of German police in the event place. PP was the only polish armed service. An equipment of an officer was generally a pistol with 5-20 bullets or a rifle with 10-60 items of ammunition. A complementation was a club and a bayonet.

Very important was including PP in judiciary of SS and the police since May 5, 1942, that since 1944 was embraced also to policemen families. The case of "willful service leaving by members of foreign police in General Government", losing a gun or an uniform was treated as a political crime and threatened with concentration camp or capital punishment. The most important source of supply for PP was established on October 1, 1941 in Nowy Sącz Police School of Polish Police of General Government. It trained around three thousand candidates. The commander of the School was Maj. Wincenty Słoma, an Austrian and then Polish gendarme, retired in 1952, his deputy was

[2] A. Misiuk, *Historia Policji w Polsce-od X wieku do współczesności*, Warszawa 2012, p. 161.
[3] W. Grabowski, *Policja w planach Delegatury Rządu RP na kraj*, Kraków 1995.

a Polish – Maj. Antoni Pikor. Slenderness of German police forces and rising of resistance movement were the reason for the order of H. Himmler from the December 6, 1943 about appointing units to protect warehouses and military facilities, but also to counterinsurgency operations. These formations were created within voluntary or forced enlistment and consisted in 2/5 of citizens of occupied countries. In years 1942-1945 in Poland, Yugoslavia and USSR formed were 250 such battalions. Voluntaries to formed in Poland battalion 202 were… two. In this situation others were detached to it. The unit was quartered in Kraków and during operations wore German uniforms. Some of officers deserted the army and swelled the ranks of The Home Army 27 Infantry Division of Wołyń. In 1940 the investigative service was separated from Polish Police and reshaped into Criminal Police (CP). Henceforth in German administration of Criminal Police (Kripo) there were Polish divisions. Directorates of CP were in Warszawa, Kraków, Lublin, and since 1941 in Lwów. In the district of Radom in every police station there were criminal branch offices consisted of two or three people. Polish officers due to that had an opportunity to access important information, and repeatedly that turned out to be very important within their contact with the resistance movement. Staff of Criminal Police was trained in the School of Security Police and SD in Rabka Zdrój[4]. Existence of Polish Police as a compact formation has been approved by both emigration and underground authorities. It was believed that establishing instead solely German police will be damaging for society and further fight with the occupant. Official management of the police was somewhat conspiracy staff of managing the police so as to it could be used in the right moment. Such moment was expected to come in spring 1940 as a hope for change, which was to be brought by the actions of the west front. This concept fall down when on May 7, 1940 arrested were 69 officers of PP in Warsaw. It was associated with invasion of Belgium, Holland and France and start of the AB action (liquidation of the prominent

[4] A. Misiuk, op. cit., p. 162.

representatives of the intelligentsia). Arrested officers were admittedly being released, though not all of them: some were transported away to Oświęcim, some did not return to service, some did. In such situation police staff were being used by various underground centers. Distinguished may be three forms of cooperation of Navy-blue Police and the resistance movement: top-down managed structure building inside of official structures of PP and CP; participation of policemen in activities of underground organizations, individual commitment in various, unorganized forms of resistance.

Underground structures based on offices and officers of Polish Police are above all: State Security Corps[5] [*Państwowy Korpus Bezpieczeństwa* – PKB] and 995 Police office in Department of Security and Counter-Espionage of II Branch of The Home Army Police Headquarter. The Chief Constable became Lt. Col. M. Kozielewski, his deputy was Lt. Col. S. Wasilewski and the Chief of Staff was Maj. B. Buyko. Since the end of 1942 began an increase of ranks of State Security Corps, as a consequence of decisions of Army authorities on transfer of PP officers associated to military conspiracy and officers of People's Security Guard to PKB. The Chief Constable became a barrister Stanisław Tabisz from the People's Party. In October 1943 the numerical amount of entire PKB (except from district of Lublin) was 8400 officers. With PKB cooperated Military Corps of Security Service [*Wojskowy Korpus Służby Bezpieczeństwa* – WKSB] – a kind of military police. Both formations manifestes during Warsaw Uprising by taking over stations of Polish Police. Very important area of activity of PP was cooperation with links of counter-espionage of all ranks of ZWZ-AK [*Związek Walki Zbrojnej*: Union for Armed Struggle]. A connection to Polish Police had all important organizations military and political: starting from GL-AL [*Gwardia Ludowa – Armia Ludowa*: People's Guard – People's Army], thorough BCh [*Bataliony Chłopskie* – Polish Peasant Battalions] to NSZ [*Narodowe Siły Zbrojne* – National Armed Forces] as well as

[5] Ibidem p. 166.

soviet intelligence service. Casualties of PP were relatively heavy. It is estimated that in 1942 on the territory of General Government every four days a policeman perished. Dying were both those who unambiguously cooperated with the occupant, and those who were involved in underground. Of the low trust of occupational authorities to Polish Police evidenced the fact that none of three phases of alarm in the event of an uprising did not assume using PP. Oppositely – in the third phase of alarm PP was to be arrested, disarmed and even physically liquidated. In 2000, police community commemorated a "round", 60th anniversary of a crime committed by soviet NKWD on policemen of the II RP[6]. Moral duty to victims and community of a uniform and profession make us remember this crime.

"He was a policeman, that was enough to shoot him" – said on one of interrogations the chief of NKWD in Kalinin – Dmitrij Stefanowicz Tokariew, later the general of state security in Kazań. Where such categorical and cynical statement come from? It seems like the reason of such criminal decision of soviet authorities was fear of leaving on their territory people, for whom sense of moral values and professional ethics were paramount[7]. It was what dictated faithful service to country and nation even risking one's life. Polish policemen were dangerous for the occupant even while they were imprisoned in camps. Bravery, loyalty in service, sacrifice for the Homeland, faithfulness to ideals of freedom, made them fight until the end and excluded a possibility of capitulation and surrender to enemy[8]. Therefore they were sentenced to death, so that they could no longer be a danger. According to estimates in September 1939 interned in Eastern Borderlands were 12 thousand of officers and police workers. The way of treating prisoners changed on whether specific group of policemen fought against the Red Army or surrendered. Commanders of this army did not have at first clear instructions on how to deal with specific categories of prisoners. It is confirmed by policemen who managed to survive the war.

[6] Ibidem, p. 155.
[7] J. Piwowarski, *Police Officers's Ethics*, Podhajska 2013, p. 17-80.
[8] Ibidem.

They say, they were being taken captive several times and then released. However on September 19, 1939 Soviet Commissioner for Internal Affairs Ławrientyj Beria made a decision to establish a management board for the Prisoners of War and Internees (order no. 0308), and the next day he issued a directive in which he commanded organization of transitional and distribution camps. Under this directive created were POW camps in which detained were around 15,000 of Poles. The camps were located in former monastery premises in Kozielsk, Starobielsk and Ostaszków[9]. It is where in the turn of October and November directed were first transports of Polish prisoners.

Policemen were transported to Ostaszków. For them there was a maximum security camp. Apart from policemen held there were also officers of Border Service, Prison Service, soldiers of Border Protection Corps, Military Police and II Branch of Main Headquarter, judges, prosecutors, military settlers (of the east territories of II RP) and clerics. The camp was located over a dozen kilometers from Ostaszków on one of islands on Seliger Lake in former orthodox monastery premises – Niłowa Pustyń. In contrary to camps in Kozielsk and Starobielsk, which were mostly camps for officers, in the one in Ostaszków in December 1939 remained 6364 people, including 48 military officers, 240 police and gendarmerie officers, 775 non-commissioned officers and 4924 privates of police, 189 officers of Prison Service, 9 agents of espionage services, 5 clerics, 35 settlers, 4 merchants, 4 former Polish prisoners, 5 judiciary employees, 72 privates and non-commissioned officers of Polish Army and 54 other prisoners. Prisoners were quartered in 20 practically unheated buildings. Food standards were so calculated to serve only for keeping alive and not meeting the hunger. Moreover prisoners were exposed to propaganda, which consisted of speeches, individual talks, movies promoting “accomplishments” of Soviet Union. At the end of 1939 authorities of USSR started preparation to final solution of the problem of Polish POW. In order to do this, to Ostaszków directed was special investigative group of

[9] A. Misiuk, op.cit., p. 162.

S. Biłopilecki, which was to prepare - by the end of January 1940 "files of prisoners of war – policemen of former Poland" for special conference of so called "threesome" in head-office of NKVD in Moscow that was to "sentence by default in administrative procedure the Polish prisoners to death" (on the basis of the criminal code of SFRR from 1926, art. 58 clause 13 "for activity" or "active fight (…) against working class and revolutionary movement"). The fate of policemen in Ostaszków was ultimately foredoomed on March 5, 1940 on the meeting of CC (central comitee) of WKP(b) [*Wszechzwiązkowa Komunistyczna Partia Bolszewików* - All Union Communist Party of Bolsheviks] composed of: Stalin, Woroszyłow, Mołotow, Mikojan and Kaganowicz. At the time made was the decision accepting Ł. Beria's proposal of consideration in a special procedure with the use of death penalty by shooting of cases of 14736 Polish prisoners of war, including 1030 officers and non-commissioned officers of police, border guards and gendarmerie and 5138 privates of police, gendarmerie, prison system and intelligence services[10]. Justifying his proposal Ł. Beria said that. "all of them (POWs) are unregenerate and intractable enemies of the soviet regime". Basing on this proceedings from the special meeting, the NKVD Board for the Prisoners of War and Internees made collective lists of names for shooting, which were sent to camps in April and May, for at the time "the ground was thawed enough to dig mass graves". For the camp in Ostaszków prepared were 64 collective lists containing information on 6263 people. At the same time issued was a command to "dispatch" those people to Kalinin. Made were also preparations in the edifice of NKVD district board in Kalinin, associated to "unloading" of the camp in Ostaszków. Due to that in the undergrounds of the NKVD edifice prepared was a soundproof condemned cell, and form Moscow brought was a mechanic excavator to dig holes for bodies of murdered victims. Liquidation action of the camp in Ostaszków was started on April 4,1940[11]. Number of people in prison was at the time 6364, including inter alia 5938 policemen

[10] Ibidem, p. 155.
[11] Ibidem, p. 155.

and gendarmerie (the latter were only a small % of this amount). Polish policemen sentenced to death were driven from the monastery to train station Soroga and therefrom, through Lichosław, were transported to in so called Stolypinki to Kalinin. Afterwards from the station they were transported in prison vans (called *cziornyj woron*) to the NKVD district board on the Sowiecka Street, where they were being placed in underground cells in the building. When night fell the executions began. It looked as follows: "in one of spacious basement premises, called the red nook (…) checked were personal details of a sentenced, then he was chained up and led to the condemned cell, which was right near, with doors fitted with a felt fabric. (…) After dragged to the death cell a victim was murdered at once with a shoot in back of the head. Body was being carried outside and laid on one of 5 or 6 waiting trucks (…)". Then at dawn bodies were transported to Miednoje on Twierca river. There on the recreational area of Kalinin NKVD buried were bodies of murdered in holes prepared previously by excavators. The holes were 4 meters deep and every one of them could accommodate a harvest of one night, i.e. 250-300 murdered people. There is 25 such holes in Miednoje. Buried in them were 6288 prisoners of war from the camp in Ostaszków. The action of "unloading" (murdering) POWs from Ostaszków was ended on May13, 1940. The role of executioners was fulfilled by almost 30 persons, but the most outstanding in this regard was major of state security of USSR – W. Błochin. Half a year later all of them, within a special order of Ł. Beria dated October 26, 1940 received rewards "for efficient fulfilling of special orders". It amounted ca. 800 rubles, i.e. as much, as their monthly salary.

The Citizens' Militia [*Milicja Obywatelska* – MO] was established in the second part of 1944 and dissolved in the first half of 1990. Hence it was the longest working polish policy formation. It was active in several different historical periods. It was brought to life when in Poland hostilities were still ongoing, and the Europe was soon to be divided with the iron

curtain. It ceased operation when the revolution abolished the order, which the Militia was one of guarantor[12].

Enacted on July 27, 1944 decree "On establishment of Citizens' Militia" resolves that every national, city or municipal council establish MO to protect safety and public order on the territory of their activity and subsequently exercise supervision on economic and finance and from the social control point of view. Whereas the substantive basis for MO were to be ordinations, regulations and instructions issued by head of department. The decree did not get into force, for the activists of the Central Office of Polish Communists, who came to liberated part of Poland and decided to base the structure and tasks of MO on the soviet model. Therefore on 7 October 1944 Polish Committee of National Liberation implemented decree "On Citizens' Militia" instead. According to this decree, MO was legal and public formation of Public Security service, subordinated to the head of Public Security Department. Hence MO was placed in structure of security department, the institution that was to play leading role in intimidating and enslaving society[13]. Though main job of local units of Militia was typical ordinal tasks, investigations and prosecution of offences, it became an immanent part of totalitarian power apparatus. At first MO had some autonomy, which manifested itself in equal importance of MO commanders and chiefs of Office of Public Security at voivodeship and county level in the time of the first Chief Commander gen. Franciszek Jóźwiak "Witold"[14], however it did not last long. Transferred into Polish the thesis of Stalin on intensifying class struggle escalated repressions of the security apparatus. The authorities considered even illusory autonomy would interfere with accomplishment of specific goals. Franciszek Jóźwiak was therefore dismissed from the function of a Chief Commander and replaced with gen. Józef Konarzewski. Minister of Public Security issued the order no. 13 according to which "activity of MO bodies on all levels have been

[12] A. Paczkowski, *Pół wieku dziejów Polski*, Warszawa 2005.
[13] A. Misiuk, *Historia Policji w Polsce-od X wieku do współczesności*, Warszawa 2012, p. 172
[14] Ibidem, p. 174

united and linked to the work of entire security apparatus". Commanders of MO on voivodeship and county levels became deputies of chiefs of offices of public security for militia. On 7 December 1954 MBP [*Ministerstwo Bezpieczeństwo Publicznego* – Ministry of Public Security] was lifted and instead established were two authorities: office of Minister of Internal Affairs and Committee for Public Security by the Council of Ministers. Their duties were included to the scope of activity of minister of internal affairs, in the field on the other hand – to voivodeship and county MO stations. The decree dated 7 December 1954 accentuated also the need of control of national council over the activity of MO. At that time that was a symptom of tendencies, which started to occur in decisive circles of the state. The breakthrough in 1956, which brought inter alia abolition of hated security apparatus have negatively influenced the position of MO. By the end of 1956, after only two years of separation from the security apparatus, was institutionally linked to it again. It was the subject of the act dated 13 November 1956, on the force of which liquidated was Committee for Public Security by the Council of Ministers[1516] and realized by them issues related to regime and state interest was included to the scope of the head of Ministry of Internal Affairs

Therefore Public Security and Citizens' Militia were linked. This solutions was undoubtedly a failure, for it lost the chance to break with structures, which in the past involved it in conflicts with barely entire society. Worse, if until 1954 public security apparatus was a hegemon in relation to militia, which was a specific kind of justification for it, than later this hegemon became militia, under cover of which operated the Security Service. MO was therefore burden with activity of the entire department. Organizational solutions, which were implemented in November 1956 lasted without any essential changes until the end of 1990. The only one was in relation to entering into force of the act on two-level structure of territorial authorities and admini-

[15] Dz. U. 1954, nr 34, poz. 143.

[16] A. Misiuk, *Historia Policji w Polsce-od X wieku do współczesności*, Warszawa 2012 s. 179

stration bodies (1 June 1975) liquidated were county stations of MO and replaced with district stations. In July 1983, in relation to enforcing the act on the office of Minister of Internal Affairs and the scope of activity of subordinated organs, previous voivodeship and district MO stations were renamed to voivodeship and district offices of internal affairs. Identifying both services as one by the society highly hindered exercising duties by militiamen[17]. Relation between militia and society get dramatically worse in years 1980-81. This service became an explicit side in the ongoing political fight. Great part of society, which supported established at that time NSZZ "Solidarność" [Indepentent Self-governing Trade Union], started to consider militia as declared enemy. Its officers were socially ostracized and so they had problems with exercising their personal duties. Moreover this situation coincided with trying to maintain the "peace and quiet" by supervisors at the expense of officers and for this reason there occur attempts of organizing trade unions and separating MO services from SB [*Służba Bezpieczeństwa* – Security Service]. First meetings of such purpose took place in Katowice Szopienice in May 1981, and postulates that were proclaimed there met strong support of militia environment. On May 25, 1981 officers of Kraków garrison established Temporary Founding Committee of Citizens' Militia Officers Trade Union [*Tymczasowy Komitet Założycielski Związku Zawodowego Funkcjonariuszy MO*]. In turn on 1 June 1981 in garages of Patrol and Interventional Battalion of Capital Station of Citezens' Militia [*Batalion Patrolowo-Interwencyjny Komendy Stołecznej MO*] representatives of 37 garrisons of militia made a decision on establishing National Founding Committee of Citizens' Militia Officers Trade Union [*Ogólnopolski Komitet Założycielski Związku Zawodowego Funkcjonariuszy MO*]. Worked out was a project of statutes and an register application to Voivodeship Court in Warszawa. In response management of internal affairs department established councils of officers, that were to perform the same tasks as an union. Harassment and even dismissing of

[17] P. Majer, *Milicja Obywatekska 1944-1957. Geneza, organizacje, działalność, miejsce w aparacie władz*, Olsztyn 2004.

service the activists and refusal to register the union by the Court, made the pacification of organization possible. Union activity in Citizens' Militia did not match the vision of authorities represented by the state management. They were supposed to be absolutely loyal and obedient, for it was an assumption of the martial law.

Since December 13, 1981 internal affairs department along with MON [*Ministerstwo Obrony Narodowej* – Ministry of National Defense] and Ministry of Justice participate in all relevant, scheduled operations, e.g. within operation "Jodła" interned were nearly 16 thousand people, mostly activists of NSZZ "Solidarność", KPN [*Konfederacja Polski Niepodległej* – Confederation of Independent Poland] and KSS-KOR[18] [*Komitet Samoobrony Społecznej – Komitet Obrony Robotników* Committee for Social Self-defence – Workers' Defence Committee]. Fatal overtone had the tragedy in "Wujek" mine, where on 16 December 1981 due to the use of the firearms 9 miners died and 59 were injured. These events put a wall between militia and great part of society, which considered as embodiment of all evil the Motorized Reserves of the Citizens' Militia[19] [*Zmotoryzowane Odwody MO*]. The authorities used these units for pacification of demonstrations arranged as an assign of contradiction on the occasions that were important for the society. Therefore after appointment by the Parliament on 24 August 1989 Tadeusz Mazowiecki to the position of Prime Minister and creation of the first in 40 years non-communist government in Poland, liquidation of Militia was not controversial. Dilemmas related to the scope of changes within order services were solved on 6 April 1990, when the Parliament adopt the so called package of police acts. On the force of one of them Citizens' Militia was abolished and replaced by Police. In the act on police, restored was basis rule of functioning of its pre-war predecessor – non-political character and philosophy of conduct that envisages

[18] A. Misiuk, *Historia Policji w Polsce - od X wieku do współczesności*, Warszawa 2012, p. 182.
[19] T. Walichnowski, Ochrona bezpieczeństwa państwa i porządku publicznego w Polsce 1944-1988, p. 153, Warszawa 1989.

cooperation with society instead of confrontation with it. Henceforth the Police was to serve the society and its officers in their actions were supposed to follow ethical rules[20]. That is when people returned to pre-war models, based on chivalric ethos. The act established following kinds of Police: criminal police including investigations and prosecution service, operative and preliminary investigation service and criminal and operational techniques; traffic police, prevention, antiterrorist subunits, specialized police, including Railway, Maritime and Aviation police, and local police. The first Chief Constable on 10 May 1990 become Col. Leszek Lamparski and his deputies were Col. B. Strzelecki and Col. J. Wydra. On the next day Voivodeship Court in Warszawa sign to the register of trade units NSZZ of the Police. In June 1990 in all 49 voivodeships appointed were new commanders of the Police. In 1990 under way of internal verification 3027 militiamen left the service. Since due to fears of pension settlement in next few years the number of officers did not decrease, in the beginning of 1995 the Police ranks swelled ca. 50 thousand new employees, who required at least basic training. Leading role in police education was given to Police Academy in Szczytno, established due to regulation of the Ministry Council dated 10 September 1990. Apart from that the web of police education system was created by schools that also were established in 1990 i.e.: Police Training Centre in Legionowo, Police School in Słupsk, Police School in Piła and outreach training centers. On 6 January 1999 established was Police School in Katowice. This all indicates how important for the state became training and improving of young police staff that was to fill the gap, which arisen after retirement of big amount of policemen. Training program on every levels included both theoretical education and acquisition of practical skills such as interventional techniques, self-defense or hand combat. Used were verified far eastern models that consisted not only of training solely the body but also the mind. Culture and tradition

[20] J. Piwowarski, *Etos rycerski i jego odmiany w koncepcji Marii Ossowskiej. Przyczynek do budowy kultury bezpieczeństwa*, Wyższa Szkoła Bezpieczeństwa Publicznego i Indywidualnego „Apeiron" w Krakowie, Kraków 2010, pp. 61-64.

of bushido perfectly succeeded in forming personality of a modern Police officer[21].

In turn an increase of amount of old and appearance of new forms of delinquency enforced on the department management establishing in Police divisions similar to those functioning in western Europe. That was inter alia: Division for Drug Addiction and Other Social Pathologies, Division for Affair Delinquency, National Division of "Interpol" or lately Central Bureau of Investigation[22]. An important element is help to western police both the temporary one, related to current cooperation, as well as one resulting in long-term undertakings, such as: Międzynarodowe Centrum Szkoleń Specjalistycznych Policji [International Center of Specialized Police Trainings] on the territory of the Police Training Center in Legionowo and Środkowoeuropejska Akademia Policji [Middle-European Police Academy] which one of cohosts is Police Academy in Szczytno.

On 1 January 1999 along with implementation of administrative reform of the country, the Police started to function in new organizational structure. To the National Police Headquarter currently subordinated is 16 voivodeship commands, 329 county commands and 2072 stations. Moreover the Police is no longer fully independent formation subordinated solely to National Police Headquarter but became part of combined administration at a level of a voivodeship and county[23]. Polish Police already underwent a process of political transformation that began with liquidation of MO in 1989, which in its shape imitated soviet solutions. Nowadays it is a modern formation, cooperating with other polices of the world, which mission is to everyday service for citizens. It is a fully democratic, learning and open for changes and new advantages carried along with economic and political integration. In the era of globalization not only economic boarders stop existing but also those, which

[21] J. Piwowarski, *Police Officers's Ethics*, Podhajska 2013, pp. 175-198.
[22] A. Misiuk „Historia Policji w Polsce-od X wieku do współczesności" Warszawa 2012, p. 195
[23] Ustawa z dnia 24 lipca 1998 o wprowadzeniu zasadniczego trójstopniowego podziału terytorialnego państwa (Dz. U. nr 96, poz. 603 i nr 104, poz. 656).

limited the delinquency. Now it has no boundaries and free movement of people and capital results on one hand in fast economic development, but on the other in new kinds of well-organized crimes. It is a challenge for Polish Police, which has to constantly develop to cope with the new situation. Condition of such development is not only modern equipment and technique but above all a human potential. Developing positive attitudes and behavior of officers, which are based on high moral standards, and building of a police service ethos[24] are as relevant as new technologies in criminal researches. This direction of activity of Polish Police management is currently a priority.

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8. Ustawa z dnia 6 kwietnia 1990 r. o Policji,
9. Ustawa z dnia 24 lipca 1998 o wprowadzeniu zasadniczego trójstopniowego podziału terytorialnego państwa (Dz. U. nr 96, poz. 603 i nr 104, poz. 656),

[24] J. Piwowarski, *Etyka funkcjonariusza policji. Źródła, motywacje, realizacja*, Wyższa Szkoła Bezpieczeństwa Publicznego i Indywidualnego „Apeiron" w Krakowie, Kraków 2012, s. 78.

10. Ustawa z dnia 24 lipca 1998 r. o zmianie niektórych ustaw określających kompetencje organów administracji publicznej – w związku z refirma ustrojową państwa (Dz. U. nr 106 poz. 668),

Leontij Hryhorowycz Czystokletow

THREATS TO INFORMATION SECURITY IN THE AREA OF ADMINISTRATIVE AND LEGAL SECURITY OF BUSSINES ENTITIES IN UKRAINE

Abstract

Based on the theoretical and practical aspects, studied was most pressing issues related to information security threats in the area of administrative and legal security of business entities in Ukraine. Classification of threats and the concept of administrative and legal information security entities was formulated.

Keywords

information security, business security, administrative and legal support, security threats activities.

Defining the problem

Taking into account importance and significance, which humanity draw from the informational field, current political, economic and social development of our society mostly depends on qualitative, reliable and efficient obtaining information in order to make numerous important decisions that are being made on different levels – starting with the Verkhovna Rada of Ukraine to an ordinary citizen. Immense flows of information literally flood the people. Scientific knowledge, according to expert assessments, doubles every five years. What was said above finds its confirmation in fact, that according to data of world's internet statistic, Europe has more than 476 million of Internet users, what accounts for 58,3% of the people in continent and 22,7% users in the whole world. In the period 2000-2011 the numbers of Internet users worldwide has increased almost three and a half times, what means that in June 2011 the number of them reached 353,1% of amount from 2000. The most powerful Internet using countries

are: Germany, Russia, Great Britain, Turkey. Ukraine locates on 9th position having more than 15 million of users [1].

Analysis of publications on which the article is based

One needs to notice that enough attention has not been paid to solving the issues related to searching effective ways of counteracting the threats to information security in area of administrative and legal security of activity of business entities in Ukraine as to a separate field of scientific researches. Particular attention was drawn to works of such scholars as: R. B. Tarasenko, W. A. Łużeckyj, O. P. Wojtowicz, A. D. Kożuchiwskyj, L. I. Seweryn, I. B. Trehubenko, O. I. Motlach, R. A. Kałużnyj, W. S. Cymbaliuk and others.

The aim of the research

On the basis of issues mentioned above and a short analysis of scientific sources, which relates to the subject, this article aims to theoretically substantiate of scientific position on nature and elements of emerging threats that negatively influences the information security in the area of administrative and legal ensuring the security of activity of business entities.

The basic content of the study

Analyzing problems of administrative and legal ensuring the security of activity of business entities, one needs to focus on such important aspect, as Information Security (further IS). For it is the source of violation of IS.

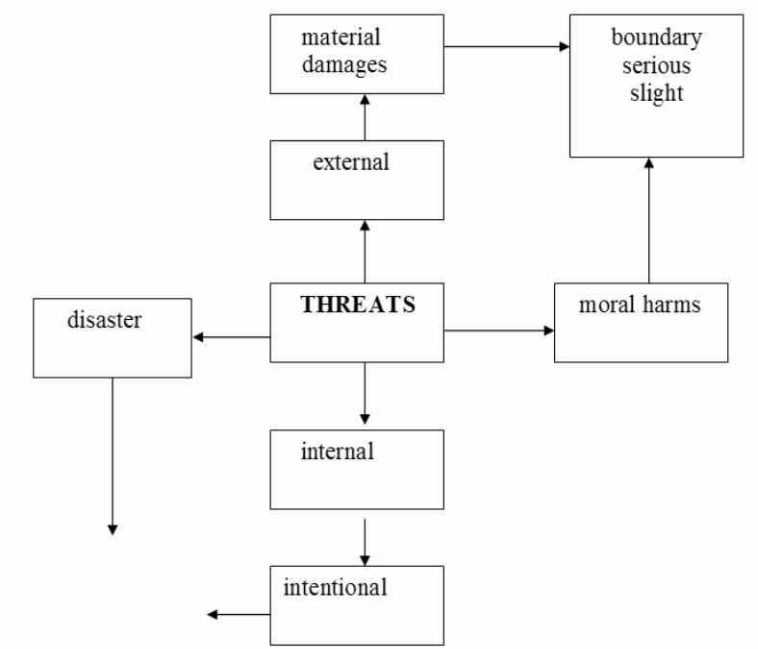
R. B. Tarasenko defines information security threats as a set of conditions and factors that poses danger to underlying interests of an individual, a society, and a state in an informational sphere [2]. In our opinion a concept of informational security threat is to be considered a potentially possible occurrence, act, process or phenomenon that may lead to violation of confidentiality of information, as well as unjustified settling of effort. Usually threats indicates presence of gaps, that is weak points of IS.

However, it is not always the case. For example threats of disruptions in supply of electricity or disconnecting the current, exist due to the dependence of the technology on the power supply.

Ensuring availability, integrality and confidentiality of information sources is one of the main conditions of efficient functioning of a contemporary organization. Such sources includes: contract and agreements; information of financial and technical character; information about new projects and business plans; information about employees; information about intangible assets; accounting calculation data; information about current activity of an organization.

All such information are mostly stored and processed by automated informational systems, so an outcome of enterprises activity highly depends on stability and security of these systems and actions of their competitors, rivals. Diversification and penetration of new markets, searching for new clients and suppliers, creating new units lead to more complex structures of an organization, which requires improvement of an informational system using new informational technology. But along with building a modern, automated system, the probability of threats of different kinds, which aims to undermine the IS of an enterprise, increases. Threats of IS are usually targeted to undermine entirety, confidentiality, and availability of information. An effect of these threats may be leak, divulgation, distortion (modification) or destruction of an information. At picture 1 presented was the classification of administrative and legal threats to ensuring the informational security of activity of business entities, in accordance with the following criteria:

- source of threats (internal and external);
- character of suffered damage (threats, which cause material or moral harm);
- probability of occurrence;
- causes of rising.



Pic. 1 Types of threats to administrative and legal ensuring the informational security of activity of entities
Source: elaborated by the author.

External threats includes:

- industrial espionage;
- attacks on security system with the intention of stealing, destroying, modifying the information;
- lack of a sufficient number of certified resources of information security on the market;
- imperfection of existing normative and legal base of administrative and legal ensuring the IS;
- activity of dishonest partners and clients.

Internal threats includes:

- imperfection of information security systems used;

- obsolete software and means for storing and processing data;
- low qualifications of employees;
- using “pirated” software;
- sabotaging personnel;
- insufficient fire and technical safety of rooms and buildings of an organization.

To internal information threats may be also included subversive activities of competing organizations, which is the enlistment of agents in order to further disorganization of competitor, revenge of employees which are dissatisfied with their salary or with their status in the firm, and other. We hold that in order to minimalizing the risk of such occurrences it is necessary that every employee of an organization is to fulfill the so-called “status of trustworthiness”.

At the same time W. Łużeckyj, O. Wojtowicz, A. Kożuchiwskyj, L. Seweryn, I. Trehubenko claim that every year there is a significant increase of more sophisticated, universal and complicated virus programs, which causes serious damages for both corporate and home users [3].

Usually there are two types of information that requires security and are included in category of confidential information or trading information:

- scientific and technical information that are directly connected with technical documentation and documentation of projects, information about used materials, and description of methods and technics of producing new wares, unique software;
- information, which includes official messages about activity of an organization: financial documentation, plans of future development, directions of modernization of the production, analytical materials of researching the competitors and effectiveness of work on the commodity and services market, information of partners etc.

These two types of information are predominatingly the objects of a computer crimes [4, p. 42]. We notice, that professor R. Kalużnyj has yet in 1992 emphasized a prominent role of computer computational technology in work of organs of internal affairs [5, p. 3].

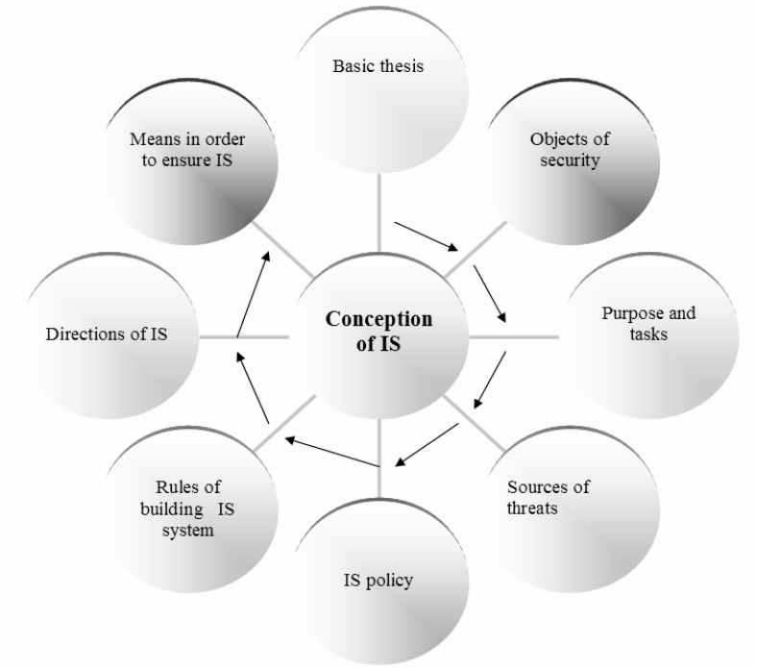
Based on the above, we think, that basic tasks of administrative and legal ensuring IS of any business entity are: creating stabile, efficient trading and productive activity of all units, protection against loss, theft, distortion or destruction of confidential information and trade secrets, embezzlement of costs, prevention of security threats. The IS system is necessary also for improvement of services quality, and security guarantee of an ownership rights, and an interests of clients.

To achieve this goal, above all necessary is:

- categorization of information into confidential information and trade secrets;
- forecasting and early detection of informational security threats, causes and contracts, which may cause financial, material and moral damages;
- creation of such conditions of activity, with the lowest risk of realization of threats to security of information resources, and of causing damages of different kind;
- creation of mechanism and contracts for effective reaction to IS threats, based on legal, organizational and technical means.

Constant increase of rate of development and spread of informational technologies, high competition an current situation of delinquency makes an information the most attractive, because its confidentiality is being determined with conditions of access and is limited to the number of people, who has right to its possession [6, s. 88−91]. Mentioned remarks define the priority issues related to creation in the enterprise a homogenous *system of administrative and legal ensuring of information security of activity of business entities*. IS system of entity, in our opinion, should contain legal, informational and analytical, organizational, physical, engineering and technical, as well as programmatic

means of ensuring security of informational resources. For a full assessments of the situation in the enterprise, in regard to all directions of ensuring IS, in our opinion, it is necessary to elaborate the *Conception of administrative and legal ensuring of informational security of entities* (further also – Conception) (pic. 2), which brings in the systematical approach to the issue of security of information resources and which is a systematized lecture of purposes, tasks, rules of projecting, and a complex of means related to administrative and legal ensuring information security of an entity.



Pic. 2 Components of conception of administrative and legal ensuring information security of entity.
Source: elaborated by the author.

While elaborating the conception under account must be taken are contemporary organizational and legal methods, and

programmatic and technical measures to prevent external and internal IS threats, as well as the current state of information security and perspectives of development of informational technologies.

Basic rules and needs of the Conception of IS should apply to all employees of an enterprise, who are in any way associated to elaborating, storing, conserving or creating informational resources, which requires protection of its unity, confidentiality and availability, and to other persons from other organizations, who are responsible for actualization and support of software.

The Conception should serve as a basis for:

- creating a uniform policy of ensuring IS in an enterprise;
- coordinating the activity of structural units of an enterprise in order to ensure IS;
- making decisions and undertakings, aimed to prevent, detect and eliminate effects of various IS threats;
- searching for new decisions aimed to improve the ensuring of IS.

Conclusions

As a general scientific category, security can be define, when it is able to withstand the impact of external and internal threats, and when functioning of a whole system does not threaten elements of this system and the external environment.

Taking into account what has been said above, from the position of administrative and legal ensuring security of activity of business entities, information security is the state of informational system, in which it can withstand the internal and external threats without initiating creation of elements of the system and the external environment.

On basis of this, it has to be noticed, that a base for ensuring IS is solution of three problems that are connected with each other: problem of securing information, which is in the system, against the impact of external and internal threats, problem of securing an information against informational threats; problem of

protecting the external and internal environment against the threats of an information, which is in the system.

While examining the basic principles of creating the conception of administrative and legal ensuring of security information of business entities, in our opinion, the most important one of creating this conception is its purposefulness, because lack of purposefulness thwarts other steps of creating the IS system. In order to define an adequate level of protection of informational resources, it is particularly important to examine in the methodological elements of the organizational protection of IS enterprise, that is the content and properties of informational resource at the background of evident threats.

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Ruslan Galaz

IMPROVEMENT OF PERSONNEL SECURITY

Abstract

This paper investigates improvement of personnel security company defined structural elements. The development of personnel security is zdiysnyuyetys both at the strategic level and the tactical - at the level of interpersonal relations managers and their subordinates.

Key words

personnel security, enterprise, structural elements, personnel and methodological support.

Statement of the problem

Obligatory condition of enterprise security personnel in the field is the continuous development of personnel security. The development of human resources in the areas of safety is defined as its structural elements. It follows from the definition of security personnel as on the one hand - the state of security against possible threats to her, the other - of the efficient use of resources and development company - insurance companies are the first link dvoosovoyi management personnel safety.

The analysis of recent research

Knowledge of personnel security management in the prevention, combating threats and overcome the consequences of crisis situations related to these threats is discrete – the more perfect personnel security system is, the more is the knowledge about specific threats. With the improvement of personnel security in this area is specialization of knowledge about threats, and threats management system becomes more and more discrete

nature.[1] This is due to the fact that the weak human-methodical maintenance personnel security in the enterprise there is a need to combat threats arising at a general level – with the use of common, universal measures to prevent and combat threats to personnel. These measures because of their versatility cannot fully protect against specific threats, but their advantage is the simplicity in organization and administration, low cost.

The main material of the study

Managing human resources in the field of security requires systematic action. Development of personnel security should be carried out both at the strategic level (strategic programs of personnel security, long-term planning, etc.), and tactical – at the level of interpersonal relations managers and their subordinates.

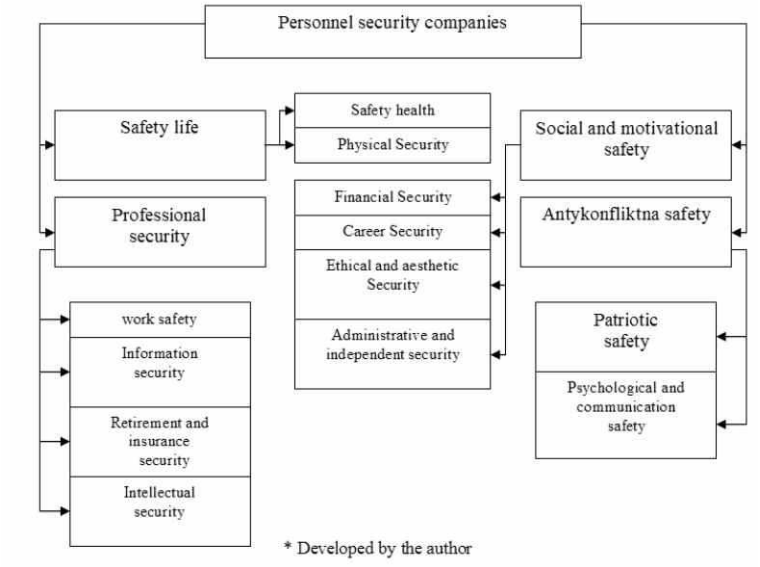
Strategic development of personnel security requires deep knowledge of the functioning of the personnel security must be supported by experience in the business of the industry. Strategic programs should be nehromizdkymy, convenient editing as their entry into force and after and approved solely responsible persons who have a sufficient level of competence for decision making. It will coordinate every direction and point of HR strategy will serve as a guarantee of safety and effectiveness of tactical measures the current character. As a tactical and strategic support should be based on an understanding of the elements of personnel security value, its structural units.

Personnel security companies includes several components of the circuit shown in Fig. 1.

Safety personnel includes ensuring its health safety and physical security. Safety health is closely linked to that of labor and provides tangible and intangible measures to ensure the appropriate level of the health of workers and to prevent injuries and accidents at the plant. Partly this helps insurance purposes, including payment in case of temporary disability, accident at the company and so on.

[1] Shvets I.B. Ekonomichna Bezpeka in upravlinni staff. Naukovi pratsi Donetsk National Technical University. Seriya: Ekonomichna. - Donetsk. - 2009. - pp. 179-184.

Figure 1. Components of personnel security company *



Development of health safety is not fully vested in the company. Important role in securing the health, particularly in traumatic industries, enterprises whose economic activity is associated with a significant risk to life and health, trade unions play. Thus, Article 21 of the Law of Ukraine "On Trade Unions, Their Rights and Guarantees" set: "Trade unions exercise public control over the payment of wages, compliance with labor legislation and labor protection, the provision of safe working conditions, adequate production and sanitation conditions, workers' clothing, footwear and other means of individual and collective protection.[2] In case of threat to the life or health of workers, trade unions have the right to require the employer to stop work immediately in the workplace, manufacturing sites, in workshops and other structural subdivisions or company in general for the time required to eliminate the threat.

[2] Jarikov ES Risks in personnel work. - Moscow, 2005, p. 92-94.

"Elected body of the primary trade union organization, in accordance with Article 38, together with the employer decides to improve conditions labor involved in the investigation of accidents, occupational diseases and accidents, provides public control over the provision of safe and harmless working conditions, occupational health and requires the company address these deficiencies, sending workers under the conditions stipulated by collective agreement or agreement to sanatoriums, dispensaries and rest houses, tourist facilities, recreation and health facilities, inspects the organization of health care workers and their families"[3].

We believe that the physical safety of workers is ensured primarily toward prevention of illegal encroachments on their rights related to professional activities, including violations of the constitutional rights to life, health and property. It is about the development and improvement of physical security and security officer of offenses subject to which it may be in the event of his failure or certain actions under the pressure of external or internal entities, such as revenge, blackmail, threats and personal injury, damage to or destruction of property of the employee or members of his family, employee theft or even murder him.

Occupational safety, consisting of a safety, information, retirement, insurance and intellectual security, covering various aspects of current and future employees, it needs protection. In our opinion, an important area of personnel security is to improve the pension insurance for employees that should be implemented because of rising payments to the pension fund by reducing "payments in envelopes." This would contribute to the improvement of social security employee at retirement and will protect the company from liability for work "in the shadows".[4] Information and intellectual enterprise security must evolve towards expanding and systematizing knowledge base

[3] Belyaev M. How to protect yourself from unscrupulous executives / / Personnel Management. - 2008. - № 7. - p. 38-41.

[4] Chumarin IG The functions and tasks of service of staff in the areas of economic security / / Staffing company. - 2003. - № 3. Mode of access to ARTICLES: http://www.poteri.net/publikatsii/kadry-predpriyatiya-3-2003.html

available to employees, the presence and development programs of education, training and professional development, maintenance of facilities and learning environments, its continuity, encourage employees to improve their skills, interest in industry trends, latest scientific and theoretical developments, exchange experiences with experts of other enterprises at conferences, seminars, round tables and more. Safety as a part of personnel security is closely linked to that of life, but also covers the employer labor law compliance in areas not related to safety of life, for example – the reception and dismissal, remuneration and its terms, work overtime, work on weekends and holidays, and so on.

In our opinion, extremely important in terms of increased productivity and increased staff loyalty is a purposeful development of socio-motivational component of personnel security. At the present stage of development of the Ukrainian economy for personnel security (at national level), one of the most pressing is the issue of conflict of financial, insurance and retirement security. Due to the weakness of the theoretical and methodological support entrepreneurial activities, including non-recent advances science management, marketing, logistics, etc. financial condition does not allow salaries to increase employee benefits differently than concealing of these payments from the state ("Grey salary") or in general, picking up illegal immigrants. While this strategy is justified in the sense of improving short-term financial security of employees, and therefore - financial security personnel component of any development of this component in the long run can not speak. It is as weakening social security employee (reduction or lack of benefits for temporary disability benefits in case of unemployment) and of undermining the pension-insurance component personnel security. However, if the company has with the need harmonious development of all elements of personnel security, the simultaneous increase in social security and financial security of workers caused a rapid growth of loyalty, you can attract new qualified personnel and build momentum by increasing productivity and reducing costs, air 'associated with high turnover.

In close connection with the financial and career security is that loyalty is key personnel and their motivation to work. We believe that the essence of career security is reduced to that of the movement of personnel in the company, when no threat poaching employees, low motivation due to lack of career prospects and the fulfillment of key positions and employees with appropriate qualifications and experience. Providing career security is to introduce an effective system of career planning of employees, fair, accessible and understandable rules career, particularly those involving close relationship of the results of labor certification (evaluation) of employees, their relationship to the organization and teamwork and promote their career.[5]

Ethical and aesthetic component of socio-motivational safety associated with the corporate culture. In our opinion, the state of moral and aesthetic Security characterizes the effective functioning of the enterprise controls morality, mutual respect and understanding between employees and between employees and management, availability of means of communication, exchange of ideas and beliefs and includes the formation of motivational environment conducive to effective motivation. The development of ethical and aesthetic security involves implementing various measures strengthen corporate culture and corporate spirit. This could be, for example, corporate events, watching behavior and requirements for employee (for example, some companies adopt the days on which employees may come in "informal attire" - jeans, sweaters, and other companies are changing the traditional view of offices, converting them The comfortable rooms where workers can comfortably communicate and perform work tasks almost home environment) and others. With the development of ethical and aesthetic component of morality in terms of the company, as well as the career component is closely related to administrative and independent component. It lies in getting rid of those responsible features appoint untrained and incompetent employees because of their family, friendships with leaders, business owners, or bribe. The development of an independent

[5] Yurasov IA The main indicators of quality of staffing services company / / Staffing company. - 2009. - № 5. - p. 91-100.

administrative security must be made towards identifying leaders whose vested interests threaten the safety of personnel and conduct regular independent assessment of employees, especially in key positions in order to establish their competence.[6] This lets you control the unreliable staff and involved persons under their supervision with timely removal of threats to security personnel, as well as enhance the overall loyalty of staff to HR strategy. Apathy in this regard can not do the company a loss of employees with high potential development, which transform the enterprises with lower levels of corruption for their own needs for self-fulfillment and career growth.

Antykonfliktna security is part of the corporate culture of the company. Patriotic antykonfliktnoyi security component is responsible for the formation of a positive image of the company employees, through which the communication in the group. Development patriotic component allows to level the internal friction between team members and employees of certain departments through their union under the banner of unity in the overall interest of the company. Thus warned conflict situations, the general atmosphere set of responsibility, demanding to myself and colleagues, friendly help and support. This reduces the likelihood of occurrence and aggravation of conflicts and strengthens motivation, provides convenient, comfortable environment for employees of their employment duties.[7]

In our opinion, the development of psychological and communications security associated with establishing communications between employees separate collective unit, all businesses and their leadership to eliminate possible inconsistencies through dialogue rather than through open conflict. The main directions of this component is to establish security antykonfliktnoyi "two-way communication" between management and staff, availability of senior management

[6] Mikhail Lysenko Mehanizm zabezpechennya kadrovoї BEZPEKA pidpricmstv / / Formuvannya rinkovih vidnosin in Ukraïni. - 2008. - № 7. - P. 137-140.
[7] Chumarin IG Probationary period and adaptation in terms of personnel security "/ / Personnel Company. - 2004. - № 9. Mode of access to ARTICLES: http://www.poteri.net/publikatsii/kadry-predpriyatiya-9-2004.html

on issues relating to inappropriate, unprofessional actions of middle managers and individual employees whose relatives or friends are among the managers or owners of businesses and creating conditions for the free expression of ideas and the adoption of effective workers' rationalization and optimization of production and economic, institutional and other processes in the enterprise.[8]

Thus, human security should be carried out simultaneously in many directions. However, we note that between different areas of conflict may arise. For example, the development of financial security may be associated with rising wage costs, and consequently - social contributions and taxes can jeopardize the financial security of the enterprise. Anecdotal cost of development of one of the components of personnel security lead to the decline of others. Thus, modern theories of motivation recognize a minimal role for monetary compensation in the growth of labor motivation. This is related both to the limited financial means of motivation and the fact that according to the most popular motivational theory of Maslow, material needs occupy only the lowest two of five-step pyramid of human needs. So back up the most significant motifs of human activity fully unleash the potential of employees can only be harmoniously developing both financial and other elements of personnel security.

So in its dynamics personnel security companies should not only be seen as a set of warnings or overcome threats to personnel. This - is much more complicated system that requires skillful strategic development - none whereby it can maximize the first to use the potential of employees, increase their loyalty to the enterprise and productivity, neutralize suspected conflicts between workers and conflicts of interest, provide comfortable living conditions and professional activities. Taken together, all this means not only increase role in the enterprise as the main source to cover their needs and goals of the employee, but also indicate that increased personnel safety. Strengthening of security

[8] Belyaev M. *How to protect yourself from unscrupulous executives* / / "Personnel Management" - 2008. - № 7. - p. 38-41.

personnel due to the harmonious development of its elements creates an integrated intelligent prevention and removal of threats to security personnel. While both Threat Management security personnel can deal only with the challenges that have arisen in the company or in the industry, and perhaps even had implemented and result in significant losses (ie directed in the past), analyzing the events that have already occurred and trying to predict such events in the future, we can ensure the harmonious development of consistent personnel security components that enable timely warning even atypical threats.

Hence, management personnel security threats and its development are two areas to ensure safety of personnel and economic security in general, in their entirety to more fully represent the interests of businesses and individuals. Ensuring the interests of the company is due to productivity growth, return on workers, their loyalty and attention to the needs of the enterprise, was able to work with the brand, customers and contractors, which ultimately means increase revenues and profits. Ensuring the interests of workers formed in the prevention and removal of threats socio-economic problems that accompany the professional activities of each of the employees. Interests are provided by the state so far as effective, advanced personnel security companies can only exist legally and mean eliminate any violations of legal documents, honesty and transparency in relations companies and the state, increase tax revenues and social responsibility of the enterprise.[9]

From the above it follows that the effective management of personnel security company in the interests of the State, may take place on the basis of the following principles:

1. The principle of integrity. The principle is that the company, its mission, goals and objectives, economic and security personnel are considered complex, due to the environment. Every aspect of the Human security is dependent on a number of factors internal and external environment. As a result of training deficiencies, lack of experience, etc., in the exercise of

[9] Shvets I.B. Ekonomichna Bezpeka in upravlinni staff. Naukovi pratsi Donetsk National Technical University. Seriya: Ekonomichna. - Donetsk. - 2009. - p. 179-184.

management personnel security managers may prefer one or another aspect without considering the systemic relations, resulting in slow performance is to ensure the safety of personnel, the emergence of uncontrollable emergencies and so on. Adherence to the principle of integrity is the key to harmonizing all activities on the formation and management of personnel security, a necessary feature of proper training of managers in the area of responsibility that includes securing the enterprise from threats related to human resources.[10]

2. The principle focus. Often, the business has been neglected management activity not directly related to increase of income from business activities. Under these conditions, the implied sources to increase profits or minimize losses, managers engaged formally chaotic. However, with the goal of full and long-term existence and effective management of business enterprises, management of personnel security must obey the mission, goals, objectives of national security, economic and security company personnel, management personnel security should focus on solving specific problems that exist in the enterprise specific period of time and may occur in the future. Is unacceptable dispersion of financial and human resources on irrelevant and unnecessary tasks chaotic "exemplary" actions of which do not contribute to the implementation of the tasks of personnel security and strategic goals of economic security.

3. The principle of planning. Business management personnel security should be based on pre-designed and approved by management's strategic and operational plans. Strategic human resource management plans should be long-term safety and determine the global activities of the formation and strengthening of personnel security across the enterprise. Operational planning should be consistent with the strategic plans and at the same time be flexible enough to meet the current needs of the enterprise. The scope of operational planning management activities to ensure the safety of personnel should include the development of current goals, objectives and activities of the formation and development

[10] Belyaev M. *How to protect yourself from unscrupulous executives* / / "Personnel Management. - 2010. - № 9.

of personnel security for individual business units, financial planning and staffing of operational control personnel safety.[11]

4. The principle of consistency. All personnel security management tasks must be executed sequentially according to set deadlines and planning schedules for their implementation, measures to strengthen the human resources development and security are implemented in accordance with the plans and personnel security features of human resource management of a particular company. Illegal is spontaneous, chaotic events of the formation and development of personnel security, ignoring targets due to switching to new tasks not supported urgent real need to strengthen security personnel in an unpredictable direction operational plans. Failure to comply with the principle of consistency entails also a violation of the principles of integrity, commitment, planning.

5. The principle of dynamism. Adherence to this principle prevents dogmatization, rigidity in the field of personnel security. Management personnel security must meet the requirements of time and the development of productive forces and economic relations, the environment of the company and changes in its internal business systems. In accordance with the principle of dynamics, all management plans for the formation and development of personnel security should have some flexibility which does not have to turn into unstable.

6. The principle of vertical and horizontal integration. Strategy, goals, methods and approaches management personnel security should be duly approved by the senior management of companies, all responsible for the development and utilization of human resources managers and to be told in its entirety to the heads of departments, branches, projects, goals, objectives, procedures, standards, measures to build and strengthen security personnel must be notified to and be binding on all employees.

7. The principle of transparency and accessibility. Goals, objectives, methods and characteristics of management to ensure personnel safety should be clear and accessible to all employees

[11] Yurasov I.A. *The main indicators of quality of staffing services company* / / "Staffing company" - 2011. - № 7.

without exception. Adherence to this principle involves the creation of effective mechanisms for informing stakeholders accommodation available databases, development, implementation and maintenance of effective systems of communication, feedback on all aspects of personnel security.

8. The principle of verifiability, which is to identify the persons responsible for compliance with other principles of personnel security regulations, rules, procedures, personnel security regulations, the proper conduct of the formation and strengthening of personnel safety, the implementation of innovative, innovative projects in this area.

Conclusions

Systematics threats on various grounds allowed to develop an effective system of classification by which simplifies development of management measures for preventing, combating and elimination of consequences of threats. One must consider advantages and disadvantages according to the classification of threats or other characteristics, and to develop an effective system of classification of threats to a particular company - to use the author's method of approximation classification of threats.

2. Management personnel security for best results should be considered at three levels relative to the company. This allows you to isolate the main activities of managers to ensure staff safety and implement recommendations for improvement measures and approaches to strengthen the security personnel at the macro (national), meso level (cooperation with customers and suppliers, working with companies-competitors) and micro (individual employees of the company).

3. Development of personnel security should be implemented systematically and harmoniously in the fields of improving life safety, occupational, social, motivational and antykonfliktnoyi security. Decisive in managing personnel security companies are the principles of integrity, determination, planning, consistency, agility, vertical and horizontal integration, transparency and accessibility and controllability.

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Roksołana Kaczur

COURT OF JURORS AS COMPLEX INSTITUTION OF THE JUDICIAL SYSTEM OF UKRAINE

Abstract

In article new approaches to the essence of court of justice in Ukraine is analyzed. This article is dedicated to the topic of the feature of the legal adjusting of court of jurors. Purposefulness of usage of court of jurors as complex institution of judicial system of Ukraine was proven.

Keywords

court of jurors, judicial system, judicial trial, justice, court, judge

Defining the problem

The Constitution of Ukraine [1], which is a basic law of our country, provides that citizens are directly involved in the administration of justice by assessors and the jury (p. 124); justice in Ukraine is exercises by professional judges and, in cases determined by the court, assessors and the jury (p. 127). Proceeding is being conducted by one judge, a panel of judges or the jury (p. 129). Although the Constitution of Ukraine was adopted almost 17 years ago, problem of the jury still has not been entirely solved.

Analysis of scientific publications on which the paper is based

The basis of the paper are scientific ideas of known scholars, including: S. Bobotowa, B. Wyłeńskiego, F. Leontowicza, N. Kołmakowa, A. Koni, M. Mychejenki, Ż. Russoa, P. Szczerbinę, O. Jarmysza, S. Paszyna. Też warto wymienić naukowców P. Dewlina, W. Zażyńskiego, A. Lewi, S. Poznyszewa, D. Robertsona, W. Tertysznyka, whose works were used while preparing this article.

Shaping the purposes of the article

Taking account of an ambiguous interpretation of law, which defines this national institution of the judicial practice and to some imperfections and lack of national model of the court of jury, the purpose of the article is to examine oddities of development of institution of court of jury on the territory of Ukraine.

Basis research materials

Part 2 of Art. 1 of the Law of Ukraine "The Judiciary and the Legal Status of Judges" provides for that the judicial is being exercised by professional judges and, in cases determined by the court, assessors and the jury, by exercising the justice in the appropriate court procedures. Part 3 of a.m. Law says that citizens take part in exercising justice by assessors and the jury. Art. 63 of a.m. Law generally defines that jurors may be the citizens of Ukraine who, in cases defined by procedural law, are able to get involved in exercising justice, providing, in accordance with the Constitution of Ukraine, direct participation of the nation in exercising justice.

It is known that using of court of jury guarantees independence of judges, encourages the parties to compete, reduces the risk of abuses on pre-trial and trial level, reduces the risk of corruption and imposing an judgment on the court.

Known English lord, Patrick Delvin called the jury a "little parliament": "No tyrant cannot afford putting a decision about freedom in hands of twelve of his countrymen. This is why jury court is more than an instrument of justice and mechanism of constitution – it is a luminary, which shows that freedom is alive"[3].

Interesting thought today are one of the founders' of processual law, S. W. Poznyszew: "While evaluating the jury, often its political side reveals itself. Some sees in it one of form of allowing people in the country to manage, some defends it

strongly in this shape, other as strongly rejects. Sometimes some sees in it a wonderful school of law for the nation or even a revision, which helps them correct defects of the legal system and adjust it to the needs of society. However such views must be immediately rejected. The court of jury should be considered in science not only as judicial mechanism, which was established to serve purposes of the criminal administration of justice. Court should ever be neither a guide of some particular political tendencies, nor an instrument of political parties, nor revision of the law, which it is to exercise and execute, and only then it shall become uncommitted and just" [4].

In favor of the court of jurors speaks also an American scholar Jeffrey Robertson, who pointed out that court of jury creates competition of the trial, in which the accused may, if they want, vigorously defend themselves and the evidence are to be examined, in order to ensure that everyone could have made sure of their authenticity or falsity [5,. c. 493].

An attempt of delimitating the process form of activity of court of jury was taken in New Criminal Code of Ukraine [6], to which the Law of Ukraine "The Judiciary and the Legal Status of Judges" relates. But the idea of the court of jury itself, as professor W. M. Tertysznyk says, have suffered some serious changes and have been strongly deformed. In part 3 of Art. 31 of New Criminal Code of Ukraine it is pointed out that criminal procedure in court of first instance against the crimes for which the likely sentence of life imprisonment shall be carried out, is conducted after accused' request by "court of jury in groups of two professional judges and three jurors". No particular form of process has been revealed and could not have been, because jurors are considered a decorative addition, which use to sit with professional judges and nods under their command [7, p. 28]. Prof. W. M. Tertysznyk is quite categorical in regard to establishing the court of jury in Ukraine, pointing out that possibility of voting in legal cases for people, who are not educated in jurisprudence is in effect a discrediting of the idea of jury court [7, p. 29].

Agreeing with this assumption, we want to point out that solution of the problem is possible through the adoption of some organizational and legal projects, which are to lead to establishing the court of jury in Ukraine. Such project may include: participation of psychologist while choosing candidates for jurors or participation of an independent, competent person in a collegium of jurors.

To a positive result may lead conducting short, familiarization seminars for candidates for jurors on which they could receive minimal knowledge about criminal judiciary and legal nomenclature.

There are also suggested conclusions about limitation of jurisdiction of jurors. Russian scholar, A. Zażyński propose: "One may only correct present state of affairs by revising the legislature. It would be worthy to remove from the competence of the court of jury cases, which are related to national betrayal, spying, national secret and some other crimes against the basic constitutional regime and security of the state" [8, p. 3]. We maintain such claim, especially in the categories of cases related to national secret. It is connected first, with complicated procedure for obtaining permission for access to national secret, and with the necessity of trust, in such cases, in findings from the experts.

Process mode of organization of court may depend on the specific of state and national traditions. However, this institution secures the fulfillment of main principles of the administration of justice, which guarantees an equitable judgment. This is done by voting of citizens uncommitted in the outcome of the case, who are capable of considering a defendant guilty or innocent, by referring to their own life experience.

In our opinion, in Ukraine there is a need for the court of jurors. First, such court would create a fundament for shaping in Ukraine a trial based on competing, nevertheless in contemporary trial competition has dominant role and apart from that, such model plays role of an example of a political criterion of democracy, justice and civilized judiciary.

The fulfillment of justice with the help of court of jurors is not possible without meeting fully the rules of competition, equality of parties and their activity, and against the traditional administration of justice in examining circumstances of the case.

Second, court of jurors is exempt of the obligations of exercising the function of criminal investigations as a wrong institution of administration of justice.

Third, court of jurors has reduced the existing distance between the administration of justice and the society, after all citizens of Ukraine was given real possibility to control the activity of judicial authorities. In conditions of wide representation of the people, in legislative and executive branches of state authority exercising of judicial power for a long time was exceptional prerogative of officials.

Fourth, court of jurors in eyes of society becomes „a court of social conscious", which ensures just punishment for all guilty ones and justifies the innocent ones. Such court is not to punish, but most likely it is an educational authority, which allows criminals to look at their committed actions with their own eyes or eyes of ordinary citizens.

In time of overwhelming distrust of the legal authorities, police and judicial system, the court of jurors is necessary for consideration and equitable solution of more complicated and socially dangerous criminal cases, to avoid tragic judicial mistakes, which may be hard to correct.

Well, advantage of alternative form of justice in criminal cases is obvious, however constantly raising amount of judgments revised in cassation procedure (at first acquitting) formed by collegium of jurors, raises serious concerns.

Having regard to the declared position, we have to acknowledge the low efficiency of activity of court of jurors and agree with separate thesis of its opponents. Arguments of the last are as follows:

First is about solving a legal question of defendant' guilt by representatives of society, who have no legal education, what causes lots of legal mistakes. Delivering a judgment, jurors go by the categories of "good and evil", "consciousness and justice".

But yet one also needs to go by general standards of behavior which are consolidated in the norms of law. Ignorance of law and not understanding its sense by a collegium of jurors makes it impossible for them to normally fulfilling the justice. However, in the era of flourishing of a legal nihilism, in which the concepts of good and evil are being mixed and distorted, these factors cannot influence shaping individual features of a man. Thus, apart from these categories, common sense must prevail in a juror.

Second is about examining and evaluating evidences in bigger, group cases with lots of episodes, which are highly difficult even for professionals. Apart from that, accusation in court of jurors must be upheld by a public prosecutor. However not every prosecutor agrees for this situation, because it takes more time to prepare to the proceedings, it requires them to study the materials of criminal case more closely to learn how to come before jurors and prove the made accusation, and not only to pass an accusation request, what may be often seen in a court. In relation to that, person, who conduct investigation, must do their work in such a way to obtain other evidences than a testimony of an accused.

Third – courts of jurors delivers a large number of acquittal verdicts (in regular courts this number does not exceed 1%, in courts of jurors it is 18% and more). A Russian scholar, A. Lewi draws attention to mistakes in activity of court of jurors and ascertains that 50% of acquittal verdicts are being invalidated in cassation procedure [9, c.25].

The fourth argument relates to fact, that our society is not prepared to solve the question of guilt and innocence of a man in a just way because:

- our society has no legal traditions;
- has no general moral basis, for example religious;
- social and economic differentiation is too strong, people are irritated, envy the rich and hatred for criminals prevails;
- general criminogenic situation etc.

The fifth argument is that the court of jurors is connected with Anglo-Saxon institution of the precedents. For us though, it is not necessary, for Ukraine belongs to continental family of law. Establishing court of jurors is against cultural foundation and traditions of national law.

Some of these arguments in our opinion are not consistent with reality. For example results of carried out research allows to conclude that court of jury in Ukraine has deep roots, which go back to ancient history, however, because of lack of required conditions (economic, social, political), was not given a chance to develop. For this reason such court cannot deny cultural foundation and traditions of Ukraine.

Arguments of opponents of court of jurors, which are based on unfounded advantage of acquittals delivered by jurors, also cannot be considered a confirmation of collapsing of this court. Indicated thesis most likely show notable repressiveness of "regular" courts, than "incompetence" of work of a court of jurors.

However we may agree with the argument of opponents of court of juror which relates to today's incapability of society to exercise the administration of justice.

In relation to that, problem of allowing people, who has no required level of education, morality, moral resistance etc., to perform the duties of a juror, deserves for special attention. The issue is complicated by the lack of legal tradition and unfinished process of shaping a civil society. To avoid unilateral implementation of a legal reform, level of legal culture of society needs to be increased. Absence of indicated projects, as it is apparent from the practice, and functioning of court of jurors in different historical moments leads to destruction of a trust for this institution and to change of its essence.

Mistakes which are being made in activity of the court of the jurors, and which existence is being confirmed by petitions of higher instances, indicates the presence of some gap in its organization, but does not allow making a conclusion about malevolence of such institution.

Conclusion

In our opinion, any point of view, which indicates an imperfection of a court of jurors or activity of higher instances (taken into account are: cassation and supervisory) is unilateral and subjective. In this case it is important to note not only defects of a court of jurors, but also an activity of higher instances, what allows finding a compromise, which serves making just and objective decisions.

In our opinion, it is necessary today to elaborate a rational procedure, within which verdicts of jurors shall acquire legal validity, the collegium will stop have only declarative character, and higher instances will stop paralyzing activity of this quite expensive institution.

Apart from indicated above, a positive aspect of development of institution of court of jurors in Ukraine is also that by institution of court of jury, role of barrister in trial strengthens, declared rule of competing of parties of a trial realizes in practice and a growth of principle of democracy is ensured.

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Vitali Vitaliyovych Novikov

THE ESSENCE OF FREEDOM OF CONSCIENCE AND OF RELIGIOUS BELIEFS

Abstract

The paper examines questions relevant to the issues of freedom, conscience, freedom of conscience, religion, and religious beliefs, in the context of Ukrainian legislation. The author aims to defines these notions and analyzes the existing provisions pertaining to them, underlying the insuffient elaboration of those is legal doctrine.

Keywords

freedom of conscience, religious beliefs, freedom of religious beliefs, religion, free will

Statement of the problem

In modern society, freedom of conscience and freedom of religion are one of the global problems in theoretical and branch law studies and are actively debated in modern science. Urgency of the problem is caused by insufficient and contradictory scientific and theoretical elaboration, dominated by outdated approaches to the problem of freedom of conscience and religious beliefs, as well as the lack of established conceptual apparatus.

Today we can say that in Ukraine there is no doctrine of freedom of conscience and freedom of religious beliefs, on the basis of which the legislation should be formed regulating this legal institution, and contradictory, scientifically undeveloped legislation gives rise to problems in the field of law enforcement. Thus, these factors determine the infringement on freedom of conscience and freedom of religious beliefs, and state and national policy of Ukraine in this field is carried out without due regard to theoretical developments and enforcement experience.

The purpose of the article

The current situation in the field of freedom of conscience in Ukraine, which is considered a multi-religious country, is described as a crisis. It is necessary to resolve this crisis as the right to freedom of conscience and religion is one of the basic human and civil rights, and its providing plays a crucial role in the issue of human rights in general. On the other hand, the neglection of this right turns into fiction such concepts as "constitutional state" and "civil society".

The form of freedom of conscience and freedom of religion, as a legal institution is adequate to its content as a subjective right. Legal institution of freedom of conscience and religion is a set of legal rules governing social relations in connection with the implementation of the relevant subjective law and is characterized by complex multi-level interdisciplinary legal regulations, which include, along with the rules governing the content of this freedom, means of its guarantee, protections and limitations. Complicated and complex nature of freedom of conscience hampers the attempts to give a comprehensive definition of this institution.

The need arises for theoretical and legal research of this problem that defines the purpose of this article.

The degree of elaboration of scientific problems

The reslearched problem is not defined clearly enough, in the theoretical aspect, though in Ukrainian science the researches touching this subject took the form of monographs and dissertations, as well as collections of materials from scientific conferences and other publications.

The yuristic legal scholars who devoted their works to the development of the concept of the institutiou of freedom of conscience and freedom of religion include: SA Avakyan, SS Alexeyev, V. G. Babiya, LL Batueva, GS Galesnika, VK Zabigaylo, VN Kalinin, MG Kirichenko, VV Klochkova, VA

Kuroedova, FK Laurinaitis, FM Rudinsky, A.V.Shuby, PI Yarotsnogo, etc.

However, in the majority of these works the problem of freedom of conscience and confession of faith was treated with some restrictions and infringements of that freedom. Therefore, this problem has yet not lost its importance.

Summary of the main database

Scientific knowledge about the nature of law in the state legal doctrine provides an opportunity to develop the concept and give an idea about the content of state-legal institution of freedom of conscience and freedom of religion, allows us to see its contours, to identify the constituent components, to make recommendations on the quality of existing and missing law.

It should be based on a theoretical construction of the institution and reinforce its legislative practices associated with the assessment of patterns of social relations in the sphere of realization of the right of freedom of conscience and religion.

Legal institution of freedom of conscience and freedom of religion in Ukraine is a set of legal rules governing public relations in regard to achieving the subjective right. However, the complicated and complex nature of freedom of conscience makes it difficult to give a comprehensive definition of this institution. To solve the problem it is necessary to examine in a specific sequence the structural elements of the notion of “freedom of conscience,” and use them to analyze the legal institution.

The key term in consideration of this legal institution is the category of “freedom,” which is one of the basic concepts in modern legal science.

In the Middle Ages freedom was connected to the sinfulness of man, his self-will and disobedience to the divine providence. Systematic basis of the theory of law, which was based on a universal understanding of freedom formed under the influence of Christian traditions, which have been developed during the New Age. The situation of this problem was influenced by the notion of natural law. It promoted the idea of an integral design of

personal freedom. Hobbes, Locke, Spinoza, Montesquieu, Rousseau played an important role in the study of the doctrine of freedom.

Particular attention should be paid to Marxism. The Marxist concept of freedom in its dialectical interaction with needs as opposed to voluntarism, preaches arbitrariness of human acts and fatalism, to regard them as predestined. Marxists defined freedom as an activity, based on the appreciation of necessity, according to which the freedom of an individual, group, class, and society as a whole is not the dream of independence from objective laws, and the ability to choose, to make decisions with knowledge of the case. It confers on the moral and social responsibility for their actions.[1]

The Dictionary by Dahl defines "freedom" as "the will, the scope, the ability to act in one's own way, a lack of restraint, bondage, slavery, subordination to the will of another." Similarly determined is "will": "This arbitrariness of action, freedom, space in the actions, the absence of slavery, violence coercion."[2] This suggests that to some extent will acts as freedom without responsibility, without the ban on violating the freedom of others.

Gaining freedom, including that of religion or belief on a scale that are qualitatively different from the previous ones, has led to the fact that it has been regarded as a matter of course, and partly as of little value, more „ fashionable" than necessary.

On the other hand, faced with the "space of freedom," drawing from their own experience people began to feel the weight of responsibility for the decisions they made, the difficulties one faced, without the intervention of the state, the devices of one's own life, the formation of worldview.

According to the IB St. Michael, mass consciousness is one of the most conservative elements of society and thus is especially difficult to change, but at the crucial moments of

[1] JG Klimenko, *The main periods of formation of the concept of „ freedom" as a legal category*, [in:] *Modern problems of the state, law and legal education.* Proceedings of the scientific-practical, Internet conference, VM Puchnin (ed.), Tambov 2005, p. 70.
[2] V. Dahl, *Dictionary of the Russian language*, V.4, Russian language, Moscow 1982, p. 151, 238.

history, in the face of radical changes in social life, the evolution in consciousness is very fast. Above all, the elements of a new world view appear, because of those aspects of life that affect the everyday interests of people, which cannot be satisfied by the present state of things.

One example of this is the increase in the number of those who recognize the importance of private property as a right, and at the same time the smaller percentage of people who rate fundamental rights (in particular, the freedom of conscience and religion) as "important" or "very important." [3]

Let us dwell on the notion of "conscience," which reveals the content of the institution. Its connection to the concept of religion, the social purpose of the church and other organizations provided the substitution of religious organization from a moral category in to law.

AA Milts argues that, despite the fact that conscience is the subject of ongoing debate, "our knowledge of it is limited. On many things related to this questions we can only give approximate answers, and sometimes intuitive guesses." [4]

By definition found in Dahl's dictionary, "conscience is a sense of moral rights, the inner consciousness of good and evil, the cache of the soul, which responds to the approval or disapproval of each act." Contemporary philosophers define conscience as "a person's ability to exercise moral self-control, self-formulate moral obligations for themselves, to require such to act and produce self-perpetrated acts" [5].

Thus, based on the definitions above, it can be concluded that conscience is a moral assessment of the content of the human mind and the consequences of their own and others' actions.

As for the concept of "freedom of conscience", despite the fact that the components of the categories of "freedom" and "conscience" have independent meaning, this notion is not

[3] IB St. Michael, *Human rights and social nolitichеskie nrotsessy in post-communist Russia* , M. Knowledge, 1996, p. 65.
[4] AA Milts, *Conscience*, [in:] idem, *Ethical Thought. Scientific and journalistic readings*, Book, Moscow 1990, p. 275.
[5] *Encyclopedic Dictionary of Philosophy* , LF Ilicheva (ed.), Knowledge, 1983, p. 620.

a mechanically combined sum of these concepts, and has its own ideological and legal significance. Theoretical and legal model of freedom of conscience includes the concept of freedom of conscience in the objective and subjective meanings. Freedom of conscience in the objective sense can be defined as a system of legal norms that make up the law on freedom of conscience, of a certain historical period in a specific country. Freedom of conscience in the subjective sense are specific opportunities, rights, claims arising out of and within the law on freedom of conscience, that is, the specific competences of people.

Analyzing the various aspects of freedom of conscience, FM Rudinskiy noted the presence in it of moral, philosophical, social, political and legal aspects.[6]

As a social phenomenon of the intangible (spiritual) order, freedom of religion has a high degree of abstraction, which inevitably affects it and is largely due to the different spheres of social life. It is customary to distinguish the most important aspects of freedom of conscience: economic, political, moral and legal. Other relevant facets include ontological, epistemological, philosophical, religious, social, psychological, social and psychological aspects.

Professor SA Avakyan believes that freedom of conscience has two aspects: the freedom of moral and ethical beliefs of man; and an individual's innate (spiritual) ability to choose a similar ethos and embrace it.[7] Freedom of conscience and religion means, on the one hand, the right to believe, and on the other, the right not to believe.

Article 35 of the Constitution guarantees freedom of conscience and freedom of religion to everyone. Article 35 of the Constitution is guarded by the Act of 21 April 1991 "On freedom of conscience and religious organizations."

Freedom of conscience and freedom of religion are considered a single concept, which includes "the right to profess,

[6] FM Rudinskiy, *Freedom of conscience in the Soviet Union: structural and legal aspects*, [in:] idem, *Questions of scientific atheism*, 1981, p. 26.
[7] SA Avakyan, *Freedom of religion is a constitutional and legal institution*, "Bulletin of Moscow State University", series 11. The right, 1999, no. 21, p. 9.

individually or jointly with others, any religion or no religion, to freely choose, possess and disseminate religious and other beliefs and to act in accordance with them." Freedom of religion is a human right to choose and practice any religion. Consequently, "freedom of religion" – just one component of the concept of "freedom of conscience," is dialectically interconnected with it, and is not likely to share in the legislative process. In addition, the reduction of the constitutional rights of citizens in nation – church relations exclusively to religious freedom, that is, the substitution of a broad notion by a narrower one, invariably leads to a denial or infringement of the rights of citizens to freedom of thought.

So it makes sense to replace the term "freedom of conscience and religion" in legislation by a more neutral term "freedom of thought." The main advantage would be the shift from a dualistic worldview to a pluralistic understanding of freedom.[8]

In our opinion, freedom of conscience is a system of interconnected, albeit independent elements.

There is a point of view that defines freedom of conscience as an expression of man's relationship to religion, which is realized in three forms:

- The right to believe in God in accordance with any religion;
- The right to be treated with indifference as to one's religion or atheism;
- The right to be an atheist, that is not to profess any religion, and actively deny the existence of God.

A wide range of researchers define the concept of freedom of conscience guaranteed by compliance with the law.

Freedom of conscience is a complex institution, combining elements of private and public freedom, that is, to practice or not to practice a religion or not to engage in religious worship, conduct religious or atheistic teaching.[9]

[8] GP Luparev, *Freedom of conscience, "holy cow" or the constitutional and legal anachronism*, "Religion and Law", 2002, no. 22, p. 6.
[9] GG Cheremnyh, *Freedom of conscience in Russia*, Manuscript, 1996, p. 94.

In legal literature freedom of conscience is characterized as a purely secular establishment, generated by religious pluralism and the reluctance of the state to interfere in the religious affairs of the citizens.

The interpretation of freedom of conscience by advocates of traditional legal approaches is understood as the right of a person to take or not to take religious beliefs, profess, individually or jointly with others, any religion or no religion, to freely choose, possess and disseminate religious and other beliefs and to act in accordance with them, free from harassment and discrimination on the part of the sovereign and society.

To ensure a proper understanding of freedom of conscience it is essential to conduct not only a thorough scientific analysis of individual provisions of the Constitution, but also of their corespondence with each other, as well as to consider the practical implications.

Conclusions

In defining the essential content of the right to freedom of conscience and freedom of religion all theological writers use the term „religion", however, its legal meaning is still underdeveloped.

In our opinion, the term "religion" is not acceptable in the formulation of the concept of "the institution of freedom of conscience and freedom of religion" as it is out of context. This term should be replaced by the term "world", the value of which is more succinct, informative and reflect current trends in the law. This would lead to defining the institution of freedom of conscience and freedom of religion as a set of legal rules governing social relations in the field of human rights to accept or not accept, choose, change, distribute or express any philosophical system of discrimination and harassment by the state and society.

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9. St. Michael IB, *Human rights and social nolitic*h*eskie nrotsessy in post-communist Russia*, Knowledge, 199

Jeanna Semchuk

THEORETICAL APPROACHES TO THE MANAGEMENT OF INVESTMENT RESOURCES OF SOCIAL ECONOMY BASED ON STRUCTURAL DEFORMATIONS IN THE MARKET ENVIRONMENT ON THE BASIS OF PROJECT ANALYSIS

Abstract

The paper proposes a project analysis of ways to improve current economic situation in Ukraine. A crisis bordering on severe necessitates serious consideration, both scientific and practical, of actions that will boost the ailing economy. The author puts forward several formulas that may contribute to the resolution of these problems.

Keywords

social economy, investment resources, structural deformation, optimization, project analysis

Statement of the problem

The state of social economy in Ukraine is characterized by instability and remains extremely difficult. Negative trends in socio-economic development of Ukraine are the result of political instability, lack of a balanced strategy for economic transformation, not always consistent economic policy, etc.[1] Over the past few years there has been a loss of real impact leverage on the dynamics of economic processes that led to the deepening of structural deformation, delay of social benefits, etc. Therefore,

[1] AM Golovnya, *The influence of the government on the structural transformation of the socio-economic situation of Ukraine in a socially oriented economy*, "Efficient Economy", 2010, № 12 [electronic resource]. Mode of access: http://www.economy.nayka.com.ua/?op=1&z=431.

the government should actively intervene in the social activities of enterprises and clearly define its role in this process.

Recommendations from the state must take into account social resources (facilities, equipment and reserves held by the society which may be needed in various spheres of social life and work[2] and structural deformation in the market environment. The problem of reducing the structural deformations market can be solved by the means of effective implementation of investment projects of social direction.

The analysis of recent research and publications

In literature,[3] there are three approaches to the description of the social economy:

1) ochlocratical (characterized by the fact that this economy operates mainly in the lower layers of society);
2) oligarchical (associated with a focus on the interests of the higher layers);
3) democratic (intended to support the middle class). If the middle class emerges, it is exposed to a significant innovation potential and, affecting different areas of social development, it demonstrates the patterns of behavior for the lower layers of society and is an example for them. The middle class concentrates the most valuable intellectual and professional capital of the society: knowledge, culture, skills, creativity, energy, and so on. Democratic orientation of the social economy, if supported by the state, helps develop and strengthen the middle class with a simultaneous concern about the poor segments.[4]

[2] EV Mamontov, *Place symbolic resource in the social resources of the government* [electronic resource]. Mode of access: http://www.rusnauka.com/7._DN_2007/Gosupravlenie/20571.doc.htm.
[3] TI Zaslavskaya, *Economic Sociology: Formation and prospects*, "Region: economy and sociology", 2007, № 3, pp. 132–150.
[4] Ibidem.

The basis of social economy is its ideology which is rooted in two fundamental assumptions:[5]

1) human rights, the essence of which is that all men are born with equal rights and the task of the society is to create mechanisms for their implementation;
2) the only source of wealth is labor. Thus, the higher the level of distribution of generated material and cultural wealth for labor is, the more just is its social and economic system. The ideology of social economy determines its basic direction associated with the welfare of people.[6]

The analysis of the papers[7] indicates the importance of investment of firms, including social resources and structural deformations in the market environment, such as asking questions in economic practice, contributing to economic growth and the strengthening of Ukraine as a European country with advanced technologies.

In view of this, it is possible to predict, using analysis of the project to ensure suitable conditions for the effective functioning of the investment activity of enterprises, and to consider social resources and structural deformations in the market environment at a regional level.

The purpose of this study is structural analysis of the theory that will make it easier for social activities of the state as a whole and individual companies to consider investment resources and structural deformations under uncertainty and risk, taking into account the principles of project analysis.

[5] The subject of the course "Social Economy" [electronic resource]. Mode of access: http://buklib.net/books/22283/.
[6] Ibidem.
[7] TI Zaslavskaya, *Economic Sociology: Formation and prospects*, "Region: economy and sociology", 2007, № 3, pp. 132–150; The subject of the course "Social Economy" [electronic resource]. Mode of access: http://buklib.net/books/22283/.

The main material of the study

The main objective of this study is to identify a set of factors (parameters) with which you can create the following value (criteria) for processes in the economic environment that are able to take control of investment resources (cash and all other assets of the entity that can be used for investment activities)[8] in social economy with the use of project analysis.

To solve the problem of optimization of social economy, let's have a look at the macroeconomic productional function with three factors, the principles of which are highlighted in literature.[9] Productional function *W* (gross output of goods) is a classical type in the first approximation and depends on *K* (capital), L (labor), *T* (factor of neutral technological progress (STP))[10] – formula (1):

$$W = W(K, L, T) = T \cdot K^{\alpha_1} \cdot L^{\alpha_2}. \qquad (1)$$

Here α_1, α_2 – elasticities for funds K and labor L, respectively.

Productional function $W = W(K, L, T) = W(x_i)$ is the economic-statistical model of the process of production in a given economic system and expresses a stable law-quantitative relationship between volume indicators of resources and production.[11] In the production function $W(x_i)$ we substitute factors that are responsible for social investment resources, social economy.

The purpose of social analysis is to determine the acceptability of the options of the project from the perspective

[8] AG Zahorodniy, H. L. Voznyuk, *Financial and economic dictionary*, Lviv Polytechnic Publishing House, Lviv 2005, p. 496.
[9] OP Romanko, *Competitiveness building enterprise: the nature and properties*, Proceedings of the National University "Lviv Polytechnic", Logistics, 2008, № 633, p. 140; SI Nakonechniy, *Econometrics: [improvised]*, [in:] SI Nakonechniy, TA Tereshchenko, TP Romaniuk, *Econometrics*, Vol. 4th, ext. and revised, Kyiv National Economic University, Kyiv 2006, p. 162–182.
[10] Ibidem, p. 175.
[11] Ibidem, p. 165.

of the users of the region where the project is implemented, the development of a strategy of project realization in order to gain support from the population, achieve project objectives and improve the characteristics of its social environment.[12]

Let us detail the parameters that go into the formula (1). The main indicators assign capacity of spending on social projects and programs *W*, and the factors (xi) – parameters that characterize the effectiveness of social policy (the first group), financial situation (second group), the components of social analysis (third group) that are partially presented in Nakonechniy's paper:[13] x_1 – environmental factor; x_2 – innovative factor; x_3 – rate assessment of the project on the part of the population living in the area of the project, from the standpoint of demographic and socio-cultural characteristics, conditions of residence, employment, recreation and the impact of the project on these parameters; x_4 – factor determining the level of compliance of the project with the cultural traditions of the population in the region; x_5 – the coefficient of establishing the level of impact of the project on the social environment; x_6 – factor in evaluating changes in this social environment: one that will project and others that constrain it; x_7 – factor assessing the impact of social systems on the feasibility of the project and the chances of obtaining the expected results.

Options *xi* form a vector, which partly characterizes social policy – formula (2):

$$x = (x_i) = (x_1, x_2, ..., x_n), \quad n = 7. \tag{2}$$

The corresponding ratio combined (additive, multiplicative) character macroeconomic production function $W(x_i)$ in the second approximation based on formula (2) is written as formula (3):

[12] *Only trade unions – cannot stop layoffs*, Proceedings of the wording "Korrespondent.net", p. 146 [electronic resource]. Mode of access: http://blogs.korrespondent.net/users/blog/nkpu/a107347.
[13] SI Nakonechniy, op. cit., p. 528.

$$W = W(x_i) = a_1 \prod_{i=1}^{7} x_i^{b_i} + a_2 \prod_{i=1}^{7} x_i^{b_i} + a_3 \prod_{i=1}^{7} x_i^{b_i}, \quad (3)$$

where b_i, a_j (j=1,2,3,4) – empirical constants that determine the expert method. In expression (3) components of the productional function are divided into 3 groups and all 7th indices vector (2) included in each of them. Thus, $W(x_i)$ combines indicators of the project environment that meets the investment banking business, which depends on social policy of the enterprises themselves and the state as a whole.

Consideration of the representation (3) is particularly important because virtually every parameter of the production function directly or in combination is an important factor for the evaluation of investment resources of social economy.

Ratio of a mathematical model linking the components of the production function W with the corresponding components of profit P, and the cost of strengthening social capital V is presented as the cited paper by Nakonechniy:[14] formula (4) – (5):

$$\Pi = cW^{r+1} - wL - rK + \lambda(W(x_i) - W) \Rightarrow \max, \quad (4)$$

$$\Pi = d \cdot \Pi + (1-d) \cdot V \Rightarrow opt. \quad (5)$$

Here Π – total income presented in the form of the Lagrangian function, c, r, w – profit function parameters; w characterizes the average wage rate of personnel; L – the average number of employees (in this (current) year); λ – Lagrange parameter; Π_k – function compromise (with corresponding weight coefficients profits that receive, if we consider the production cycle from resources to consumers); d, (1–d) – the weight coefficients that set the expert method. Π components should be changed through taxes and other governmental regulatory mechanisms in the

[14] Ibidem, p. 143.

interests of general consumers by preventing manifestations of monopoly and providing social benefits and privileges.

Efficient targeting of social resources in the final version of the state enterprises could lead to an increase in the state's economy as a whole, as social resources meet the creative potential of individuals, social groups, organizations, their capabilities and creative energy.

Social resources contribute to the development of other resources and capabilities, including financial ones. Therefore, the social control is to use the resources of social investment economy more efficiently.

Indicators of structural deformation (deviation) for the above mentioned parameters can be written as (6):

$$\Delta П, \quad \Delta П, \quad \Delta w, \quad \Delta L, \quad \Delta r, \quad \Delta K, \quad \Delta s, \tag{6}$$

The course of recent events in Ukraine (April – May 2013), when the unemployment rate reaches 1.5 million people, arrears of wages is more than 1.1 billion, if new working places aren't created, the social insurance funds do not work for people, social dialogue in the country is not effective, indicates that there is an all-out assault on the rights of working people.[15]

A striking example of structural deformation (negative) of a social policy is the policy of JSC ArcelorMittal Krivoy Rog[16] which despite the protests of union organization, unilaterally continues:

- mass layoffs;
- the reorganization and liquidation of structural divisions;
- refuses to comply with investment duties, etc. The basis of this is the optimizing of enterprise activity, aimed solely at maximizing profits and not on the parameters and criteria of social processes.

[15] *Only trade unions – cannot stop layoffs*, op. cit.

[16] *Union ArcelorMittal Krivoy Rog asks to counteract the massive downsizing*, Materials Eng. edition of "Radio Free Radio" [electronic resource]. Mode of access: http://www.radiosvoboda.org/content/article/24979606.html.

Findings from this study

Based on the three factors (*T, K, L*) of productional functions of the equations system of mathematical economic models for policy, an analysis of social enterprises has been conducted, taking into account the production and prospects of investment projects. With the help of a given model one can explore the structural deformation in micro- and macroeconomic aspects, taking into account indicators which characterize the prospect of investment projects, social resources and TP (technological progress).

The prospects for further research in the chosen direction. The techniques of constructing the extended system of equations econometric model can focus on optimizing social policy in a macroeconomic scale.

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8. Zaslavskaya TI, *Economic Sociology: Formation and prospects*, "Region: economy and sociology", 2007, № 3, pp. 132–150.
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Yuriy Semchuk

ON CURRENT PROBLEMS IN REFORMING OF UKRAINIAN PROSECUTOR'S OFFICE

Abstract

In the article have been raised some problems emerged in the course of reformation of Ukrainian prosecutor's office. Proposal has been brought forward to retain in the gestion of prosecutor's office the function of supervision as for the keeping within the law service activities by bodies performing operative and search missions, inquest, pre-trial investigation as well as the function of observance of legal standards while execution of court decisions with elimination of supervisory function of keeping the laws declared in Article 1 of the Law of Ukraine "On Prosecutor's Office"

Keywords

prosecutor' office, functions, supervision

Statement of the problem

Resolution №1862 (2012) "On functioning of democratic institutions in Ukraine" passed on Jan. 26th 2012 by the Parliamentary Assembly of the Council of Europe has stated that the Assembly regrets in connection with the fact that Ukraine made no attempt to reform the prosecutor's office in accordance with norms of the Council of Europe in spite of the point that such a reform still belongs to the obligations adopted by Ukrainian side at the moment of her joining [1]. The Plan of Actions in 2011-2014 prescribed for Ukraine by the Council of Europe has noted that there is a need in support for reforming of prosecutor's office minding quite substantial number of cases in which the European Court on Human Rights has found violations of Articles 2, 3, 5, 6 of European Convention on

Human Rights.[1] Some of the decisions testify that Prosecutor General's Office is in want of complex and deep reform [2]. The problem of reforming of prosecutor's office accordingly to European standards has become especially actual in this context.

Solution of the problem requires first of all a theoretical substantiation for the legal status of prosecutor's office and its tasks as good as for function of prosecution, institutional principles and organizational laying in the context of eurointegrational paradigm as a strategic priority of Ukrainian policy.

The analysis of recent research and publications

Problem field of reform in prosecutor's office has attracted attention of B.Voytsyshen, V.Dayev, V.Dolezhan, O.Dragan, O.Yelyzarov, O.Ishchuk, V.Kozhevnikov, T.Kornyakova, V.Kosyuta, O.Koshman, V.Kravchuk, P.Kulagin, A.Lapkin, O.Lytvak, V.Maluga, I.Marochkin, V.Mykolenko, O.Mykhailenko, M.Mychko, S.Novikov, V.Nor, I.Ozersky, I.Oryshchenko, Y.Polansky,Y.Popovych, V.Sukhonos, V.Tatsiy, O.Tolochko, V.Chirkin, P.Shumsky, N.Tsakadze, M.Yakymchuk and other authors. Nevertheless, no enough attention had been paid to conceptualization of reform of prosecutor's office in the context of eurointegrational processes.

The purpose of this study

The aim of the present paper is identification of components that would act in favor of prosecutor's office reform in eurointegrational dimension.

[1] Resolutions 1862 (2012) Parliamentary Assembly of the Council of Europe "functioning democratic ynstytutov in Ukraine" from 26 January 2012 year [electronic resource]. - Access http://zakon2.rada.gov.ua/laws/show/994_a57

The main material of the study

In space of theory to the most important issues appertain that of grounding for legal status of the prosecutor's office itself.[2] There is rather widely spread view that ascribing the prosecutor's office to executive branch of power might lead to political dependence of institution and changes in its legal nature [3]. Notions have been expressed that in this case would be ruined its socio-economic significance [4]. According to Y. Popovych' statement, the experience of activities by national prosecutor's office shows that leading functionaries and officers quite often had been turned into true hostages of some or other political situations and in key moments of Ukrainian history were perceptible to essential pressure by representatives of different branches of power [5, p. 81]. As for our position, in this issue there is a need to appeal to Recommendation №2000 (19) by the Committee of Minister of the Council of Europe,[3] a document declaring that in case if prosecutor's office be a part of government or subordinate to it, a state is to guarantee the point that the government's volume of plenary powers and attitude toward a prosecutor's office are to be established by law; the government realizes its authority functions openly and accordingly to international agreements, national legislation and general principles of law; governmental general directions are to be presented in the written form and published in due way; in case of governmental authority for release of directions as for raising of a cause those are to contain guarantees of openness and fairness accordingly to national legislation; written direction are to be explained in due way, especially if those differ from the prosecutor's recommendations and passed forward subordinately; to concern for addition of explanations and directives to case materials etc. [6]

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[2] *Council of Europe Action Plan for Ukraine for 2011 - 2014 years [electronic resource]. - Access http:hub.coe.int \ c \ document_library \ get_file7uuid = 24875c00-6299-4c4f-9bd*

[3] *Ovcharenko A. Reform of Public Prosecution in Ukraine - possible trends and international experience / Anton Ovcharenko [electronic resource]. - Access http://www.younglawyers.org.ua/view_comms / 141*

There are some proposals as for including a prosecutor's office into the sphere of court power [7]. Notions concerning a prosecutor's office functioning as an autonomous system of state bodies adjacent the court power have been expressed [8]. Groundings have been made for introduction of prosecutor's office as a separate branch of power [9; 10; 11]. A prosecutor's office is treated as a kind of state power [12, p.5]. There are ideas as for reformation of a prosecutor's office into a component of controlling and supervising branch of power.

In this contents there is need to note that there are different models of prosecutor's office in the world. In France, Netherland, Denmark, Poland, Romania, Israel, Japan, Estonia, Syria prosecutor's belong to Ministries of Justice. Magistrates of Prosecutorial Corps represent executive as well as court powers in Belgium and at the same time make a part of Belgian Corps of Judges.[4] In Albania the prosecutors are organized into a centralized body and co-operate with a court system. In Bosnia and Herzegovina a prosecutor's office acts as an independent state body etc. In this connection an accent is to be put on the next point: Conclusion № 3 (2008) by Consultative Counsel of European prosecutors has underlined the claim that there are no common international legal norms and rules as for the tasks, functions and organizational structures of a prosecutor's service.[5] Each state has possessed quite sovereign right to determine own institutional and legal procedures aiming to realize governmental functions in defense of human rights and state interests on the level of national and international obligations as well as in keeping the supremacy of law as a fundamental principle. Harmonization of different systems used nowadays by "broader Europe" has been based upon regulations of Convention on the defense of human rights and principal liberties including the Law of Precedence by the European Human Rights Court [13]. The

[4] Popovici EM Ways of Prosecution of Ukraine / EM Popovici. - H.: Tornado, 2009. - 352 p.

[5] Yakymchuk M. Current issues of transformation functions prosecution and its role in the government of Ukraine / Nicholas Yakymchuk / / Office of Ukraine: history, present and prospects: Proceedings of the International Scientific Conference (Kyiv, Nov 25. 2011..) - Kyiv: National Academy of Prosecution of Ukraine, 2012. - S. 35 - 39.

variety of models for prosecutor's offices has been treated in the Answer of the Committee of Ministers to Recommendation of PACE №1604 (2003) [14]. In Commentary on Recommendation №2000 (19) of the Committee of Ministers the accent has been put on the point that no attempts for unification of existing systems or creation of any supranational – in this strict meaning – body should be considered.

To the most important issues has belonged one as for the functions of a prosecutor's office. Consent has been reached in the statement, that "groundless change in complement and character of functional activities of a prosecutor's office can reduce the effectiveness of its position in the sphere of national security [15, p.6]. On this plate there is a need to stress the problem field of a supervisory function as a duty of prosecutor's office. In accordance with provisions of Article 121 of the Constitution of Ukraine the prosecutor's office of Ukraine is entrusted with 1) the support of state prosecution in the courts; 2) the court representing of a citizen's or state interests in cases defined by law; 3) supervision after keeping the law by bodies that conduct operative search activities, inquiry and pre-trial investigation; 4) supervision after keeping the law during the execution of court verdicts in criminal cases as well as while the usage of other means of compulsory character and measures connected with limitations of citizens' personal liberties. In Chapter XV, paragraph 9 of Transitional regulations to the Constitution there is indication that the prosecutor's office has to continue in accordance with current legislation the execution of supervision after keeping and usage the law as well as function of the preliminary investigation – until the new laws regulating the activities of state bodies as for the control after keeping the laws will be brought in operation and the formation of a system of pre-trial investigation will be completed and the laws that regulate its functioning will be adopted and activated.[6]

[6] Recommendation Rec (2000) 19 of the Committee of Ministers to member states on the role of public prosecution in the criminal justice system (6 October 2000) [electronic resource]. - Access https://wcd.coe.int/ViewDoc.jsp?id=1568277&Site=DC

After the entering into force of the Law of Ukraine "On insertion of changes to the Constitution of Ukraine" issued on Dec. 8th 2004 had been introduced paragraph 5th, in accordance with which to the gestion of prosecutor's office in fact had been left general supervision only. The mentioned function had caused criticism from the side of Venetian Commission.[7] Critical voices had underlined the point that during acceptance of Constitution in 1996 a notion was spread as for expectant short-term command of the prosecutor's office in functions of supervision after keeping and usage the law as well as the function of preliminary investigation. The remark had been made that in 2004 to the Article 121 was added a statement charging the prosecutor's office with fifth function: "supervision after keeping a human's and a citizen's rights and liberties, keeping in mentioned issues the law by the bodies of executive power, bodies of local self-government, officers and service persons". In Conclusion of 2004 as for the corresponding statements of the Law on Prosecutor's Office the Venetian Commission noted that mentioned function was to be considered as unacceptable. It reflects a proposal aimed to introduce the emendation to Constitution, that had been presented to Verkhovna Rada (Supreme Counsel) in 2003 and got no required number of voices in its favor. In Conclusion as for the project of emendations to Constitution (CDL-AD (2003)19) the Venetian Commission had appealed the Verkhovna Rada to decline the acceptance of the mentioned emendation and Constitutional Court of Ukraine had expressed the doubts concerning correspondence of the emendation to the principle of division of power mandates. Nevertheless in the project of law (2009) a proposal had been made to pass this function to the prosecutor's office. Hence in Conclusion as for the project of the law "On the prosecutor's office" issued in 2009 there was note, that its acceptance would in result cause establishing of prosecutor's function with constant character, although earlier,

[7] Kravchuk VM Prosecutor of Ukraine as a public authority: institutional and legal aspect dis. for the sciences. degree candidate. Legal. sciences: 12.00.10 / Valeriy Kravchuk. - K., 2012. - 224 p.

accordingly to Transitional regulations to the Constitution it was considered to be only temporary.

A notion is to be made here, that no criticism could be expressed as for supervision after keeping the law by bodies carrying out operative search activities, inquiry, pre-trial investigation as well as supervision after keeping the law during the execution of the court verdicts. In this connection we consider as quite expedient the support for the project of the law of Ukraine "On the prosecutor's office" prepared by the Commission for strengthening of democracy and approved by 92nd Plenary Session of Venetian Commission, document №667/2012.[8] In the Project has been made explicit indication that bodies of prosecutor's office should be charged with: 1) supervision after keeping the law by bodies that conduct operative search activities, inquiry and pre-trial investigation; 2) support of the state prosecution in courts; 3) supervision after keeping the law during the execution of court verdicts in criminal cases as well as while the usage of other means of compulsory character and measures connected with limitations of citizens' personal liberties; 4) representation of person's or state's interests in courts in certain cases defined by the Articles 61and 62 of the present Law [17]. This situation corresponds to Recommendation 1604 of the Parliamentary Assembly of the Council of Europe that has recognized the practice of supervision after the proper functioning of bodies responsible for investigation of breaking of the law and for persecution of delinquents [18].

The next quite important component bringing the shape to the problem of reforming of the prosecutor's office is the issue of non-criminal functions of prosecution. [9]

In Recommendation №2000/19 of the Committee of Ministers of the Council of Europe presented to member-countries and titled "Concerning the role of prosecutor's office in

[8] Talochka A. Reform of Prosecution of Ukraine: institutional perspective / Alexander Talochka / / Office of Ukraine: history, present and prospects: Proceedings of the International Scientific Conference (Kyiv, Nov 25. 2011..) - K., 2012. - S. 45 - 49.
[9] Chyrkyn Kontrolnaya authority VE / VE Chyrkyn / / State and Law. - 1993. - № 4. S. 18 - 20.

the system of criminal justice" there was a note claiming that prosecutor's service is a state's body working in the name of public and ensuring the legitimate nature for the usage of law in public interests in case if breaking of the law entails criminal penalty taking into consideration the person's rights on the one hand and demand for efficiency of criminal justice on the other. At the same time in Commentary to this paragraph of Recommendation more exact definition had been placed concerning the expression "in case if breaking of the law entails criminal penalty" as one that signified the criminal law in the broader sense of word. The term "criminal law", as Commentary had set it forth, was not used, as many persons associated it with criminal codices, especially at the time, when constantly grown sphere of law was defined as "criminal" not because of its possible connections with which-so-ever law considered as "criminal",[10] but rather in the view of criminal sanctions, mentioned in its provisions. Stress should be put on the point that in Recommendation of PACE №1604/2003 a notion is expressed that the prosecutor's office might possess some additional functions with no relations to the sphere of criminal law [18]. In Recommendation №2012/11 issued by the Committee of Ministers to member-states "On the prosecutors' role beyond the system of criminal justice" approved by the Committee of Ministers on Sept. 19th 2012 the prosecutors' role beyond the system of criminal justice has been underlined.[11] Mark has been made that in case as to which the national legislation would provide fulfillment of prosecutor's functions beyond the system of criminal justice, their task is to be consisted in presentation of general or public interests, defense of the human rights and main liberties as well as in supporting the supremacy of law [20]. Non-criminal functions of a prosecutor's office have been stressed in Conclusion №3 (2008) exposed by the Consultative Council of

[10] Elizarova AB Role and Place of prosecutorial supervision authorities in Triada / AB Elizarova / / History of State and Law. - 2003. - № 6. - P.24 - 28.

[11] Andryyanov VN Prosecutor of the Russian Federation in the system Separation of powers / VN Andryyanov / / Journal Tyumenskoho of the State University. - 2009. - № 2. - S. 73 - 78.

European public prosecutors [13], the document pointing out that the prosecutor's services of the majority member-states of the Council of the Europe have possessed certain tasks and functions beyond the system of criminal justice. The spheres of competence have been quite different and included civil, family, work, administrative, electoral laws as well as the care for environment, defense of social rights and rights of vulnerable groups of population as persons under age, invalids, people of moderate means. Mention has been made that in some member-states tasks and amounts of prosecutor's duties in this sphere might exceed the load of prosecutor's part in the system of criminal law proceedings. But accentuation has been put upon the clause that if the prosecutor's services should fulfill certain functions beyond the sphere of criminal law, any intervention in activities of those services would be avoided; there is need of secure realization for their functions in strict accordance with the principle of divided powers. Besides, all acts of prosecutors should be characterized by honesty and impartiality whereas their functions would be realized in the name of society, for the sake of state interests and with the aim of securing the supremacy of law and keeping general right and liberties.

The prospects for further research in the chosen direction.

Thus, in conclusion we'd like to express quite grounded notion that there are all reasons for leaving the prosecutor's office with the function of supervision as for keeping within the law service activities by bodies performing operative and search missions, inquest, pre-trial investigation as well as the function of observance of legal standards while execution of court decisions with elimination of supervisory function of keeping the laws declared in Article 1 of the Law of Ukraine "On Prosecutor's Office".

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Rostislav Sopilnyk

THE RIGHT TO A FAIR TRIAL AS A EUROPEAN STANDARD OF HUMAN RIGHTS IN CRIMINAL PROCEEDINGS

Abstract

This article examines the right to a fair trial as a European standard of human rights in criminal proceedings. The essence of fairness criterion that applies in relation to the properties of the verdict, which is predominantly evaluative, subjective.

Keywords

litigation, human rights, criminal procedure, the European standard, Justice of Ukraine, legal proceedings, the verdict of the court.

Statement of the problem

The right to a fair trial is one of the essential building mechanism of criminal justice system that would embody all the nuances of European standards to reform the criminal justice in Ukraine.

The analysis of recent research and publications

D. Enikyeyev argues that the right to a fair trial is of fundamental importance and provides the basis for the principle spravedlyvosti1.

In this regard, LM Ashirov offers distributed implementation of the provisions on the validity of all proceedings and decisions of the criminal protsesu1 subjects.

And despite of the feasibility and reasonableness of this approach, the possibility of specified provisions related to overcoming difficulties both theoretical and practical. First, the

right to a fair trial – is primarily a general principle of legal procedure that is closely intertwined with the concept of the principle of legality. Secondly, the use of the term "justice" traditionally associated only with a court where it appears one of its main properties. A.M. Baranov, for example, generally denies the possibility of application criterion of justice to procedural decisions that are intermediate in nature. One explanation for the above points of view, can be considered the essence of fairness criterion that applies in relation to the properties of the verdict, which is predominantly evaluative, subjective.

The main material of the study

In this regard, we consider it necessary to draw attention to the fact that the interpretation of justice, in the context of European standards, based primarily on the nature of the compliance protsesualnyh rights of criminal proceedings, based on the provisions of the ECHR and the ECtHR interpretation of the existing system, and therefore has objective. From this we can conclude that the nature of the procedural decisions at any stage of the criminal justice system depends on the validity of the whole movement of criminal proceedings in the criminal case, and that, above all, points to the impossibility of separating justice in its objective sense from a particular action.

In practice, the ECtHR made the principle that the provisions of justice apply not only at the trial stage, but the stage of pre-trial proceedings ("the demands of justice refers to the process in general and not limited to adversarial hearings" 3) as a violation of the rights of interested persons to this stage affects the possibility of further fair procedure. From the textual content of art. 6 of the ECHR, which is a set of separate powers of the subject, expressing some level of European standards in the face of the trial, the understanding of a fair trial must include the following provisions: the independence and impartiality of the court, the publicity of the proceedings, the proceedings in terms of reasonableness a case, equality of parties and

adversarial in criminal proceedings, the right to legal assistance. Guarantees the right to a fair trial can be differentiated on the fundamental (independence and impartiality of the court, the publicity of the case, the reasonableness of the terms con-tion of the case) and status (equality and adversarial procedure in criminal proceedings, the right to legal assistance). Fundamental safeguards aimed at creating a fair trial, warranty status - to ensure parity between the parties during the proceedings. Let us examine them in detail.

1. Independence and impartiality of the court. As required by § 1 of Art. 6 ECHR, the cases should be independent and unbiased (impartial) court. Since the provisions of said paragraph c. 6 may give the impression that the guarantees of a fair trial apply only to proceedings in court. But on this occasion the ECHR clearly established that ensure the right to a fair trial is impossible without security of access to the courts. Therefore, according O.A. Banchuk and P.O. Kuibida, the right to "access to justice" has become a complex category that is regarded as one of the preconditions for the existence of a fair trial. The basis of a fair trial, access to the procedure is a fair trial, justice which must be real, not formal.

The right of access to a court - a person able to submit the case to trial, and the court should consider it without unnecessary and undue legal or practical obstacles. This right, according to S. Shevchuk entrusted to the State as a negative obligation to refrain from creating undue procedural barriers to access to justice and positive - to provide practical and effective access to justice.

Independence, impartiality and legitimacy - the three are closely intertwined, organic guarantees of a fair trial. ECHR judgment determines the body, performing judicial functions must meet several requirements: independence against the executive branch as a party in the case, the terms of office of its members, the guarantees provided by the procedure which it operates.

When it comes to the independence of judges, mostly meant their independence from other state agencies and officials. Is no

exception and independence of the legislature (parliament) of the country, which can be designed to influence the courts. To determine the level of independence of a tribunal in the case ECHR is guided by several criteria:

- The procedure of appointment of judges;
- The duration of the judges;
- Availability of external signs of independence;
- The guarantee of judicial activity, hindering influence them in the exercise of justice,

Important in the process of appointment of a person as a judge of the Court is the claim that the fact that the appointment of a member of the judiciary by the executive itself is not a violation of the Convention. Also, when considering specific cases the European Court concluded that, for example, 6-year and 3-year term of office of judges sufficient to guarantee its independence.

The principles derived from EU practice were made in relation to criminal proceedings, particularly with regard to the issue of impartiality of the court. This is a concept that has become the practice courts value obtained for the narrow sense, which usually it is embedded. This is because the practice of the ECHR under Art. 6 has undergone significant evolution observed COP ¬ particular, increased attention to external attributes of impartiality, as well as increased public interest to guarantee fair ¬ opportunities justice. According to the ECtHR case law, impartiality ¬ ness can be assessed in different ways. There is a distinction between subjective approach, trying to figure out what the judge thought deep down in similar circumstances, and objective approach, ¬ kanym called to show that the behavior of the judge excludes all sorts of doubts about his impartiality.

Impartiality as requiring the court indicates that the court hearing the case must be subjectively impartial, that none of its members should not have any personal interest and bias. Judges should be free of personal feelings, tastes, preferences. It is believed that the judge is impartial if there is no evidence that

would indicate otherwise. That is, in the case there is a presumption of impartiality of judges. European Court of Justice, for example, questioned the impartiality of the court, a judge or jury clearly expressed their racist attitudes on defendants in criminal cases. Also uperedzhenym Court recognized that under preliminary investigation applied to the defendant's precautions and then heard the case on the merits.

It also has to be objectively impartial, that should be enough safeguards to exclude any legitimate doubt in this regard. This aspect imposes additional requirements for judges to participate in the political life of the state and any other activity, as this may cause suspicion in the personal interest of the judge when deciding the case. The judge will not be impartial and objective in the case of addiction. Dependence of judges to be stored until it is established mechanisms that eliminated the possibility of influence of illegal persons who have some leverage and can use them for profitable results resolve the case out of the administration of justice procedures.

European Court noted that the requirement of impartiality is not just the judges conducting proceedings in courts of first instance, but also has provided appellate and cassation courts in the event of the establishment and functioning of the state.

From the standpoint of the impartiality of judges may be questions of "active" or "passive" role of the courts in deciding cases. The above question in Ukrainian legal science, as opposed to the practice of the ECHR, and is regarded as part of the principle of adversarial proceedings.

Yes. courts of criminal jurisdiction in Ukraine granted considerable powers, indicating a bias conviction in criminal court cases. They are empowered to delegate operational and investigative authorities take appropriate measures to search for evidence in the case (including with Art. 66th CPC of Ukraine), and send the case back for further investigation for reasons of incompleteness or incorrectness of preliminary investigation (Article 281 of the CPC of Ukraine), delegate authority, who conducted the investigation, do some investigation (Article 315-1 Code of Ukraine).

If such powers of the court are not considered by the European Court as a violation of the adversarial trial, they can serve as a basis for any doubt in the impartiality of the court. Since vytrebovuyuchy own evidence and making decisions, going beyond the requirements of the parties in the case, making their own order and remit the case for further investigation, the court both on the side of one of the parties to the case.

Speakers called CE authority to use the courts send criminal cases for further or new investigation "archaic practice" and urged Ukrainian authorities to review the relevant provisions of the Criminal Procedure Code.

2. Publicity of the case. Publicity of the trial is one of the essential guarantees of fair process. Paragraph 1 of Art. 6 ECHR obliges judges to ensure publicity of criminal proceedings. Publicity protects actors from justice in secrecy, outside the control of the public. Publicity is a means of maintaining confidence in the courts and in furtherance of the purpose of Art. 6 ECHR: ensure fairness to all participants of the trial process.

In the publicity of proceedings means at least two aspects:

1) public hearing if any person, including the parties and counsel may be present during the proceedings;
2) open ad a judgment upon consideration of the case.

"The public nature of the proceedings referred to in paragraph 1 of Article 6 (ECHR - clarification of the author.] Protects the sides of the secret administration of justice beyond the control of the public, it is one way of ensuring confidence in the courts. Ensuring transparency of justice, it contributes to purposes of Article 6 § 1 (ECHR - clarification auth.) - namely, the fairness of the trial, the guarantee of which is one of the fundamental principles of every democratic society within the meaning of the Convention ", - stated the European Court in the case" Pretto and Others v. Italy ".

Publicity (openness) trial may be limited in cases proceeding closed hearings. These meetings, according to the ECHR can be carried out for:

- Protection of morals, public order or national security;

- Interests of minors;
- The protection of the private life of the parties;
- Interests of justice.

Another case allowable limit open court hearing, when it can be treated without the parties and other interested persons was put directly ECHR. According to his practice in appellate litigation and cassation where doslidzhuvatymutsya factual circumstances, but only verified application of the law, can occur without participation of the parties and it is not to violate the principle of openness, justice, "the Court has repeatedly stated that if the proceedings in the Court first instance was public, the lack of "openness" in the proceedings in the courts of the second or third instance may be warranted characteristics of the procedure in the case. If the appeal concerns only questions of law, leaving aside the factual circumstances of the case, the requirements of Article 6 (ECHR - clarification of the author.) Can be observed even when the applicant was not given an opportunity to be heard on appeal or cassation court in person. In the latter case it is of such authority before which the school is challenged ¬ lyuvaty established facts of the case, but the interpretation of the rights violated.

"On the principle of publicity of the trial drew attention to the Committee of Ministers of the Council of Europe as the need placing ¬ judicial rulings in electronic databases.

One of the purposes of the adoption of this document is directly reflected in the preamble and Guidelines provides that "full awareness of the practice of all courts is one of the main conditions of fair application of the law." This goal can serve as the selection of judicial decisions that are made in accordance with certain criteria. These criteria are:

- hierarchical selection, i.e. selection of rulings one or more instances depending on their hierarchical status in the legal system of a country;
- geographic selection, which is to select the judgments of the geographical location of the court;

- selection by fields of law, that the selection of judicial decisions in one or more fields of law such as criminal law, environmental law, procedural law, tax law, etc.;

Selection in fact, that the selection of judicial decisions depending on whether they are legal interest. "Legal interest" means that if the judgment creates a legal norm, for example, sets a legal precedent that reflects the procedural practice so that the decision is or may be important for proper and detailed information on the case law in this or that field of law.

Sampling should be carried out in such a way as to ensure objectivity and representativeness of the database. Conducted the selection of judicial decisions should provide a broad and all-surround access to information on court decisions and, on the other hand, preclude accumulation of useless information.

Important in the selection decisions are issues of confidentiality and protection of personal data. In accordance with the provisions of Recommendation, they must be regulated domestic law of the country in accordance with the principles of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data. After selection decisions, they must be submitted and rozmishuvatysya, usually in the form of complete original texts in the automated search engine.

In Ukrainian procedural law principle of publicity of the trial with the principles of transparency and openness of the trial. Article 129 of the Constitution of Ukraine comes to publicity trial, Article 9 of the Law of Ukraine "On the Judicial System of Ukraine" - the transparency and openness of the trial proceedings, Article 20 Code of Ukraine - the publicity of the trial. Often the principles of transparency and openness are identified, but in the present law and doctrine they divorced.

Transparency requires the court to ensure that persons whose interest refers to the right, the right to know the date, time and place of hearing it, the right to be heard in court, and be aware of all decisions taken in the case.

Openness trial gives individuals who are not involved in the proceedings, the right to be present at the hearing. Procedure.

Limit this right only in the case of closed hearings in certain cases, by law you ¬.

Common reasons for holding closed hearings contained in Ukrainian criminal procedure law, the content in general coincide with the list contained in the Convention. In particular a closed hearing may be conducted with a view to ensuring secrecy in cases of crimes committed by persons under sixteen years of age, and cases of sexual crimes, prevention of disclosure of intimate aspects of people, the safety of persons taken under protection (Part 2 of Art . 20th CPC of Ukraine).

Terms of publicly ads judgments contained in paragraph four of article 20 of the Criminal Procedure Code, which stipulates that judgments of courts in all cases prog ¬ loshuyutsya publicly.

National procedural law does not provide features making judgments of the higher courts and these procedures are subject to the rules making judgments at first instance.

Important guarantee transparency of court operations and control it from the public and yuku is a publication of the texts of judgments. Unfortunately, in Ukraine court decisions are published informally and selectively, with the exception of decisions of the Constitutional Court of Ukraine. Therefore, due to the better implementation of the principle of publicity should, in our view, to introduce mandatory publication in all judicial decisions, such as the Internet.

In implementing the published texts of judgments should be clearly defined, or the decision to publish the full names of the actors, as is customary in the U.S., or encrypt personal information, as in many European countries.

Despite the fact that announced in open court judgment becomes public, search a database of judicial decisions should not be given the opportunity to use it to gather information about a particular person. Therefore, to prevent such occurrences in the texts of court decisions open to the public, it is advisable not to disclose information that make it possible to identify the person - in particular, the names and pri-withhigher, address of residence. It is thus ensured the right person for the privacy of the Law of Ukraine "On access to court decisions."

3. The reasonableness of the terms of the proceedings. Part 1 of Art. 6 ECHR enshrines the right of everyone to a fair and public hearing within a reasonable time by an independent and impartial tribunal, the question of the validity of any criminal prosecution.

SV Shevchuk, who has devoted much of his research to compliance with the ECHR Ukraine, says that compliance with the requirements for a reasonable period of lawsuits was not the biggest problem for the legal systems of most Council of Europe member states. Currently, there is no clear plan of action to overcome it neither national governments nor the ECHR. The largest number of cases against Ukraine in recent years with regard to violations of the national courts of the right to a fair trial within a reasonable time.

Introducing a reasonable time frame and focus of national mechanisms for the protection of the right to respect for their bodies of inquiry, investigation, prosecution and trial would: 1) bring Ukrainian legislation on criminal procedure in line with the ECHR and 2) improve the image of Ukraine in Europe;

Three) significantly reduce the state budget expenditures to persons whose rights violations to trial within a reasonable time recognizes the ECHR, and 4) a step towards the establishment in Ukraine of the rule of law, and 5) protect the interested participants in the criminal process, and officials who carried his from illogical legal liability for violating the terms of formal proceedings in criminal cases.

4. Equality of arms and zmahalnistu trial. The principles of equality of arms and adversarial litigation in ECHR derived from the principle of the rule of law, which in particular finds its expression in the provisions of Article 6 of the ECHR on fair trial.

As for the principle of equality of arms ECtHR noted that this principle extends to cases of civil rights and obligations, and in criminal cases [168] and requires that each party was given reasonable opportunity to present his case in a way that does not puts it in a much less favorable position compared with an opponent.

Requirement of adversarial litigation in particular the ECHR is formulated as follows: "The principle of competition means that the parties in criminal proceedings have the right to examine all evidence or observations involved in the case to comment."

The principles of equality and competitiveness as elements of a broader notion of a fair trial, referred to in paragraph 1 of Article 6 of the ECHR, partially embodied in the ECHR and in paragraph "c" of paragraph 3 of Article 6, which guarantees to persons charged with a criminal offense such competitive rights as the right to question witnesses against him or have them examined, and requiring attendance and examination of defense witnesses under the same conditions as witnesses against him. These capabilities persons accused of committing criminal offenses guaranteed not only in litigation, but also on pre-trial investigation, as Article 6 of the ECHR also apply to pre-trial stage of litigation.

In Ukraine the principles of equality and adversarial trial enshrined in Article 129 of the Constitution of Ukraine, and in particular Article 16,16-1 PDA Ukraine.

Equality of parties to the case means giving them equal rights and equal responsibilities to participate in the process and defending their position. Equal rights (obligations) does not necessarily mean that they must be the same, it is that each of the parties have rights and have responsibilities, adequate rights and obligations of the other party.

One way to better implement equality and competitiveness in the pre-trial investigation may staty'pokladennya authority to address above procedural issues (involving a lawyer, translator, collection of evidence, examination, etc.) with the prosecution of judges.

The Convention on the participation of the defendant in court hearings meet the provisions of Article 262 Code of Ukraine, which provides for mandatory participation of the defendant in meeting trial court in criminal proceedings. Found only two cases in which the hearing is possible in the absence of the defendant;

- if the defendant is outside Ukraine and avoids coming to court;

- if the defendant asks to consider the case without a crime for which there can be sentenced to imprisonment.

A violation of the requirements of the mandatory participation of the accused in the court considered grounds for nullity on appeal (Section 6 of Part 2 of Art. 370 of the CPC of Ukraine).

Also considered mandatory call to the Court of Appeal convicted who sent the request to participate in the hearing, and if the appeal raises the question of the deterioration of its situation (Part 2 of Art. 358 CPC of Ukraine).

5. The right to legal assistance. ECHR considers the right to legal assistance component of broader in scope and importance of the right to Sulu as guaranteed by Article 6 of the ECHR. For cases of criminal prosecution ECHR emphasized precedence to ensure proper protection of the accused. The right of every person accused of a criminal offense, an effective defense lawyer is one of the attributes of a fair trial.

Subparagraph "c" of paragraph 3 of Article 6 of the ECHR guarantees a person accused of a criminal offense, the following rights:

1) to defend himself in person;
2) through legal assistance of his own choosing;
3) use free legal assistance if the person does not have sufficient means to pay for legal assistance, and if the interests of justice.

Many ECHR judgments concerning the question of legal aid. ECHR did not make the interpretation of the term "free" is used in paragraph 3 (c) of Article 6 ECHR.

In the context of criminal justice protection plays a very important role. Subsection "c" claim to Art. 6 ECHR provides kinds of rights to protect the accused: first case of its right to defend himself in person, then as an alternative it is entitled to provide his defense through an attorney, and finally, in some cases it may be given free legal aid at state expense.

Recognizing the right of every accused to defend himself personally or to use the assistance of a lawyer, the Convention does not specify the conditions under which these rights.

ECHR provides that legal aid person may rely only on the mandatory presence of two bases at once:

1) lack of funds in person;
2) the interests of justice require such assistance.

To determine the fact of lack of funds in the ECHR person recommends national authorities to investigate the application entity of its property, help the competent authorities, the declaration of income and property osoby12.

In addition to poverty as a criterion for legal aid people in ECHR states that legal aid is required interests of justice. In cases of criminal prosecution for providing free legal aid to the poor are always the interests of justice due to the existence of a threat of imprisonment and the severity of other pokarannya1.

The system of legal aid in Ukraine cannot be considered adequate and complete with regard to legislation and its practical implementation – stated in the report of the Parliamentary Assembly RYE3. In Ukraine the right people at the proto-language support, including on legal aid, guaranteed by Article 59 of the Constitution of Ukraine, Article 8 of the Law of Ukraine "On the Judicial System of Ukraine" 4 and PDAs Ukraine.

Advocates appointed in criminal cases tend to become less experienced attorneys who can use it to do to improve their skills. Therefore, to assure the quality and effectiveness of such legal aid is difficult to speak.

Questionable in view of the requirements of the ECHR and the ECtHR understanding of the concept of "chargeless" looks provisions of Part 6. 93 Code of Ukraine, according to which the convicted person who provided free legal assistance, or those who have a financial responsibility for the actions of the convicted person may be obliged to reimburse state funds spent on legal aid. In order to prevent violations of the ECHR appears that judges should refrain from imposing on convict duty to reimburse state

costs of legal assistance even in the case of a person consent to such compensation.

Legal assistance in criminal matters will not have enough efficiency to as long as prosecutors are authorized to remove from the protection of attorneys against whom criminal proceedings (paragraph 4 of Part 1 of Art. Ukraine 61 CCP). Speakers CoE recommended repeal these provisions because they "provide an opportunity for abuse by nominating fabricated charges against an attorney" 2.

The above analysis confirms the relevance for Ukraine ECHR concluded that the state is not enough to fix in the law davtsi "theoretical and illusory rights" and to take measures to their "practical and effective implementation."

Therefore, to ensure the right to legal assistance, including legal aid, can facilitate the adoption of the law on legal aid and the development of appropriate infrastructure. It should provide an annual budget funding of these costs.

The prospects for further research in the chosen direction

As a result of the presentation should be noted that the right to a fair trial as a European standard of human rights in the criminal process – is defined in Article 6 of the Convention provisions guaranteeing a fair trial, and approved on the basis of Article 6 of the ECHR, which affect enforcement of the national criminal justice system and are binding on the latter.

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SCIENTIFIC APPROACH TO THE PROBLEM OF DIVISION AND RECIPROCAL INHIBITION AND COUNTERPOISES OF STATE AUTHORITIES IN UKRAINE

Abstract

In the article were examined basic theoretical approaches and oddities of distribution and reciprocal inhibition and counterpoise of state authorities in Ukraine. Analyzed was basic components and oddities of principles of distribution of the state authority in the condition of fixation of the democratic state.

Key words

system of distribution of authority, reciprocal inhibition, mechanism of cooperation, state authorities

Defining the problem

It is worth noting that, until recently, the problem of the application of the inhibition and counterbalance system as a way of implementing the principle of separation of Ukrainian powers has not been taken into account in general. Ukraine was for a long time one of the countries of the Soviet Union, where such a rule was considered bourgeois and never was regarded even at the conceptual level. Regardless of the fact that according to the Constitution of the USSR supreme power of the state belonged to the Verkhovna Rada of the Ukrainian SSR, in fact, it was the power of the CPSU on the basis of Art. 6 of the Constitution, which announced it the center of the political system. The local councils were considered as the local government bodies, therefore the local government in fact did not exist.

Nowadays, during the building of a democratic state we realize the idea of inhibition and counterbalance to not only prevent the excessive concentration of state power, but also to ensure the stability and sustainability of the activities of state

institutions, to their better organization and harmonization, and to defeat any confrontation within the mechanism of the state.

The analysis of existing research and publications

The basis for writing this article are ideas of well-known scientists, among whom it is worth mentioning A. S. Awtonomow, N. W. Hajdajenko, W. I. Danyłenka, M. W. Cwik, O. W. Petryszyn, Ł. W. Awramenka, W. W. Łazariew, H. F. Szerszeniewicz, M. N. Marczenka, O. F. Skakun and Ł. M. Entin.

The purpose of the article

Regardless of the fact that in the scientific literature to issues of division, mutual inhibition and counterbalance the government paid a lot of attention, due to the overlapping judicial reform, a matter of examination of the principles and power of attorney between the legislative, executive and judicial powers becomes particularly timely now. Taking into account the mentioned above, the purpose of this article is a theoretical analysis of current issues related to the unity of government and the division of its branches, whose activities must not be contrary to the democratic development of the country.

The main contents of the study

The system of inhibition and counterbalance plays an important role in the formation and the system of powers separation. "In a democratic constitutional state, – writes the Russian political scientist W. Danyłenko, – the idea of distribution (including dismemberment, separation, in other words inhibition of power and controlling it) is an essential part of the political system" [1, p. 726].

The problem of power separation, as well as the issue of inhibition and counterbalance in modern societies such as were examined in the work of N. W. Hajdenko [2, p.11], where a theoretically methodological basis for shaping the optimal

model of inhibition and counterbalance in the political process of modern Ukraine and was analyzed in detail. “Modern system of inhibition and counterbalance, – says the author – is an independent, integral part of the process of rendering power in modern countries, including not only the state, but also the entire system of power in society by allocation of power to each institution, as well as to the nation, who is source of power in a democracy, the appropriate permissions to ensure the possibility of interaction between them, not only to avoid the concentration of power in one of them, but also to improve the relationship between them in the issue of organization and the implementation of the political process, promoting the progressive development and governance in society” [2, s. 11].

It is also worth noting that the system of inhibition and counterbalance is active if the competence of all organs of state power provides both unique and shared powers of attorney, which means building a mechanism of cooperation and interdependence of all branches of power.

Not offering a detailed analysis of the practical problems of power in Ukraine, we would like to emphasize what is most important. In the Art. 6 of the Constitution of Ukraine (1996) it is noted that "state power in Ukraine is exercised on the basis of the principles of its division into legislative, executive and judicial powers", and the bodies of legislative, executive and judicial powers "exercise their powers in the limits defined by the Constitution and accordance with the laws of Ukraine "[3]. Moreover, in Art. 7 of the Constitution of Ukraine it is noted that "in Ukraine is recognized and guaranteed local government." Accordingly, N. W. Hajdenko rightly emphasize: "In unitary states is almost impossible observation of inhibition and counterbalance components under vertical organization of power. This is due to the fact that the unitarity provides for the unity of state power and the transfer of powers to local authorities is very difficult "[2, p. 10]. This comment is very true of the system of government in Ukraine, where the functions and status of local government as part of the government are not sufficiently well defined.

The mechanism of reciprocal inhibition and counterbalance of the legislative and the executive branch is to ensure their cooperation as the branch of the only state authority. The legislative authorities inhibit the executive, because the executive authorities must not exceed the limits set by the laws passed in parliament. The epitome of the legislative branch is the Parliament, which shapes or participate in the shaping of the highest executive body – the government and parliamentary controls over its activities relating to the performance of his acts. [4, p. 131].

If the legislative and executive powers are united in one man or one government body, freedom is impossible, because the concerns may arise that the same sovereign (president) or the Senate (Parliament) may enter tyrannical law, to use it in a tyrannical manner only for own use and not for the good of society [5, p. 238].

In examining the question of the peculiarities of the powers separation, it is necessary to look at yet another aspect of the problem. In contemporary literature it is often to encounter criticism of the separation of powers, which according to some researchers may cause them to counter and undermine the government unity. In our opinion, this approach requires a precise demarcation and taking into account two important facts: firstly, modern Ukrainian political and legal realities are not entirely consistent with the classic understanding of the theory of separation of powers, and secondly, it is important to take into account the tendency to gradually blurring the concept of separation of powers, by including the new branches of government to the well-known triad.

Accordingly, interesting is thought that in 1908 gave H. F. Szerszeniewicz. Speaking about the unity of the state (high) power he marked: "Hence the obvious fallacy of view of known eighteenth century French writer Montesquieu's about the need of powers separation. In search of ways to achieve the state policy that would best ensure the freedom of citizens, Montesquieu came to the conclusion that the main danger lies in the concentration of power in one hand. The philosopher has proposed to establish

three powers: legislative, executive and judicial. But such reasoning was proved wrong, because practically three equal power authorities cannot exist. The legislation, execution (management) and the court - these are not three authorities, but only three forms of the absolute power of the state "[6, p. 33].

The proposed citation largely stands out from the general positive assessment of the theory of powers separation. It is worth noting that currently in the literature, some researchers have also expressed concern at the fact that the principle of separation of powers is often idealized, wrongly regarded as a kind of panacea for all problems, which even gives the impression that if in the state-legal mechanism this principle will be fully adopted, it will immediately establish a true democratic order [7, p. 363].

The principle of separation of powers cannot be absolutized. In no part of the world such a theory in the form in which Montesquieu formulated it, has not been completely accepted and reflected in the binding constitutions now and then.

In the Russian Empire, to which Ukraine also belonged, in its entire history the principle of separation of powers was rejected by the autocracy power of the monarch. This rule has not been also accepted in the era of Soviet power, because this power was conceived and shaped as a carrier of a formal "full power" of government councils. To appreciation of the concept of separation of powers has led only searching for ways to overcome the political regime in the Soviet Union in the late 80's of last century. In fact, only the introduction of the institution of the USSR and Ukraine President, as well as the proclamation of the independence of Ukraine, led to the constitutional consolidation of this principle of the power organization in Ukraine.

However, the state power by itself is not divided between the state authorities. The exercise of state power is related to the distribution of certain functions between the legislative, executive and judicial powers that are independent only at the level of the exercise of those functions, fixed and allotted to them by the Constitution and law.

It's not about authorities existing in parallel that are developing completely independently of one another, but about

their cooperation and collaboration, and even unity, within its limits they act and they guarantee in the Constitution the autonomy and independence of the legislative authorities, the management and the judiciary. This vision of the separation of powers is consistent with the fact that the only source from which derive all the authorities, as well as carrier of independence of these authorities is the nation of Ukraine, as it proclaims the Constitution of Ukraine.

So in today's conditions the national unity of government provides, firstly, that in its basis is the will of the people, which is its source, and secondly the state power is the only one at its social character and the only state power in a society, and thirdly it pursues common objectives and tasks facing the state, fourthly the state power in the legal and organizational unity performs only the functions of the state apparatus in different forms and with different methods.

The division of state power for independent to each other fields is set to provide the necessary balance of interests, which makes the power the only and overall as the result. This balance should be constitutionally guaranteed by the power of the legislative, executive and judicial authorities and disagreements should be resolved by way of constitutional and legal procedures (the Constitutional Court).

In such circumstances, there is a need for both rethinking the content of selected principles and finding ways of their connection and mutual influence. It is worth mentioning, that being “divided” authority in the country should remain comprehensive and unique. In one country there cannot be two or more independent authorities. State power as a holistic phenomenon is unique. However, it can be divided into different branches and levels due to the functions it perform. Consequently O. F. Skakun rightly says that legal expression of unity and harmony of power consists of the following:

1) public authorities are competent in all required to carry out the functions and tasks of the state;

2) various state authorities cannot dictate to the same subjects in the same circumstances mutually exclusive rules of behavior [8, p. 168].

The state power is above all a unified system in which the branches of government are part of the whole, they work systematically and harmoniously, and the system determines their quality, forms and methods. The system of inhibition and counterbalance, lying in the basis of the principle of power separation, provides not only the insulation of each branch of government, but also constructive functioning, interaction and interpenetration of state power branches. So the unity of state power and the distribution of its branches are not inconsistent with each other, and in the case of a true understanding of these phenomena they are combined under democratic regimes.

The division of branches of state power is possible only with retaining its unity. Each branch has the same social character and operates in directions designated by unity of government. The separation of powers cannot be treated as the tear. The branches of government are doomed to cooperation, they "penetrate" the other, performing the function of the other authority from time to time.

In the scientific literature, several authors point to the unilateral nature of the existing terminology of "the principle of separation of powers." W. J. Czirkin proposes to consider this principle as the concept of the unity of state power and the distribution of its branches. On the one hand, the new relationships that are affected by the state authorities lead to the spread of its integrating role. On the other hand, the new range of state management determine both decentralization and devolution of state power, which leads to the creation of new bodies and ways to manage the state [9, p. 103].

We share the opinion of A. N. Sokolov, that the separation of powers as the organizing principle of state power has a specific content, which includes the following provisions:

1) the act should have a higher legal force and be adopted only by the legislative (representative) authorities;
2) the executive authority should deal with the implementation of laws and only a limited creation of standards, subordinate to the head of state and only partially to parliament;
3) between the legislative and executive authority a balance of powers of attorney is to be provided, which excludes the transfer of the center of decision, and the more the fullness of power in one of them;
4) the judicial authorities are independent and within their competence they operate independently;
5) any branch of government should not interfere with the prerogatives of the other branches of government, much less connect with another branch of government;
6) misunderstanding of competence should be solved only by the constitutional legal procedure in the Constitutional Court;
7) the constitutional system should provide legal ways of inhibiting power by two others, which include mutual counterbalance to all the Authorities [10, p. 139].

At the same time, as a well-known Russian researcher L. Entin claims, by combining the principles of separation of powers and the rule of law, each of the branches of power, being independent, represents the unity of power, which is based on the unity and universality of the law [11, p. 20].

So the concept of the unity of state power and distribution of branches of government should be perceived as an opportunity to combine unity in diversity.

At the present stage the principle of unity of state power and the distribution of its branches with proper organization of relations between them quite organically combine to foster constructive cooperation of state authorities and help form an effective mechanism for the implementation of state power in shaping the conditions of the rule of law in Ukraine.

This rule shall be distributed to the entire system of state power in Ukraine. With regard to the analysis we can conclude that in the native model of state organization law principle of separation of powers has both organizational (static) and functional (dynamic) start. Article 6. of Constitution of Ukraine consolidates functional ("state power in Ukraine is conducted") and organizational ("by the rules") aspects of the division of state power. So, we believe that the essence of the principle of separation of powers is the legal fixation. It depends on the organizational and functional delimitation of major areas of state authority actions, while ensuring the efficient cooperation of its bodies.

Conclusions

The analysis of the main scientific approaches to the problem of dividing, mutual inhibition and counterbalance to government shows that the main value of the principle of the separation of powers is not only that it allows to "promote and strengthen democracy" [12, p. 274], but also forms the general foundation for any political and legal interaction processes in system of the state authorities. At the same time the incentive to cooperate for separate branches of separate power is not only a normative regulation (or even constitutional), but the need to maintain the integrity of democratic power. Therefore, recognizing the role of introduction and implementation of the practical principle of separation of state power in the formation of a democratic state, we must remember that it hits the target only if it has an organic connection with other principles that underlie the foundation of modern constitutionalism, above all the rule of law. Indeed, the process of separation of powers acquires meaning only when all three branches operate within the one rule of law, which perpetuates their competence, power of attorney, the main objectives and their rights concerning the other branches of government.

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