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Section 1. Criminal science

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THE TRANSNATIONAL ORGANISED CRIME IN THE TWILIGHT OF GLOBALISATION AND EUROPEANISATION

Abstract. The sophisticated form of organised crime, as well as its rapid expansion in various states stemmed from the socio-political conditions and the development of technology, which has been used by organised criminal groups to an extent that exceeds the technology used by the european states. As a matter of fact, the geographic expansion of organised crime in the european area has put this phenomenon at the heart of the international community's interest, as it has realised that organised crime is not an isolated issue, but a problem, which may foment the foundations of the international community and its components. The regulatory objects, which were set hierarchically as priorities of the international community were the police and judicial cooperation, and the adoption of common provisions, which contribute to combat this kind of criminal activity.

Keywords: organised crime, transnational nature, european and international initiatives, effects of cooperation, roots of the problem.

Introduction

The organised crime, as a threat to international security and the security of citizens, in general, is primarily a social phenomenon [5], which is constantly taking on supranational dimensions, hence becoming a global problem of ensuring the stability of the states. Despite the fact that it has not been a new phenomenon, in recent decades it has acquired a sophisticated structure and a multi-dimensional form, expanding its field of activity, not only in sectors such as trafficking, illegal immigration, arms trafficking and drugs, to which organised criminal groups traditionally activated, but in modern areas of crime, such as the illicit trafficking of nuclear substances and the money laundering etc [9]. In the face of these facts, the counter-criminal policy and the associated penal laws, which standardize the criminal phenomenon, are confronted with a new reality, namely the different form of the organised crime, which is related to a completely different model of expression of the devaluation of the laws by the perpetrators.

Theoretical Framework

Roots for developing organised crime and the effect of globalisation

Organised crime has appeared and continues to appear as a result of the rapid changes and the redeployments in the political, social and economic sector [15]. In this context, some geopolitical events have played an important role, namely the fall of the Berlin Wall in 1989, the War of the former Yugoslavia in the early 1990, the uprising in Albania in 1997, as well as the war in Kosovo, which further highlighted the

involvement of UCK in organised crime's activities [27]. These events have shown that political and social imbalances provide the ideal conditions for the development of organised crime, which exploit the weaknesses of internal social control mechanisms and expand its activities, often creating close relations with paramilitary centres of power [4].

At the same time, the rapid development of information and communication technology gave to organised criminal groups new tools for the implementation of their criminal activities across borders and highlighted the value of information as a driving force for organised crime, since organised criminal groups, taking advantage of this information, broadened their cognitive field in the countries that they demand illegal goods or services and became aware of the criminal organisations, with which they could cooperate [18; 19]. In the field of technology, a great emphasis should be given on the contribution of the Internet to the development of organized crime, since the latter is fast, easy to use, leaving only digital traces and facilitating the conclusion of illegal collaborations without revealing the true identity of the users [32; 34]. Thus, organised criminal groups, taking advantage of the anonymity offered by the Internet in terms of the identity and location of users, were facilitated to promote their activities [26]. One of the most popular sites for the development of such illegal activities is the use of so-called "dark web" that offers an encrypted communication platform, which is not indexed by search engines and therefore, it is not accessible through a traditional search engine, allowing information to be shared to its users with minimal risk of being identified and traced [29]. Relatively, the creation of electronic banking services and the development of so-called "bitcoin" and other cryptocurrencies, ensuring the anonymity of transactions, contributed to the trafficking of unlawful money, making difficult to trace them. As a result, the exploitation of this technology by the criminal organisations, coupled with the lack of organisational and technical infrastructure of the states in response to modern forms of crime, led to the exacerbation of the phenomenon [8].

Furthermore, the consolidation and growth of organised crime is a result of the opportunities offered by economic practice and in particular, by the advanced techniques used in the context of money laundering [1; 8]. Analytically, the transition from the socialist economy to the free economy of the capitalist market after the end of the Cold War, the internationalisation of the economy, which is linked to an increase in the dependence of prosperity on foreign imported funds and the creation of new forms of inequality on the basis of the consumer goods' demand and the unaudited privatisation of state property, are consistent with the development and the internationalisation of crime, i.e. with the spread of transnational criminal enterprises and the creation of new opportunities for illegal profits in general [10]. More specifically, the Monetary Union of the European Union has contributed decisively to the transition of illegal money, while at the same time the emergence of new opportunities and investments, particularly in eastern European areas, influenced criminal actions and contributed to expand the criminal activities of organised criminal groups [14]. Moreover, the permeability of borders facilitated the international movement of people, goods, capital and services, favoured the creation of flexible trade areas and the shaping of a global unified market in the field of which it assisted the rapid and easy trafficking of illicit goods and services, as well as the emergence of new forms of crime [16].

The globalisation, combined with the progressive economic crisis, has intensified the phenomenon, since the "professional" criminals enable, exploiting the institutional weaknesses and the political and social "asymmetries", to develop their action and be evolved [24]. In addition to this, the opening of the borders between EU members and the countries of Central and Eastern Europe led to the proliferation of international contacts and activities [28], thus aiding to the cooperation between criminal organisations

in international level and expanding their criminal actions. This, coupled with the crisis of confidence in the existing model of economic governance in the euro area, due to the significant increase in unemployment rates and the long-time recession, has not only created obstacles to the process of European integration and effective cooperation between European countries, but it has called into question the construction of the post-war liberal civil democracy [21]. Meanwhile, the "new internationalism", which in some cases was accompanied by the resignation of the state from areas of collective interest, deprived from the latter the "mask" of the protector of the political and social rights of individuals, leaving it openly fragmented in institutions without object and in processes without laws.

As a matter of fact, the steadily increasing opportunities, which globalisation provided to conceal criminal acts, the development of international contacts, the methodical tactics of organised criminal groups, as well as the inventiveness and the flexibility of these in the development of new methods of action made the fight against organised crime a difficult task, which could not be tackled piecemeal, within the framework of the nations, and in this respect, with practical and short-range strategies in the narrow contexts of the states, which were lengthy and not always successful for the interests they were to serve.

The european and the international initiatives to combat organised crime

The chimera of these subversive activities has highlighted the need of strengthening the cooperation of the states at international and european level, as well as the necessity of establishing international organisations and institutions, so as to make possible to set up a multi-level and multi-dimensional strategic action to tackle organised crime and its individual activities [36]. In this context, the European Union and the international community have sought to repel this threat by introducing "internal and external security" regimes, putting in threat the principles based on the rule of law, on fundamental human rights and opening the backdoor of populism and authorisation.

More specifically, the main pillar on which the effective confrontation of organised crime at international and european level bases is the harmonization of criminal law and criminal procedure, so as to facilitate both the police and judicial cooperation [2]. In this way, it was endeavored to be achieved a minimum common legal framework for the prevention and the suppression of organised crime, as well as the cooperation of member states through the formation of stable structures and relations. However, it should not be underestimated that any attempt to approach legislation between member states, with the view to formulate an effective policy for it requires the adoption of a mutually acceptable definition on which it bases every effort for mutual inter-state corporation [20]. Additionally, the focus should be given on the content of the legislating, namely the substantive and procedural provisions of criminal law. The first are necessary, because through them behaviors with socio-ethical demerits are criminalised as offences with the provision of their penalties, while the second case relates to all the rules, which determine the institutions and the procedure for the administration of justice in the restoration of the judicial peace [12].

Undoubtedly, this venture is particularly arduous and certainly not easy, given that organised crime is multifaceted and difficult to be captured. Also, legal systems of the states enclose cultural, legal traditions and are based on fundamental principles that are extremely difficult to be surpassed or even to be converged in the name of the european unification [10]. Moreover, particularly in the case of criminal law, these parameters express the principle of sovereignty of each state and describe the hard core of the internal legal order. Therefore, traditionally, European Union had a limited scope for the possibilities of legislative intervention to this scope, since the regulation of the latter depend on the political will of the state authority. The reluctance of the member

states to grant relevant competences in the European Union, the differences in the appearance of organised crime in its scope and form from country to country and the divergences in the legal systems prompted organised criminal groups to benefit from the differences in national legislation and gave flexibility to the methodology of organised criminal groups' action [33].

Discussion

The international collaboration and its effects

Despite the above-mentioned difficulties, the understanding of the supranational nature of organised crime, the rapid evolution of the quality of its expression, the way that it works, the observed diversity of crimes committed, as well as the awareness of the degree of the threat posed to the security of states, resulted in the adoption of a common criminal policy to deal with the phenomenon [25].

The continued strengthening of the role of the European Union resulted in the homogenisation of the judicial arrangements, which at least at the beginning of its founding, was fully realised that it should be based on the spirit of common european values and principles [11]. In this context, it has gradually become necessary to extend european integration in the area of criminal law, thus following the path of economic and political integration and bringing about the intended europeanisation of legal thinking. This attempt to harmonise criminal legislation on individual issues, as well as the strengthening of police and judicial cooperation, has been implemented on several levels, which had as a common component the bilateral and multilateral conventions between states and international organisations or the European Union [35]. On the basis of the international and european texts, member states are obliged to transpose into their domestic legal order the measures or arrangements decided in order to participate in this endeavour. This is a direct consequence of the internationalisation of the criminal policy and the penal law and the understanding of the fact that the international security became part of internal security [31].

In this context, the traditional distinction between internal and external security has replaced from the concept of a "continuous security" [3], which were taken up and dealt with through the common, generalised and simplistic view of a "particularly serious crime" that shows the cross-border dimension of organised crime and the nature or impact of such offences [7]. In view of these events, those recognised by the international and European community as "serious crimes" obtained a further criminal value, accompanied by the need for a greater punishment, when they are committed in the context of the organised criminal group. Participation in such a structured criminal organisation has become clear that it should be criminalised so as to suppress them in a timely manner and effectively protect important legal values, which may be challenged by that activity [17]. It is thus highlighted that the need to fight organised crime has led to a gradual revision of the classical rules and the principles of international and European criminal law, such as the abandonment of the classical discrimination of legal goods in national and international, the broadening of the criminal repression, the rigour of measures to protect international security, the adoption of burdensome procedural measures, the gradual restriction of double criminality in the field of extradition and judicial assistance, which resulted in the risk of shrinking the fundamental freedoms of citizens in general [6].

Conclusion

From the above analysis, it becomes more than apparent that the international and european initiatives to combat transnational organised crime have brought about radical changes in the legislation of the member states, since the attempt to establish a unified legislative response to cross-border organised crime was a product of political compromises between member states, so that international and european texts would be widely accepted, but without at the same time trying to safeguard basic sovereign guarantees [13]. However, criminal law intertwines with the exercise of state power and

the cultural identity of the social area in which it is based, expressed through its settings. Therefore, the disposal of this power to international and european institutions result in the contraction of internal state sovereignty, which, in turn, influences culturally the social area in which it poses. Indicatively, the European Union legislation often not only proposes necessary measures, but imposes obligations on member states to institutionalise specific measures, strictly defined in terms of their details and specific sanctions, a fact that has led to a situation which creates the impression of an uncontrolled democratic european technocracy [22]. In this context, there is an urgent need to balance the repressive policy, introduced by the democratic structure and the general humanitarian philosophy of both the international and european community so that the protection of legal goods and public security not to contrary to the guarantee function of european and international criminal law.

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Section 2. International law

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STATE MANAGEMENT ON FIRE PREVENTION AND FIGHTING FOR URBANITIES IN VIETNAM – THEORETICAL AND PRACTICAL ISSUES, MEETING THE REQUIREMENTS FOR SUSTAINABLE DEVELOPMENT

Abstract. In the current period of international integration, urban areas in Vietnam are growing rapidly. Many problems are posing in the revolution of science and technology 4.0. The article focuses on clarifying theoretical issues on state management of fire prevention and fighting for urban areas, assessing, surveying and analyzing practical state management on fire prevention and fighting for the urbanities of the subjects of state management in Vietnam over the past time, since then, study and propose feasible measures, improve the effectiveness and efficiency of state management on fire prevention and treatment. fires, ensuring safety in fire prevention and fighting, meeting the requirements of sustainable development in the coming time.

Keywords: Urban in Vietnam; State management on fire prevention and fighting.

1. Set the problem

Urban areas in Vietnam are urban areas, including cities, towns and townships, which are recognized by decision makers in Vietnam. Accordingly, up to May 5, 2019, there are 833 urban areas in Vietnam, including 02 special-class cities, namely Hanoi and Ho Chi Minh City, 20 grade-I urban centers, 29 urban centers of grade II and 45 dollars. market type III, 85 cities of type IV and 652 grade V urban areas. Urban centers function as integrated centers or centers of specialized branches, national levels, interprovincial, provincial, district or one-level centers. the center of the region in the province, plays a role in promoting the socio-economic development of the whole country or a certain territory. Along with the process of urbanization, has been and will pose many challenges for fire prevention and fighting in general and state management on fire prevention and fighting in particular for urban areas, to ensure safety in fire prevention and fighting in urban areas, serving the requirements of economic development, society, security, order, environment … in urban areas.

2. Theory of state management of fire prevention and fighting in urban centers

In Vietnam, many scientists have approached and studied state management on fire prevention and fighting or research on urban planning and development, but so far, no scientific work has been studied a systematic and comprehensive way of state management on fire prevention and fighting for urban areas. Therefore, in order to approach research and improve the theory as well as to build and propose

additional legal corridors in the state management of fire prevention and fighting for urban areas, it is necessary and meaningful. important in applying theory to practical state management on fire prevention and fighting in Vietnam today.

According to the Urban Planning Law of the Socialist Republic of Vietnam, urban areas are areas with high population density and mainly in non-agricultural economy, which is the main center. administrative, administrative, economic, cultural or specialized, playing a role in promoting the socio-economic development of the country or a territory, a locality, including the city and suburbs of the city; inner towns and suburbs of the town; town. Thus, it can be seen that the urbanities are an area with high population density, mainly production and business activities, being a political, economic and social center of a locality, a region, including cities, towns and towns.

Along with that, through research, it is possible to understand fire prevention and fighting for urban areas: Synthesizing measures, organizational, technical and technological solutions applied in urban areas to eliminate or limit processing causes and conditions of fire here; is a combination of people and means in applying methods, tactics to save people, save assets, prevent the spread and extinguish fires in a timely and effective manner, ensuring security and disobedience self and environment in urban areas.

From the above arguments, the initial approach to research, according to us, the state management of fire prevention and fighting for urban areas is an organized impact and adjusted by the legal power of the state. For fire prevention and fighting activities in urban areas of authorized subjects, to minimize the occurrence of fires and damage caused by fires, contributing to protecting lives and protecting property of the house. water, organization and individuals, environmental protection, security, social order and safety.

Accordingly, pursuant to Article 57 of the Fire Code, the content of state management on fire prevention and fighting for urban areas includes: Building and directing the implementation of strategies, planning and plans on fire protection for urban areas; issue, guide and organize the implementation of legal documents on fire prevention and fighting for urban areas; propaganda, education and dissemination of laws and knowledge about fire prevention and fighting; building the movement of the entire fire prevention and fighting in urban areas; organizing and directing fire prevention and fighting activities in urban areas; equipping and managing fire prevention and fighting facilities in urban areas; inspecting, examining, handling violations, settling complaints and denunciations and investigating fires in urban centers.

2. Practical state management on fire prevention and fighting in urban areas in Vietnam today

Recognizing the importance of state management on fire prevention and fighting in general and state management on fire prevention and fighting for urban areas in particular, after the Law amending and supplementing a number of articles of the Fire Code was passed by the National Assembly of the Socialist Republic of Vietnam. The Prime Minister signed Decision No. 493/QD-TTg dated April 8, 2014 issuing detailed implementation plans the law. The ministries, branches and localities have closely followed the direction of the Government, concretized by plans, directives and action programs. Since 2014, the Government has issued 09 Decrees and 02 Resolutions related to fire prevention and fighting; The Prime Minister issued 05 Decisions, 03 Directive, 11 Electricity and Directive documents. The promulgation of the above documents has complied with the regulations on competence, order, procedures and contents to ensure constitutional, legal, practical requirements for fire prevention and fighting work. On that basis, the ministries and branches within their management have elaborated and promulgated 24 Circulars to guide the implementation of the legislation on fire prevention and fighting; issued many directives, electricity, instructions and instructions on this work. So far there are over 150 standards and technical regulations related to fire prevention and fighting, of which over 50% of regulations and standards directly regu-

late fire prevention and fighting, of which mainly focus on fire prevention and fighting in urban areas. Thus, it can be seen that, the work of advising and proposing the issuance of documents related to state management on fire prevention and fighting for urban centers is very interested in implementing, creating facilities and practices. a solid legal framework for state management entities to perform their duties.

Along with that, propaganda, dissemination and legal education, knowledge of fire prevention and fighting have been strengthened, there are innovations in content and form. From 2014 to 2018, it was posted on the mass media of 62.320 news and articles; broadcast 3.173 reports, documentaries on fire prevention and fighting; issue 308.997 zippers, slogans and 4.025.005 leaflets, recommendations on fire prevention and fighting; print copies, issue 7.296 tapes and CDs to propagate on fire prevention and fire safety … All of these activities are aimed primarily at managed subjects in urban areas. In the work of approval, pre-acceptance test of fire prevention and fighting in urban areas, in the past 5 years, the police force of the Ministry of Public Security has been appraising and approving the design for fire prevention and fire fighting for 58,504 projects; organized acceptance for 29.230 projects and works in urban areas. Besides, for the inspection, examination and handling of violations of regulations on fire prevention and fighting for management objects in urban areas, it is very interested, in the last 5 years, agencies The function has conducted 357 inspections of the observance of the law on fire prevention and fighting; organizing fire safety and fire safety inspection 1,575,154, issuing 98,384 official letters proposing to overcome loopholes and shortcomings in fire prevention and fighting. Contents, regimes and procedures for conducting inspections and inspections shall comply with current law provisions; Thereby, it was fined with a total budget of over VND 200 billion, suspended operation of 1.956 cases, temporarily suspended 2.720 cases … On the other hand, in the implementation of state management functions fire prevention and fighting of the subjects under management, also deploying synchronously other measures such as fire fighting, building fire prevention and fighting forces in urban areas, national cooperation on fire prevention and fire fighting, the implementation of compulsory fire and explosion insurance, the settlement of complaints and denunciations …

However, besides the above results, in the state management of fire prevention and fighting for urban areas, there are still limitations and shortcomings such as: advising and proposing the issuance of documents detailing and guiding fire prevention and fighting for a number of specific areas in urban centers such as mini condominiums, super high-rise buildings … not yet issued; effectiveness of propaganda on fire prevention and fighting is not high, awareness and awareness of a part of people in urban areas is still limited; There are still 2.662 dangerous fire and explosion projects put into use, which have not been approved for design and approval or approved but not yet approved for fire prevention and fighting, as of July 2018, Vietnam. 110 apartment buildings and high-rise buildings have been put into operation by investors but have not been tested for fire prevention and fighting; about 60% of urban areas in Vietnam have not been planned for urban fire fighting water supply; building civil defense fire prevention and fighting forces, grassroots and specialized fire prevention and fighting forces that have not been given adequate attention; investment, equipment for fire prevention and fighting activities is still slow, unsecured … The cause of these problems is due to awareness of responsibility for fire prevention and fighting activities of a limited number of committees, local authorities, heads of agencies, organizations and establishments in urban areas; Some provisions of the law on fire prevention and fighting are still slow to implement; Infrastructure conditions in urban areas are still inadequate, incomprehensive, especially the planning of transport systems, water sources, communications for degradation and fire fighting …

3. Some lessons learned in Vietnam and propose solutions to improve the effectiveness and efficiency of state management on fire prevention and fighting in urban areas

The results achieved in the state management of fire prevention and fighting for urban areas in Vietnam are due to: The role of the committees, authorities at all levels in the process of implementing, urging and checking the real the provisions of the law on fire prevention and fighting for urban areas are the leading factors; the implementation of responsibilities in fire prevention and fighting for urban areas of the heads is a decisive factor for the quality and efficiency of this work; always attach importance to prevention as the main, ensure and maintain safety conditions on fire prevention and fighting in urban areas; propaganda and dissemination of laws and knowledge on fire prevention and fighting are taken seriously; planning, building and implementing strategies and plans on socio-economic development of urban centers must be closely linked and ensured in sync with the planning on fire prevention and fighting; management subjects, especially the fire prevention and fighting police of the Ministry of Public Security have done well the state management on fire prevention and fighting for urban areas, minimizing the damage caused by fire and explosion, ensuring safety in fire prevention and fighting in urban areas.

In addition, in order to ensure sustainable development of cities in Vietnam in the coming time, in the state management of fire prevention and fighting, it is necessary to continue to thoroughly grasp and implement a number of measures and solutions. after:

Firstly, continue to rase awareness as well as the responsibility of the Party committees, local authorities in leading and directing the implementation of the provisions of the law on fire prevention and fighting; units and localities continue to build a scheme on socio-economic development planning in urban areas in association with fire prevention and fighting work, especially ensuring infrastructure such as transportation, water sources and systems. communication system as well as ensuring funding for fire prevention and fighting activities.

Secondly, promote the propagation and dissemination of laws and knowledge on fire prevention and fighting for objects in urban areas so that people can voluntarily comply with and implement the provisions of the law on fire prevention. and fire fighting, participating in the movement of the entire population for fire prevention and fighting; continue to improve the content, renew propaganda forms and measures; integrate knowledge and skills on fire prevention and fighting into curricula and extracurricular activities in schools and educational institutions in Vietnam; to build a movement for the entire population to participate in fire prevention and fighting with the motto "4 in place"; continue to consolidate on-the-spot forces that are key to fire prevention and fighting in urban areas.

Thirdly, continue to review, study, supplement and perfect the legal system on fire prevention and fighting in general and for urban areas in particular, especially the addition of national technical regulations to the rooms. fire and fire fighting in urban areas; strengthening measures of state management on fire prevention and fighting, in which focusing and attaching importance to the inspection and examination of fire prevention and fighting work in condominiums, high-rise buildings and trade centers, markets …, strictly handling acts of violating regulations on fire prevention and fighting; to focus on directing and definitely handling establishments and works in urban centers which fail to ensure fire prevention and fighting safety and put them into use before the 2001 Fire Code.

Fourthly, focus on synchronously implementing measures to prevent fire and explosion in urban areas, because this is the center of politics, economy, culture and society of the locality, special attention is needed.; effective solutions and measures are needed to prevent the factors leading to big fires and explosions and serious damage; build coordination mechanism among forces; concentrating resources to build and deploy synchronously infrastructure and

techniques on fire prevention and fighting; research and application of science and technology for fire prevention and fighting for urban areas in Vietnam.

Fifthly, continue to consolidate the organization model of local police police fire prevention and fighting forces, ensure regularity, elite, modern steps, professional skills, techniques and curing tactics fire; investment in budgets, regimes, facilities and means and ensure conditions for tools for fire prevention and fighting in urban centers; strengthening and expanding international cooperation in the field of fire prevention and fighting; exchanging, sharing experiences, applying advanced techniques and technologies to other countries.

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Section 3. Public law

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THE CONCEPT OF IMPOSING CRIMINAL SANCTIONS FOR PERPETRATORS OF CHILD SEXUAL VIOLENCE: THE DETERRENT EFFECT

Abstract. The addition of basic criminal detention periods, criminal acts in the form of chemical castration, installation of electronic detection devices, and additional criminal announcements of the perpetrators' identities, were chosen by the government as a way to deal with child sexual violence with the aim of providing a deterrent effect for the perpetrators. This study aims to determine the concept of imposition of criminal sanctions for child sexual violence perpetrators as a form of deterrent or rehabilitative effect. This type of research used in this study is normative legal research, using primary and secondary legal materials, using the law approach, and analyzed with qualitative techniques. The results of this study indicate, the concept of criminal prosecution for perpetrators of child sexual violence is a deterrent effect as a form of President's political decision to meet the demands of the public who want the government to immediately take serious and decisive steps for perpetrators of sexual violence.

Keywords: child sexual violence, criminal prosecution, deterrent effect.

Introduction

The crime of child sexual violence committed by pedophiles is very difficult to be eradicated, sexual violence is a form of crime in a society whose development is increasingly diverse both motive, nature, shape, intensity and mode of operation [1]. As a social reality, this problem cannot be avoided and indeed always exists, causing anxiety because it is considered as a form of disruption to the welfare of the community and its environment [2].

The crime of child sexual violence that is currently seizing the attention of the community is, Mu-

hammad Aris, a 20-year-old youth, a 9-child rapist suspect in Mojokerto Regency, East Java, sentenced to 12 years in prison, a 100 million fine and an additional sentence in the form of chemical castration by the Mojokerto District Court. The decision was read out on May 2, 2019.

Aris was the first person to be subjected to additional criminal sanctions from chemical castration since Law No. 17 In 2016 it was ratified, suddenly this matter became a discussion among the people there who appreciated the decision but there were also those who regretted it [3]. The Mojokerto District Court Judge passed the ruling based on the Law of the Republic of Indonesia Number 17 of 2016 concerning the Establishment of Government Regulation in Lieu of Law Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning the Protection of Children into Law (Law No 17 of 2016), which regulates the provision of additional criminal sanctions in the form of chemical castration sanctions for perpetrators of sexual violence against children.

UU no. 17 of 2016 was passed by the House of Representatives in 2016, the birth of the law began with the Perppu issued by President Joko Widodo in May 2016, when the news that was raised was filled with full mass media with news about child sexual violence, then pressures for the government Immediately taking serious steps to overcome these problems more intensified, then issued Perppu Number 1 of 2016 concerning the Second Amendment to Law Number 23 of 2002 concerning Child protection (Government Regulation in lieu of Law No. 1 of 2016).

The addition of basic criminal detention periods, criminal acts in the form of chemical castration, installation of electronic detection devices, and additional criminal announcements of the identity of the perpetrators, were chosen by the government as a way to deal with child sexual violence with the aim of providing a deterrent effect for the perpetrators and at the same time to prevent possible acts of crime and violence by other actors.

But this has led to various responses from many parties, both pros and cons. The Executive Board of the Indonesian Doctors Association (IDI) has also issued a letter dated June 9, 2016 requesting that doctors not become executors, the refusal is based on the fatwa of the Medical Ethics and Honorary Council (MKEK) and also based on doctor oaths and the Indonesian Medical Ethics Code (KODEK).

These problems arise because of a reactive government to deal with child sexual violence. In 2014 the government issued Law Number 35 of 2014 concerning Amendments to Law Number 23 of 2002 concerning Child Protection, in reaction to cases of sexual violence against children at the Jakarta International School (JIS) in 2014, as well as government regulations in lieu of Law No. 1 of 2016 which was later passed into law as a reaction to a case of sexual violence accompanied by the murder of Yuyun by 14 men in Bengkulu at the end of April 2016, this shows how the government is still reactive in responding to sexual violence against child, and as if the rule is a momentary reaction without an adequate review process.

Sexual violence against children needs to be seen from many perspectives, not only from the perspective of punishment, in-depth research is needed to prove the best treatment for perpetrators and victims and appropriate prevention efforts [4]. for this reason, the authors are interested in reviewing the concept of imposition of criminal sanctions for child sexual violence as a deterrent effect.

Research Method

This type of research used in this study is normative legal research, using the law approach (statue approach) and conceptual approach. The main types of data used by the author are secondary data Soekanto & Mamudji [5] with document study collection techniques, analyzed descriptively.

Result and Discussion

Based on the mapping of children's problems, violence against children ranks first, it can even be said that Indonesia is currently in an emergency

position of violence against children, especially sexual violence.

Data shows that since 2014 and 2015 sexual violence against children reached 50% of all cases of violence. In 2014, 52% of 4,638 cases were sexual violence against children. In 2015 as many as 58% of cases of sexual violence against children from 6,726 cases of violence. Furthermore, based on preliminary data in January 2016 there were 339 reports and there were 48% of cases of sexual violence against children. Where 16% of sexual violence in 2016 was carried out by children under 17 years of age and in general sexual violence committed during the last few years was rape followed by mistreatment, sodomy, incest, even murder [6].

In 2015 there was a case of child sexual abuse with a murder in West Jakarta. Non-formal education for 9-year-old girl was found dead in a cardboard box with the condition bound in a bent body position, legs and hands were also bound, while the victim's mouth was taped [7]. Then there was a case of violence where the culprit was only 1 person, but the number of victims reached 58 child victims namely the SS alias Koko case in Kediri in 2015 [8].

Cases of child abuse also occurred to 2.5-year-olds with the initials LN in 2016 in Pabuaran Tonggoh village, Bogor Regency, where the perpetrator was a neighbor of the victim, and the victim was raped in the bathroom until death, after death raped again wrapped around using a blanket then hidden in the closet. clothes and thrown behind the house. Then in 2016 a case of sexual violence that caught people's attention and was widely discussed on the media was the YY case of 14 years old, a resident of Kasie Kasubun Village, Padang Ulak Tanding District, Rejang Lebong Regency, Bengkulu [9].

A series of events above shows how the abomination and cruelty of perpetrators of sexual violence are a threat to children, so that the community encourages the government to establish sexual violence against children as a serious crime and need to take firm policies to the perpetrators. The social minister at that time Khofifah Indar Parawansyah felt the need to take legal steps, in the form of castration for the perpetrators.

To address the phenomenon of sexual violence against children, provide a deterrent effect on perpetrators and prevent sexual violence against children, and taking into account that the state guarantees children's rights to survival, growth and development, and protection from violence and discrimination as stated in the Basic Law The Republic of Indonesia in 1945, and that sexual violence against children from year to year is increasing and threatening the future of the nation and the state, so it is necessary to increase criminal sanctions and provide action against perpetrators of sexual violence against children. The President shall stipulate Government Regulation in Lieu of Law Number 1 of 2016 which has been ratified to become Law Number 17 of 2016 based on Article 22 Paragraph (2) of the 1945 Constitution of the Republic of Indonesia.

Criminal damages in question are, the addition of basic criminal sanctions, the provision of actions in the form of chemical castration accompanied by rehabilitation, installation of electronic detection devices, and announcement of the identity of the perpetrators, and the main focus in providing severe penalties for child sexual violence offenders is through castration for the perpetrators.

But it is not appropriate if the government takes steps to issue regulations because of emotional situations, because it could be that the laws passed seem very hasty, not comprehensive, and not go through deeper studies.

Until now, the Implementing Regulations (PP) related to the technical implementation of chemical castration sanctions are still under discussion. Due to the absence of PPs, the criminal prosecution regulated in Law No. 17 of 2016, has caused uncertainty to be applied, such as the number of injections the perpetrators will receive, what substances will be used and who will be the executors, which will eventually lead to conflict.

Law No. 17 of 2016 only mentions castration actions imposed for a maximum period of 2 (two) years and carried out after the convicted underwent a basic crime, under periodic supervision by the ministry that carries out government affairs in the field of law, social and health, and their implementation is accompanied by rehabilitation.

In making laws and regulations must be based on the principle of formation of legislation, one of the principles of which is the principle can be implemented [10]. Azisa [11] said that the principle can be implemented (het beginzel uitvoerbaarheid) is more directed to the readiness of the government in anticipating legislative products that will be enacted. All must be prepared and arranged in advance so that when the law is enforced does not have obstacles in terms of law enforcement both the readiness of the resources of its apparatus, facilities and infrastructure and adequate allocation of funds for its operations need to be budgeted in the government budget and sought a solution [12].

In a public hearing, Mudjahid [13], asked the Indonesian Child Protection Commission (KPAI) whether there was data showing that the perpetrators of child sexual violence were motivated by deviations from the perpetrators' sexual desires and regretted that so far there had never been a comprehensive explanation of the main causes someone committing child sexual abuse. What is stated by KPAI is that it has not been able to provide comprehensive survey or research results related to the background of the perpetrators of child sexual violence.

Based on the above statement, we can conclude that up to now there has not been an in-depth study regarding the dominant causes of the perpetrators of child sexual violence, whether dominant psychic, physical dominant, not yet known, even though to give the right punishment and deterrent effect must be based on the results of studies that have been done.

Some countries have implemented castration punishment, but not all have succeeded in proving that castration can provide a deterrent effect for perpetrators of child sexual violence, because sexual disorders are caused more by psychological problems and environmental influences than hormone problems [14].

The Indonesian Doctors Association (IDI) also states that on the basis of scientific and scientific evidence, chemical castration does not guarantee the loss or diminished desire and potential for sexual violence behavior of perpetrators. IDI also requested that the government find another solution to the use of chemical castration which was once again considered ineffective in cases of sexual violence (KPAI, 2016). In this case, IDI also refuses to be the executor of granting chemical castration actions based on the Fatwa of the Honorary Council and the Medical Ethics Code (MKEK) and also on the oath of doctors and the Indonesian Medical Ethics Code (KODEKI).

Chemical castration is also considered by some as not yet resolving the problem of sexual violence because it does not provide a deterrent effect because the punishment given should be equivalent to criminal punishment for crimes against humanity. Chemical castration in Law No.17 of 2016 is a form of punishment. Actions (maatregel) are sanctions that are not retaliatory, but are solely aimed at special preventions, so the purpose of protecting concerns certain people, namely dangerous people who can harm public order. So, if the definition of action is related to the chemical castration action set in Law No. 17 of 2016, it is not to hurt the perpetrators of child sexual crimes [15]. Whereas to cause a deterrent effect for someone who has committed a crime usually by giving punishment in the form of giving pain so that someone no longer wants to do the same thing, and there are other benefits that result from preventing crime because the sentence makes them afraid to commit a crime. The determination of chemical castration as an action or a criminal certainly has different consequences. If positioned as a criminal, chemical castration is a form of suffering as well as a statement of reproach for the perpetrators. This is as explained by Alf Ross that the conception of a criminal departs from 2 (two) conditions or objectives, namely the criminal is aimed at the

imposition of suffering against the person concerned, and the crime is a statement of denunciation of the perpetrators' actions [16].

Along with the development of the theory of punishment, punishment no longer aims to have a deterrent effect, motivated by revenge for the actions of the criminal, but the punishment is held to improve the conduct of the criminal maker, then the institutionalization of the criminal is also eliminated the conditions that allow "labelization" of him [17].

The aim to provide a deterrent effect for perpetrators and prevent the possibility of crime and violence by other perpetrators is actually not appropriate if it is associated with imprisonment because in Indonesia the concept of imprisonment has changed to correctional facilities.

Law No. 12 of 1995 concerning our Penitentiary today, adheres to the theory of rehabilitative punishment, resocialization, and reintegration, which means that the Penal Act regulates the philosophy of punishment is no longer retributive or deterrence doctrine (revenge).

With the use of the prison concept, the orientation of imprisonment should not have a deterrent effect but rather as a special intervention aimed at improving the perpetrators to return to normal life in society. Thus, the threat of imprisonment for any period and formulated with a specific minimum criminal threat pattern, the concept remains not as a deterrent but as guidance to re-populate prisoners.

The theory of punishment used in basic criminal charges is an interactive theory according to Wibowo [18] that is, even though it considers retributive as the main principle and that the severity of a crime must not go beyond a fair retaliation, it is held that the criminal has various influences including prevention, deterrence, and repair something that is broken in the community [12]. The use of theory is relatively visible from the weighting of imprisonment for certain types of sexual violence, such as inclusion, repetition, and carried out by people close to the victim, so that the training of perpetrators in Penitentiaries is longer so that they are better prepared for re-socialization. While the use of retributive theory can be seen from the accommodation of capital punishment as a criminal burden on the perpetrators of sexual violence that has a serious impact on the victim [18].

Finally, this study revealed that the concept of criminal prosecution for child sexual violence perpetrators is a deterrent effect as a form of political decision of the President to meet the demands of the public who want the government to immediately take serious and decisive steps for perpetrators of sexual violence.

Conclusion

The concept of criminal prosecution for child sexual offenders is a deterrent effect. However, this step is a form of President's political decision to meet the demands of the people who want the government to immediately take serious and decisive steps for perpetrators of sexual violence. The government responds to pressure from the public by providing, additional terms of basic criminal detention, criminal acts in the form of chemical castration, installation of electronic detection devices, and additional criminal announcements of the perpetrators' identity, through their authority to impose government regulations in lieu of law no. 1 of 2016 but the issuance of the regulation was due to an emotional situation, very hurried, not comprehensive, and not through deeper studies. This is evidenced by the absence of Government Regulations governing the technical implementation of the imposition of criminal sanctions for perpetrators so that there is uncertainty in its implementation, there is no resolution of problems related to IDI which explicitly refuses to be the executor of chemical castration actions for perpetrators, the unclear theory of criminalism adopted by also differs from the purpose of our correctional concept at the moment, and it turns out that in-depth studies have not been conducted regarding the dominant causes of perpetrators of child sexual violence.

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Section 4. Criminal law

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STATE SOCIAL ASSISTANCE, WHICH IS PROVIDED AFTER CHILDBIRTH TO A WOMAN BY THE DEPARTMENT OF SOCIAL PROTECTION, DELIBERATELY CREATES GENOCIDE OF WOMEN AND CHILDREN IN UKRAINE

Abstract. This article is aimed at women who are not officially employed before childbirth, and after giving birth they receive state assistance for one child in the total amount of 860 hryvnias per month (about 35 dollars) without additional payments. According to the law, facts of legislative violation of mandatory payments of government assistance will be proved and the main types of assistance will be considered: benefits for caring for an unemployed child up to the age of three and assistance for giving birth to a child.

When an unemployed woman gives birth and receives a certificate of pregnancy and childbirth, she is registered with the Social Security Office with this document and begins to receive payments: childcare benefits until the child reaches the age of three and additional assistance for childbirth. But the Department of social protection of the population throughout Ukraine pays women only assistance at the birth of a child in the amount of 860 hryvnias per month (about 35 dollars), and the childcare allowance until the child reaches the age of three is deliberately not paid, thereby creating genocide of women and children in Ukraine, and depriving their rights to a normal standard of living. These actions violate part 3 of Art. 46 of the Constitution of Ukraine [3], which establishes that pensions, other types of social payments and benefits, which are the main source of subsistence must ensure a standard of living not lower than the minimum subsistence level established by law.

In the Article 7 of the Law of Ukraine "On the state budget of Ukraine for 2019" [14], it is indicated, firstly, to establish in 2019 a living wage for one person per month in the amount 2027 hryvnias from December 1, and for basic social and demographic population groups: for children under 6 years: 1779 hryvnias from December 1; for persons who have lost their ability to work: 1638 hryvnias from December 1. It turns out if a woman receives assistance only in the amount of 860 hryvnias per month (about 35 dollars) for herself and for the child, when the minimum living wage for children under 6 years old: 1779 hryvnias from December 1; for persons who have lost their ability to work

(because women who are on maternity by law lose their ability to work and receive assistance from the government): 1638 hryvnias from December 1, the total amount of 1779 hryvnias + 1638 hryvnias = = 3417 hryvnias per month (about 140 dollars). How to dress a woman and a child for 860 hryvnias a month (about 35 dollars), buy food and diapers, vitamins for a child, pay for utilities? This is an open form of genocide of women and children by the government in Ukraine.

In fact, the government deliberately deprived a woman and a child to receive payments: childcare benefits until the child reaches the age of three, of the amount of the minimum wage multiplied by 36 months (3 years). This is a quiet destruction of women and children by the government in Ukraine.

Keywords: genocide of women in Ukraine, genocide of children in Ukraine, child care assistance, birth assistance, assistance payments, government assistance, social guarantees.

Every unemployed woman at birth must receive monthly assistance in the amount of the minimum wage – as a childcare allowance for children under the age of three and additionally assistance for childbirth.

Assistance at the birth of a child is indicated in paragraph 1 of Part 1 of Article 12 of the Law of Ukraine "On Government Assistance to Families with Children" [1], where it is established that the amount of assistance at the birth of a child is set in the amount of 41.280 hryvnias. Assistance is paid once in the amount of 10.320 hryvnias, the remaining amount of assistance is paid over the next 36 months in equal installments in the manner established by the Cabinet of Ministers of Ukraine. The sum of 41.280 hryvnias, of which 10.320 hryvnias is paid first of all, and then monthly 30.960/36 months = = 860 hryvnias per month (about 35 dollars).

Should be paid a child care allowance before he reaches the age of three, which is confirmed by the following Articles of the Law of Ukraine, but they deliberately "forgot" to pay unemployed women in Ukraine.

Paragraph 8 of Part 1 of Article 8 of the Law of Ukraine "On Government Assistance to Families with Children" [1], establishes that for a period of maternity leave that coincides with maternity leave until the child reaches the age of three, maternity allowance is paid regardless of the child care allowance until he reaches the age of three.

Part 3 of the Art. 31 of the Law of Ukraine "On Compulsory Government Social Insurance for Unemployment" [2], defines the termination, deferral of payments of material security for unemployment and a reduction in their duration, namely, that the payment of unemployment assistance is terminated for the period when the unemployed woman is entitled to maternity benefits, benefits for the unemployed to care for a child until he reaches the age of three.

When an unemployed woman gives birth and receives a certificate of pregnancy and childbirth, she is registered with the Social Security Office with this document and begins to receive payments: childcare benefits until the child reaches the age of three and additional assistance for childbirth. But the Department of social protection of the population throughout Ukraine pays women only assistance at the birth of a child in the amount of 860 hryvnias per month (about 35 dollars), and the childcare allowance until the child reaches the age of three is deliberately not paid, thereby creating genocide of women and children in Ukraine, and depriving their rights to a normal standard of living. These actions violate part. 3 of the Art. 46 of the Constitution of Ukraine [3], which establishes that pensions, other types of social payments and benefits, which are the main source of subsistence must ensure a standard of living not lower than the minimum subsistence level established by law.

In order to confirm this fact, we take a certificate under OK-5 form by the Pension Fund, which contains individual information about the insured

person, which indicates that the Social Security Administration pays the unemployed woman who takes care of the child until he reaches the age of three, the amount of the benefit equal to the minimum wage.

The minimum wage is 4173 hryvnias (about 170 dollars), from January 1 according to Part 1 of the Art. 8 of the Law of Ukraine "On the State Budget of Ukraine for 2019" [4], add to this 860 hryvnias per month (about 35 dollars), the amount of assistance at the birth of a child, and we get 5033 hryvnias per month.

In fact, the government deliberately deprived a woman and a child to receive payments: childcare benefits until the child reaches the age of three, of the amount of the minimum wage multiplied by 36 months (3 years).

In paragraph 2 of Part 1 of the Art. 21 of the Law of Ukraine "On Compulsory Government Social Insurance for Unemployment" [2], it was established that the period of parental leave until the child reaches the age of three, and receiving payments for certain types of compulsory government social insurance, except for pensions (except for disability pension) and unemployment insurance benefits, is included in the length of service as the period for which insurance premiums are paid based on the minimum insurance premium.

Let's look at what the minimum insurance premium means, according to Clause 5 of Part 1 of the Art. 1 of the Law of Ukraine "On the collection and accounting of a single contribution to compulsory government social insurance" [5], it is established that the minimum insurance contribution is the amount of the single contribution, which is calculated as the product of the minimum wage and the contribution established by law for a month, for which wages (income) are accrued, and is payable monthly. In this article of the law, we see that the minimum insurance premium is payable monthly.

Let's consider in more detail: officially the employer of an unemployed woman who is on a maternity leave is a body that pays her cash security, that is the Social Security Office. The fact that this body is the employer is prescribed in Paragraph 7, Clause 1, Part 1 of the Article 4 of the Law of Ukraine "On the collection and accounting of a single contribution to compulsory government social insurance" [5], where it is established that the payers of a single contribution are employers:

– enterprises, institutions, organizations, individuals using hired labor, military units and bodies that pay cash security, temporary disability benefits, maternity benefits, assistance, allowances or compensation in accordance with the legislation for such persons:

– persons receiving temporary disability benefits who are on a maternity leave and receive assistance in connection with pregnancy and childbirth;

– persons who care for a child until he reaches the age of three and, in accordance with the law, receive benefits for caring for the child until he reaches the age of three and/or at the birth of the child, adoption of the child.

So, we have identified that the employer of an unemployed woman who is on a maternity leave is a body that pays her cash security, that is the Social Security Office.

In Paragraph 3, Clause 1, Part 1 of the Article 7 of the Law of Ukraine "On the collection and accounting of a single contribution to compulsory government social insurance" [5], establishes that the accrual and payment of a single contribution for payers referred to in Paragraph 7 Clause 1 of Part 1 of the Art. 4 of this Law is carried out at the expense of the state budget in the manner prescribed by the Cabinet of Ministers of Ukraine, but not less than the minimum insurance premium for each person.

And in Part 5 of the Article 8 of the Law of Ukraine "On the collection and accounting of a single contribution to compulsory state social insurance" [5], it is established that a single contribution for payers specified in the Art. 4 of this Law is established in the amount of 22 percent to the specified

Art. 7 of this Law of the base of calculation of a single contribution.

The basic law that proves!! that money is paid to an unemployed person caring for a child before he reaches the age of three!!! in the amount of the minimum wage!!!, is a Paragraph 2 of Part 8 of the Article 9 of the Law of Ukraine "On the collection and accounting of a single contribution to compulsory state social insurance" [5], where it is established that the payers specified in Clause 1 of Part 1 of the Art. 4 of this Law, for each payment of wages (income, cash security) for the amount of which a single contribution is accrued, simultaneously with the issuance of the indicated amounts, they are required to pay the single contribution accrued for these payments in the amount established for such payers (advance payments). The exception is cases if the contribution assessed for these payments has already been paid within the time period established by the first paragraph of this part, or as a result of reconciliation of the payer with the revenue and fees agency, the overpayment of a single contribution is recognized, the amount of which exceeds the amount of the contribution payable, or equal to it. Funds are transferred simultaneously with the receipt (transfer) of them for labor (payment of income, cash security), including in non-cash or in kind. In this case, the actual receipt (transfer) of funds for payment of labor (payment of income, cash security) is considered to be receipt of the corresponding amounts in cash, crediting to the recipient's account, transferring on behalf of the recipient for any purpose, receiving goods (services) or any other material assets against these payments, the actual implementation of such payments deductions in accordance with the law or executive documents or any other deductions.

According to the law below, banks transfer funds, namely, benefits for caring for a child before he reaches the age of three to an unemployed woman, provided that they simultaneously transfer funds to pay the corresponding amounts of a single contribution, which is carried out from the state budget.

In fact benefits for a child under the age of three are not received by an unemployed woman.

This is proved by Paragraph 1 of Part 2 of the Art. 24 of the Law of Ukraine "On the collection and accounting of the single contribution to compulsory state social insurance" [5], where it is established that banks accept from the payers of the single contribution specified in Clause 1, Part 1 of the Article 4 of this Law, payment orders and other settlement documents for the issuance (transfer) of funds for the payment of wages, for which, in accordance with this Law, a single contribution is accrued, and they issue (transfer) these funds only if the payer submits the settlement documents about the transferred and funds for payment of the unified installment amounts or documents confirming the actual payment of such amounts in the manner determined by the central executive authority, which ensures the formation and implementation of the state tax and customs policy in agreement with the National Bank of Ukraine and the central executive authority, ensuring the formation state policy in the areas of labor relations, social protection of the population.

It turns out legally, that every unemployed woman who was left without payment has the right to return these funds, namely, to return the amount of the minimum wage multiplied by 36 months (3 years) and the penalty interest calculated on these amounts, is determined based on the calculation of 120 percent of the annual discount rate of the National Bank Ukraine. This right is noted in Paragraph 2 of Part 3 of the Art. 26 of the Law of Ukraine "On the collection and accounting of the single contribution to compulsory state social insurance" [5], it was established that the amounts unreasonably recovered by the territorial bodies of income and fees from legal entities and individuals are subject to return from accounts by the bodies of income and fees within three days from the day of the decision by the territorial authority of revenues and fees or the court on the groundlessness of their recovery with the simultaneous payment of interest charged on these amounts, is determined based on the

calculation of 120 percent of the annual discount rate of the National Bank of Ukraine.

Dear unemployed women, do you know that the amount of assistance payments that the government has deprived you of is officially your income?!!!, it is spelled out in Clause 1 of the Art. 41 of the Law of Ukraine "On compulsory state pension insurance" of July 09, 2003 [6], where it is established that the wages (income) for calculating the pension shall include: the amount of payments (income) received by the insured person after the entry into force of this Law (after July 09, 2003), of which, in accordance with this Law, there were actually assessed (calculated) and paid insurance premiums within the limits of the maximum amount of wages (income) established by law, from which insurance premiums are paid, and after the entry into force of this Law of Ukraine "On the collection and accounting of a single contribution for compulsory state social insurance" – the maximum value of the base for accruing a single contribution on compulsory state social insurance determined in accordance with the law.

We conclude that in the certificate under the OK-5 form are indicated the social benefits provided by the Pension Fund, the indicated income of an unemployed woman, which is actually **not paid to an unemployed woman**.

According to Clause 2, Part 2, Article 6 of the Law of Ukraine "On the collection and accounting of the single contribution to compulsory state social insurance" [5], it has been established that the payer of the single contribution is obliged to keep records of payments (income) of the insured person and the calculation of the single contribution for each calendar month and calendar year, store such information in the manner prescribed by law.

Due to the fact that the department of social protection of the population pays a single contribution by means of the state budget, it actually has the status of an insurance institution for unemployed women, this is spelled out in Clause 2 Part 1 of the Article 1 of the Law of Ukraine "On the collection and accounting of a single contribution to compulsory state social insurance" [5], which established that a single contribution to compulsory state social insurance (hereinafter – a single contribution) is a consolidated insurance contribution collected in the system of compulsory state social insurance on a mandatory basis and on a regular basis in order to ensure protection in cases provided for by law of the rights of insured persons to receive insurance payments (services) for existing types of compulsory state social insurance. Further, in Part 1 of the Article 8 of the Law of Ukraine "On the collection and accounting of a single contribution to compulsory state social insurance" [5], it is established that the size of the single contribution for each category of payers defined by this Law, and the proportion of its distribution by type of compulsory state social insurance are established taking into account the fact that they should provide insurance benefits and social services to insured persons provided for by the legislation on compulsory state social insurance; financing of activities aimed at the prevention of insured events; the creation of a reserve of funds to ensure insurance payments and the provision of social services to insured persons; covering administrative expenses for the functioning of the system of compulsory state social insurance.

This proves that the size of the paid single contribution should provide insurance payments to the insured, but where are these payments?

Let's start with the fact that, Part 1 of the Article 4 of the Law of Ukraine "On government assistance to families with children" [1], establishes that the cost of paying government assistance to families with children is funded from the State budget of Ukraine in the form of subventions to local budgets

At what stage does money disappear !? when a child care allowance is transferred before he reaches the age of three?:

1. Do the National Bank of Ukraine and the Central Executive Body providing social protection of the population, intentionally document them as paid and do not pay officially? Indeed, the Cabinet of Ministers of Ukraine provides support to fami-

lies with children, coordination of the activities of central and local executive bodies in this area. The Cabinet of Ministers of Ukraine annually reports to the Verkhovna Rada of Ukraine on the state of the demographic situation in Ukraine.

2. Are local budgets and assistance subsidies hided?

Indeed, according to Clause 2, Part 2, Article 23 of the Law of Ukraine "On the collection and accounting of the single contribution to compulsory state social insurance" [5], it has been established that the Central Executive Body, which ensures the formation and implements the state tax and customs policy, Pension Fund, compulsory state social insurance funds exchange information in cases provided for by this Law. The procedure for the implementation of such an exchange is determined by the Central Executive Body, which ensures the formation and implementation of the state tax and customs policy, together with the Pension Fund and funds of compulsory state social insurance. Where does the money actually disappear? After all, officially in the Pension Fund, a certificate OK-5 indicates that assistance is provided, this means that the government pays money to a woman! But if you take a certificate on the payment of benefits for the management of social protection of the population, it will indicate that a woman is paid only the allowance at the birth of a child in the amount of 860 hryvnias for months (about 35 dollars). And in the Pension Fund, the same department of social protection of the population will indicate that it that pays a woman a minimum wage equal to the amount of childcare up to the age of three in the amount of 4173 hryvnias (about 170 dollars).

We conclude that by the actions of state bodies in the deliberate non-payment of childcare benefits until the child reaches the age of three to unemployed women, such laws were affected:

1. Law of Ukraine "On the Protection of Childhood" [7].
2. Part 1 and Part 2 of the Article 2 of the Law of Ukraine "On Childhood Protection" [7].
3. Paragraph 4 and 5 of the Article 4 of the Law of Ukraine " On Childhood Protection" [7].
4. Part 2 of the Article 5 of the Law of Ukraine "On Childhood Protection" [7].
5. Part 2 of the Article 6 of the Law of Ukraine "On Child Protection" [7].
6. Part 3 of the Article 12 of the Law of Ukraine "On Child Protection" [7].
7. Part 1 of the Article 13 of the Law of Ukraine "On Child Protection" [7].
8. Part 1 of the Article 35 of the Law of Ukraine "On Child Protection" [7].
9. The Article 48 of the CU [3].
10. The Article 56 of the CU [3].
11. Part 2 of the Article 5 of the FCU [8].
12. Part 1 of the Article 1 of the Law of Ukraine "On the minimum living wage" [9].
13. Paragraph 7 and 9, Part 1 of the Article 4 of the Law of Ukraine "On the principles of preventing and combating discrimination in Ukraine" [10].
14. Part 1 and Part 2 of the Article 15 of the Law of Ukraine "On the principles of preventing and combating discrimination in Ukraine" [10].
15. Part 1 of the Article 32 of the Convention on the rights of the child [11].
16. Part 1 of the Article 3 of the Convention on the rights of the child [11].
17. Part 2 of the Article 3 of the Convention on the rights of the child [11].
18. Part 2 of the Article 6 of the Convention on the rights of the child [11].
19. Part 1 of the Article 26 of the Convention on the rights of the child [11].
20. Part 1 of the Article 27 of the Convention on the rights of the child [11].
21. Part 3 of the Article 27 of the Convention on the rights of the child [11].
22. Part 1 of the Article 39 of the Convention on the rights of the child [11].
23. Part 1 of the Article 442 of the Criminal Code of Ukraine [12], it was established that genocide-

an act intentionally committed with the aim of the complete or partial destruction of any national, ethnic, racial or religious group by depriving the lives of members of such a group or causing grievous bodily harm to them, **creating living conditions for the group calculated on the full or partial physical destruction**, reduction of childbearing or its prevention in such a group or by forcible transfer of children from one group to another – shall be punishable by deprivation of liberty for a term of ten and up to fifteen years or life imprisonment.

We conclude that the employer of an unemployed woman who is on maternity leave is a body that pays her cash security, this is the Social Security Office, and due to the fact that this body pays a single contribution for a woman, the collection of which is carried out in the system of compulsory state social insurance on a mandatory basis and on a regular basis in order to ensure protection in cases provided for by law of the rights of insured persons to receive insurance payments (services) automatically. He becomes an insurer, and an unemployed woman – an insured person. In this regard, it is applied the law Clause 5, Part 1, Article 268 of the Civil Code of Ukraine [13], where it is established that the claim limitation of actions does not apply to the requirement of the insured (insured person) to the insurer to make insurance payment (insurance compensation).

Payments of state care can be returned to herself through the courts, since she does not have a limitation period, if you did not receive child care help, you need to take the OK-5 form of the certificate from the Pension Fund and a certificate from the manager social protection of the population, and see how much they must to pay and how much they actually paid.

How to calculate the amount of government debt to an unemployed woman who took care or caring for a child up to the age of three: this is the minimum wage multiplied by 36 months, add to this amount 120% interest for each year and add moral damage.

In article 7 of the Law of Ukraine "On the State Budget of Ukraine for 2019" [14], it is indicated, firstly, to establish in 2019 a living wage for one person per month in the amount 2027 hryvnias from December 1, and for basic social and demographic population groups: for children under 6 years: 1779 hryvnias from December 1; for persons who have lost their ability to work: 1638 hryvnias from December 1. It turns out if a woman receives assistance only in the amount of 860 hryvnias per month (about 35 dollars) for herself and for the child, when the minimum living wage for children under 6 years old: 1779 hryvnias from December 1; for persons who have lost their ability to work (because women who are on maternity by law lose their ability to work and receive assistance from the government): 1638 hryvnias from December 1, the total amount of 1779 hryvnias + + 1638 hryvnias = 3417 hryvnias per month (about 140 dollars). How to dress a woman and a child for 860 hryvnias a month (about 35 dollars), buy food and diapers, vitamins for a child, pay for utilities? **This is an open form of genocide of women and children by the government in Ukraine.**

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Section 5. Theory and history of state and law

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COMPARISON BETWEEN CAPITALIST LAW-GOVERNED STATE AND SOCIALIST LAW-GOVERNED STATE IN VIETNAM

Abstract. This article discusses two main issues, namely, methodology of comparative politics and similarities and differences between capitalist law-governed state and socialist law-governed state in Vietnam. The author applies analytical method to clarify characteristics the law-governed state and then, applies comparative method to identify similarities and differences and find out advantages and disadvantages of this state organization type. Next, the author proposes measures to complete the legal system in Vietnam and facilitating effective development of a democratic, fair and civilized society in Vietnam.

Keywords: Comparative politics, capitalist, law-governed state, socialist, Vietnam.

Definition of comparative politics

Comparative politics is considered by most of scholars in the world as one out of four pillars of politics, namely, political theory, domestic politics, international relation and comparative politics.

In fact, comparative politics not only plays a key role in politics but also acts as one of the important components of international studies in general, especially in international relation studies and international law (for example, comparison of political institutions/constitutions).

Based on word combinations of noun "comparative politics", methodology of comparative politics is shown in two aspects. The first aspect is that subjects of comparative politics are political systems of two or more different countries or two or more political systems in different stages of the same country or region. In this aspect, comparative politics is associated with political regionalistics. The second aspect is that the fundamental method of comparative politics is comparative method — a method widely applied in sciences, including natural science and social science. Consequently, comparative politics answers two questions, including What is compared? and How to compare? Accordingly, "comparative method is not a scientific epistemology principle used as the premise for theory justification but it allows comparative assessment of empirical research result".

Use of comparative method in political studies allows identification of similarities and differences in

political characteristics and helps to detect the interaction between culture and politics, geography and economics, tradition and modernity, the ordinary and the extraordinary to be eliminated.

Theoretics of law-governed state

Law-governed state is considered as a type of state organization that governs the society by constitutions and laws. In that state, law system acts as the highest-ranking tool in governing social relations and people are entitled to all democratic rights to the extent permitted by laws.

Regarding theoretic, law-governed state is not a type of state. Law-governed state covers common values and represents a level of democracy development. This means that law-governed state is associated with a democracy. Although law-governed state is not a type of state characterized by theoretic of socio-economic formations, it cannot exist in a non-democratic society.

Objection against the viewpoint that law-governed state is a type of state has important epistemological significance in properly detecting nature of law-governed state. This epistemological significance includes the following aspects:

Firstly, law-governed state only exists when when capitalist democracy emerged. In fact, it is declared that law-governed state is being built in most of developing and developed capitalist countries as a result.

Secondly, as a type of organization and operation of a state and social regime, law-governed state is developed in not only capitalist regime but also socialist regime. In theoretic epistemology and fact, capitalist and socialist law-governed state all exist as a result.

Thirdly, law-governed state has common values presented in various forms by theorists, depending on their political — legal and academic viewpoint. Their forms may be different but in nature, law-governed state has the following general values:

1) Law-governed state is the concentration of democratic regime. Democracy is nature and condition, premise of the state regime. Law-governed state aims to develop and implement a democracy and ensure that political powers belong to people. Accordingly, people fulfill their democratic rights via direct democracy and representative democracy.

2) Law-governed state is organized and operated to the extent permitted by the Constitution and laws. Constitution and laws fundamentally govern the whole State activities and social activities, decide constitutional compliance and legality of all organizations and activities of the state apparatus at all times. However, not all constitutional regimes and legal systems can be able to develop a law-governed state. Only Constitution and democratic and fair legal system can be bases for a law-governed regime in the state and society.

3) The law-governed state respects, emphasizes and assures human rights in all activities of the state and society. Human rights are criteria for assessment of rule of law of a state regime. All activities of a state must come from respect and assurance of human rights and facilitate fulfillment of citizens' rights under legal provisions. The relationship between individuals and a state is closely determined in legal aspects and is fair. Model of the relationship between the state and individuals is determined based on principle that state agencies must only do things permitted by law whereas citizens have rights to do all things, except for things prohibited by laws.

4) State powers in a law-governed state are organized and fulfilled based on democratic principles, including power delegation and power control. Characteristics and methods of state power delegation and control vary by state governments in countries but their similarity is that state powers cannot be assigned to one person or one agency but must be delegated (allocated) among legislative, executive and judicial agencies. Organization and fulfillment of powers must be closely controlled by specific power control mechanisms inside and outside state apparatus.

5) Law-governed state is associated with an appropriate Constitution and law protection mechanism. Bases of a law-governed state are Constitution

and a democratic and fair legal system, thus, a Constitution and law protection mechanism is always a requirement and prerequisite for ensuring that constitution and laws are always respected, emphasized and closely observed. Forms and methods of Constitution and law protection may vary by countries but they aim to ensure the highest-ranking and inviolable position of Constitution and eliminate acts against nature and provisions of constitution, regardless of subjects of these acts. In order to protect Constitution, law-governed state always requires development and implementation of a democratic, transparent and appropriate judicial regime to sustain and protect legislation in all activities of the State and society.

6) In a law-governed state, state powers are always limited to relationships between the State and economy, the State and society.

In the relationship between the State and economy, position, role, functions, duties of the State are determined by characteristics and levels of market economy model. Accordingly, the State respects, promotes objective rules of market, uses market to regulate economic relations and remedy, limit negative impacts of market.

In the relationship with the society, the State uses laws to manage the society, respects and follows position, role and autonomy of social structure (social organizations and social communities).

The relationship among the State, economy and society is an interactive relationship that regulates each other. The State is not ranked higher than economy and society and law-governed state is associated with economy and society, serves economy and society to the extent permitted by Constitution and laws.

Besides common values above, a law-governed state also includes specific values. Specificity of the law-governed state is characterized by many factors. In fact, these factors are very diversified, abundant and complicated and characterized by historical, economic, cultural condition, social psychology and geographical environment of each ethnic group. They not only result in identity, distinction of each ethnic group during founding, protection and development of their country but also decide law-governed state's level of reception and absorption of common values. Acknowledgement of specificity of the law-governed state has important epistemological significance. With this significance, law-governed state is a common and specific category and a common value of the human kind and a specific value of each ethnic group and country. Consequently, there cannot be a common law-governed state for all countries and ethnic groups. Depending on historical, political, socio-economic characteristics and development level of each country and ethnic group, they build their own appropriate law-governed state model.

Similarities and differences between capitalist law-governed state and socialist law-governed state

It is essential to study similarities and differences between capitalist law-governed state and socialist law-governed state because this will correct two current deviant trends in Vietnam, namely, conservative trend with old-fashioned thinking and "left-wing" childishness and objection to and denial of the whole capitalism; gradually equivocal, wrongful and "right-wing" trend towards Western capitalist democracy despite Vietnam's more intensive and comprehensive integration with the world, especially with developed capitalist countries.

Fundamental similarities between capitalist law-governed state and socialist law-governed state in general, including the socialist law-governed state of Vietnam in particular, including the following main similarities:

Firstly, methods for organizing, developing and operating state apparatus must be regulated by laws. Law-governed state is a special form of state organization, in which, legislation is the highest-ranking tool to fulfill powers of people. The State and citizens must acknowledge the ultimacy of laws. Laws not only act as the main tool to manage all social activities of citizens but also ultimately prevail over

all powers of social and political organizations regulating each citizen in such society.

Secondly, state powers include legislative powers, executive powers and judicial powers.

Thirdly, there are sufficient, clear and transparent law systems representing people's will and expectation for governing legal relationships arising in the society. Law-governed state is a form of state organization, in which, state powers represent interests and will of most people, apply democratic regime to establishment of state powers and apply referendum. Accordingly, each individual must have obligations, responsibilities and rights as provided for by laws.

Differences between capitalist law-governed state and socialist law-governed state:

Firstly, socialist law-governed state and capitalist law-governed state must acknowledge methods for organizing, developing and operating state apparatus as provided for by laws. However, legal nature and contents regarding organization, development and operation of apparatus of such two states are fundamentally different. The clearest difference is the difference in constitutional and legal norms regarding organization, human resource structure and development, operation of power apparatus such as National Assembly and Parliament; President and State Leader, Prime Minister, Court, Constitutional Law, etc. Laws in socialist law-governed state acknowledge that all state powers belong to people, bodies of power (National Assembly, Government, etc) and only people, directly or via their delegates, have right to declare dissolution of the National Assembly, Government or elect the National Assembly and Government for a new tenure while capitalist constitution and laws acknowledge powers of the President or Prime Minister to dissolve the Parliament (National Assembly) or the Government, etc.

Secondly, in a socialist law-governed state, the state and its citizens must acknowledge ultimacy of laws because socialist laws represent will and expectation of the whole people. In a capitalist law-governed state, the state and its citizens must also acknowledge ultimacy of laws but capitalist laws are not laws of the whole people and fail to fully represent their will and expectation but only reflect will and expectation of a group of people who are of capitalist class. In other words, laws of capitalist law-governed state only protect interests of capitalist class and fail to cover rights of employees. This is the most fundamental difference between socialist law-governed state and capitalist law-governed state.

Thirdly, capitalist law-governed state considers "trias politica" theory of Montesquieu as a fundamental theory in fulfillment of state powers. Accordingly, legislative, executive and judicial bodies independently fulfill three powers, including legislative, executive and judicial powers. Socialist law-governed state does not acknowledge separation of powers but considers that state powers are consistent and belong to people. Moreover, fulfillment of legislative, executive and judicial powers is assigned and coordinated to ensure that state powers are consistent and fulfilled most effectively.

Fourthly, socialist law-governed state relies on its economic base as public ownership of means of production and is characterized by working class while capitalist law-governed state relies on its economic base as private ownership of means of production and is characterized by capitalist class.

Fifthly, besides differences related to class, socialist law-governed state only recognizes legal norms when they are made and passed based on a certain sequence and procedure white capitalist law-governed state often considers "case law" or "custom" as a type of "unwritten" legal norms.

The above differences result from differences in economic, political and social base between capitalist law-governed state and socialist law-governed state.

Economic base of capitalist law-governed state is capitalist market economy whereas economic base of socialist law-governed state is socialist-oriented market economy. Socialist orientation of market economy does not deny objective rules of market and act as the base for determining differences be-

tween market economy in capitalism and market economy in socialism. Consequently, characteristics of socialist market economy lead to differences between capitalist law-governed state and socialist law-governed state and create quality of socialist law-governed state.

Political base of capitalist law-governed state is multi-party regime whereas political base of socialist law-governed state is single-party regime. Political singularity must be always an attribute of socialist state — a state requires high consistency and integrity in organization and activities of all state structures to achieve targets of socialism.

Political singularity is characterized by statement of leadership role of single ruling party in Vietnam. Nature of a democracy does not depend on multi-party regime or single-party regime but depend on whom interests are represented by the ruling party and what state powers are used for in fact. Consequently, multi-party regime or single-party regime is not a prerequisite for building law-governed state and cannot be considered as bases for assessment of characteristics and level of a democracy. Leadership of the Communist party — the single ruling party for social life and state life, not only conforms to nature of law-governed state in general but also acts as the prerequisite for development of socialist law-governed state of people, by people and for people in Vietnam.

Social base of capitalist law-governed state is high respect for individualism whereas social base of socialist law-governed state is great national unity. With great national unity, law-governed state has a wide social base and extraordinary ability to gather, call on people of all classes to practise and promote democracy.

Although socialist market economy fails to eliminate social stratification into the rich and the poor, it is able to handle relationship between economic growth and social equality better. Social contradictions arising in development of market economy are less likely to become antagonistic contradictions and result in conflicts related to social division because they are regulated by laws, policies and other tools of the state. This is one of conditions for ensuring political stability, unity of social forces for common development targets.

Some solutions to complete legal systems of Vietnam during development of socialist law-governed state

In order to develop socialist law-governed state in Vietnam at present, one of important and essential duty is early completion of legal system.

This means that Vietnam needs to rapidly determine the theory used to develop legal model.

Comparison between capitalist law-governed state and socialist law-governed state can show a lot of theoretical models that have been applied in countries in the world. On one hand, Vietnam cannot mechanically apply such theoretical models. On the other hand, Vietnam cannot ignore impacts and influences of these theories on movement of modern legislation. Consequently, studies of development of theoretical models for Vietnamese legal model need to be included in the relationship between two factors, including ethnicity and modernity.

It is necessary to study summary of historical experience of Vietnamese generations in development and implementation of legal institutions. Experience in law making and law enforcement in historical stages shows that Vietnamese generations managed to absorb foreign legal values to make Vietnamese legal identity.

Nowadays, Vietnam also needs to selectively, proactively and smartly absorb foreign legal values to keep reinforcing and developing the country. However, absorption of foreign legal values and experience needs to observe three fundamental conditions. Firstly, thoughts of imported laws must be in line with prevailing legal consciousness of the receiving country. Secondly, imported laws must be in line with structure, forms and methods of state power organization in the host country. Thirdly, imported laws must conform to social production method and

must be accepted and supported by the majority of members in the society.

Demand for integration into international economy in the context of globalization and assurance of compatibility of national laws with international legal space requires Vietnam to promote legislative reform. Legislative reform can be summarized as follows:

The first reform is legislative planning reform. If law making plans are only made based on proposals of the competent authorities for gathering, reviewing and passing, they cannot remedy failure to complete plans because many law-related projects are registered like "reservation" and in fact, it is very difficult to make legal plans because characteristics, targets, governing subjects and governing methods have not been fully determined. Document registration like "reservation" fails to closely bind responsibilities of agencies proposing drafts. In order to remedy this, the National Assembly only needs to pass legal initiatives, instead of making and passing annual and five-year law making plans. Individuals and agencies (under legal provisions) proposing legal initiatives assume responsibility for explaining bases regarding necessity of targets, subjects to be governed and feasibility of documentation. Accordingly, the National Assembly discusses passes and assigns drafting responsibility to appropriate agencies, organizations and individuals.

The second reform is change of viewpoint of act scope. Recent law making processing in Vietnam shows that most of made and passed acts have a large number of governing norms and subjects and large governing scope. Making of large-sized acts requires results in drafting extension and inappropriateness and inconsistency between drafts and other acts. Especially, significant and complicated acts often require a long time of argument, discussion to reach an agreement on viewpoints and forms of representation. Consequently, it takes a long time to prepare, compile, appraise, discuss, edit and pass drafts at the National Assembly. A large gap between urgent demand for act amendment and ability to amend acts makes passed acts lag behind daily life. In order to fix this, it is necessary to focus on developing and passing acts with narrow governing scope, instead of developing and passing large-sized acts. An act with a few articles will be rapidly prepared and promptly meet demand for law amendment and easily conform to international legal space. Usefulness of an act with a few articles is characterized by not only brief contents, easy preparation but also easy control of appropriateness and consistency, easy amendment, if required and easy application in fact.

The third reform is reform of law passing methods and procedures. Traditional law making procedures of legislative bodies including discussion by delegates of the National Assembly, appraisal by committees of the National Assembly, explanation and listening by preparing bodies cause difficulties in improvement of quality and effectiveness of acts. It takes a long time to orally discuss whereas drafting contents are not concerned. Consequently, discussion opinions of delegates of the National Assembly on drafts are not really good. In order to fix this, before drafts are discussed at the National Assembly, groups of experts from research institutes, universities need to scientifically appraise drafts to assess specific aspects of the whole law-related projects, from wording, structure to contents of acts and identify wording and document errors. Scientific appraisal of drafts by independent groups of experts is a base for drafting and editing and act as reference documents for delegates of the National Assembly when discussing drafts. On the other hand, in order to improve quality of acts, draft passing procedures need to be performed in two steps, including discussion and passing at a corresponding committee of the National Assembly and discussion and passing at a plenary session of the National Assembly. Drafts are only considered, discussed and passed at the National Assembly only when they are passed by a committee of the National Assembly. This not only emphasizes law making role of committees of

the National Assembly but also saves working time of the National Assembly and improves effectiveness of acts.

The fourth reform is strengthening absorption of people's opinions on draft law making. Brief draft laws with a few articles will be extremely accessible to people. People's opinions on law making are important prerequisites for ensuring that laws properly represent will, expectation of people and are actually of people, by people and for people. It is necessary to prescribe that collection of people's opinions (besides collection of opinions of agencies, organizations or some officers) is mandatory during drafting. Especially, inclusion of people's opinions in drafts (which opinions are included, which opinions are not included, why not included) must be publicly and transparently notified. This will make people feel that their opinions are respected and their trust in laws will be reinforced as a result.

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Contents