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Резюме

Муляр Г.В., Ховпун О.С., Шуст Г.П. **Правопорушення у сфері використання земельних ресурсів як підстава притягнення до адміністративної відповідальності: порівняння законодавства України та сусідніх держав.**

У статті на основі аналізу законодавства України та сусідніх держав розкриваються особливості складових правопорушення у сфері використання земельних ресурсів як фактичної підстави притягнення до адміністративної відповідальності.

Ключові слова: юридична відповідальність, правопорушення, використання земельних ресурсів, об'єкт правопорушення, об'єктивна сторона правопорушення, суб'єкт правопорушення, суб'єктивна сторона правопорушення, адміністративна відповідальність.

Резюме

Муляр Г.В., Ховпун А.С., Шуст А.П. **Правонарушение в сфере использования земельных ресурсов как основание привлечения к административной ответственности: сравнение законодательства Украины и соседних стран.**

В статье на основе анализа законодательства Украины и соседних стран раскрываются особенности составных правонарушения в сфере использования земельных ресурсов как фактического основания привлечения к административной ответственности

Ключевые слова: юридическая ответственность, правонарушение, использование земельных ресурсов, объект правонарушения, объективная сторона правонарушения, субъект правонарушения, субъективная сторона правонарушения, административная ответственность.

Summary

Muliar G., Khovpun O., Shust G. **Offenses in the sphere of land resources utilization as grounds for administrative liability: comparison of legislation of Ukraine and neighboring states.**

In the article on the basis of the analysis of the legislation of Ukraine and the neighboring states reveals the features of the constituent offenses in the sphere of land resources use as the actual grounds for bringing to administrative responsibility.

Key words: legal liability, offense, use of land resources, object of the offense, the objective side of the offense, the subject of the offense, the subjective part of the offense, administrative liability.

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PROCEDURAL SAFEGUARDS ENSHRINED IN ARTICLE 9 OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS APPLICAPLE TO THOSE IN PREVENTIVE DETENTION

A situation where a person is held without trial refers to preventive (pre-trial) detention[1] based on the danger to state or public security posed by a particular person[2]. However, identical standards should be used to measure the treatment of detainees either in preventive detention or within the regular criminal justice system[3]. Even the methods employed to combat terrorism, including the detention of terrorist suspects, should be commensurate with established international legal norms[4] as "no matter how wrongly, dangerously, or even criminally a person may act, every human being is legally and morally entitled to protection on the basis of internationally recognized human rights and fundamental freedoms"[5].

In *Union of India v. Paul Nanickan and Anr*, the Supreme Court of India stated: "The object of preventive detention is not to punish a man for having done something but to intercept him, before he does it, and to prevent

him from doing it. No offence is proved, nor any charge formulated; and the justification for such detention is suspicion or reasonable probability and not criminal conviction, which can only be warranted by legal evidence"[6]. Referring to the above mentioned, a deprivation of personal liberty prior to criminal conviction in modern legal systems characteristically occurs as a precautionary measure to ensure that the administration of criminal justice is not frustrated or obstructed by those who may become subject to its processes[7].

'Preventive detention' is often called 'administrative detention' for the reason that such detention is ordered by the executive and the power of decision rests solely with the administrative or ministerial authority[8]. Gross' definition of 'preventive detention' is the following: "Administrative detention, sometimes known as preventive detention, refers to a situation where a person is held without trial. The central purpose of such confinement is to prevent the detainee from committing offences in the future. Detention is based on the danger to state or public security posed by a particular person against whom the government issues a detention order. In other words, if the detainee were released, he would likely threaten the security of the state and the ordinary course of life"[9]. Consequently, the detention will fall within the concept of preventive detention if the courts are responsible only for considering the lawfulness of the decision and/or its proper enforcement[10].

The United Nations Commission on Human Rights developed an interest in the practice of administrative detention in its resolution 1985/16 of 11 March 1985. The Sub-Commission on Prevention of Discrimination and Protection of Minorities requested its Special Rapporteur, Mr Louis Joinet, to prepare an explanatory paper concerning administrative detention. According to the synopsis of material received from non-governmental organisation: "Administrative detention was … common practice in more than 30 countries, where thousands of persons were said to be held in detention without charge or trial, merely by executive decision, either because they were viewed as a potential threat to national security or public order.[11] Joinet further commented: "… contrary to what one might suppose, administrative detention is not banned on principle under international rules"[12].

At the same time, being applicable for preventive detention[13] article 9 (1) of the International Covenant on Civil and Political Rights (ICCPR) provides that no one shall be subjected to arbitrary detention or deprived of his liberty except on such grounds and in accordance with such procedure as are established by law[14]. Whether preventive detention is a permissible deprivation of liberty depends on whether it falls within the prohibition on arbitrary detention under Article 9(1) of the ICCPR[15] where 'arbitrariness' means either contrary to national law or international standards[16]. The latter comes from the practice of Human Rights Committee (HRC), the *travaux préparatoires* of both the Universal Declaration of Human Rights (UDHR) and ICCPR and the United Nations Study Analysis of 'Arbitrary Arrest and Detention'. Thus, as to the United Nations Committee an arrest or detention is arbitrary if it is (a) on grounds or in accordance with procedures other than those established by law, or (b) under the provisions of a law the purpose of which is incompatible with respect for the right to liberty and security of person'[17]. In the Study Analysis of 'Arbitrary Arrest and Detention' made by the Commission on Human Rights mandated by the United Nations Economic and Social Council the suggestion was made that the word 'arbitrary' should be understood to mean arrest and detention either: a) on grounds or in accordance with procedures other than those established by law; or b) under the provisions of a law the basic purpose of which is incompatible with respect for the right to liberty and security of person[18]. At the same time, in *Van Alphen v. The Netherlands*, the HRC considered the meaning of 'arbitrary' in Article 9(1) of the ICCPR. In this case the applicant was detained from 5 December 1983 to 9 February 1984 (a period of over nine weeks) without criminal charge or trial. The Committee confirmed that 'arbitrariness' is not to be equated with 'against the law', but must be interpreted more broadly to include elements of inappropriateness, injustice and lack of predictability[19]. This means that remand in custody pursuant to lawful arrest must not only be lawful but reasonable in all the circumstances[20]. A similar result was found in *A v. Australia* where it held: 'The Committee recalls that the notion of 'arbitrariness' must not be equated with 'against the law' but interpreted more broadly to include such elements as inappropriateness and injustice'[21].

This in turn, leads to two propositions: a) the deprivation of liberty must be lawful, in that it must accord with procedures as established by law, the arrest and detention must be specifically authorised and sufficiently circumscribed by law;[22] and b) the legislative enactment that permits arrest and detention must not itself be arbitrary; legislation must conform to the principles of justice or with dignity of the human person, and must not be inappropriate or unjust[23]. This interpretation of the word 'arbitrary' is consistent with the purposes of the UDHR, in particular 'protecting individuals from despotic legislation and to establish that deprivations of liberty, such as occurred under the Nazi regime, are not consistent with human rights merely because they were prescribed by national law'[24]. Further, 'only an international minimum standard which operates independently of the vagaries of national legal systems can effectively protect human rights'[25].

There is a breach of the prohibition of the arbitrary detention when a detainee is not accorded procedural safeguards enshrined in art. 9 of the ICCPR[26]. This article provides:

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation'[27].

Article 9(2) of the ICCPR provides that anyone who is arrested has the right to be informed at the time of arrest of the reasons for his/her arrest[28] to enable him/her to take immediate steps to secure his/her release if he believes that the reasons given are invalid or unfounded[29]. This right applies to cases of preventive detention[30] and serves the purpose of placing the detained person in a position to make use of their right to review the lawfulness of detention pursuant to Article 9(4)[31]. Actually, two rights exist: (i) Anyone who is arrested has the right to be informed at the time of arrest of the reasons for his arrest ('first element'); and (ii) A person charged with an offence has the right to be promptly notified of a charge or charges against him ('second element')[32].

The right to be informed at the time of arrest of the reasons for the arrest provides that the description must go beyond a mere reference to the legal basis for detainment and enable the detainee to discern the substance of the complaint against him[33]. In *Dialo* the Court stressed that Guinea was justified in arguing that Mr. Diallo's right to be "informed, at the time of arrest, of the reasons for his arrest" – a right guaranteed in all cases, irrespective of the grounds for the arrest – was breached[34]. The DRC has failed to produce a single document or any other form of evidence to prove that Mr. Diallo was informed, at the time of his arrest, of its reasons which deprived him of his right, if necessary, to take the appropriate steps to challenge the lawfulness of the arrest[35].

Moreover, in *Drescher Caldas v. Uruguay*[36], the Human Rights Committee held in relation to the ICCPR: 'The Committee is of the opinion that Article 9(2) of the Covenant requires that anyone who is arrested shall be informed sufficiently of the reasons for his arrest to enable him to take immediate steps to secure his release if he believes that the reasons given are invalid or unfounded'[37]. Thus, as to the case, simply informing Adolfo Drescher Caldas that he was being arrested under the prompt security measures without any indication of the substance of the complaint against him was a breach of Article 9(2) of the ICCPR[38].

Consequently, by failing to inform a person at the time of his/her arrest of its reasons a state deprives him/her of his/her right to review the lawfulness of his/her detention and breaches the prohibition on the arbitrary detention enshrined in Article 9 of the ICCPR.

The state's violation of the right of the person to be promptly notified of a charge or charges against him/her consequences into the arbitrary deprivation of liberty exercised against this person. If a person is arrested and detained without criminal charge, after a certain period of time the detention will offend the prohibition on arbitrary arrest and detention[39]. As to *Campbell v. Jamaica* the 'prompt' information on a criminal charge enables a detained individual to request a prompt decision on the lawfulness of his or her detention[40]. Moreover, the prohibition on arbitrary detention is equated to the requirement to actually charge the detainee with an offence[41]. As to *Constitutional Rights Project and Civil Liberties Organisation v. Nigeria* detention without charges being brought constitutes an arbitrary deprivation of liberty and violation of Article 6 of the African Charter[42].

Article 9(4) ICCPR provides the right for judicial control[43] to mean that anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful[44]. This right is applicable to *any* person arrested or detained, not just those charged with a criminal offence, and as such includes those in preventive detention[45]. A temporary executive detention is permissible – if authorised by law – but the detainee must be brought promptly before the judiciary[46].

In *Hammel v. Madagascar*, incommunicado detention for three days, during which the author could not gain access to a court to challenge it, was held to breach Article 9(4)[47].

As the right under Article 9(4) may be emanated to the only judicial remedy available for those in preventive detention[48] by depriving the person to participate in the proceedings of his/her case the state automatically deprives this person of his/her right to review the lawfulness of detention contained in Article 9(4) of the ICCPR.

As to art. 9 (4) of the ICCPR, anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation[49]. As to *Cámpora Schweizer v. Uruguay* non-compliance of the detention with the requirements of articles 9 of the ICCPR creates the obligation of the State party to provide the victim with effective remedies, including compensation, for the violations he has suffered[50]. As to *Diallo* as well as *A v. Australia* the compensation will be payable even when detention is 'lawful' under domestic law, but 'arbitrary' under the ICCPR[51].

"Mental and moral damage" which covers harm other than material injury suffered by an injured individual[52] may take a form of "mental suffering, injury to [a claimant's] feelings, … loss of social position or injury to … his reputation"[53]. As to *Diallo,* non-material injury can be established even without specific evidence as to the fact that significant psychological suffering and loss of reputation of a person is an inevitable consequence caused by the responsible State's wrongful conduct[54].

In *Diallo* the ICJ outlining the commitment by the breach of DRC of its obligations under articles 9 of the ICCPR of internationally wrongful act giving rise to international responsibility[55] referred to *Chorzów case*[56] and recalled that "reparation must, as far as possible, wipe out all the consequences of the illegal act and reestablish the situation which would, in all probability, have existed if that act had not been committed"[57].

The ICJ has fixed an amount of compensation in the *Corfu Channel* case[58] and, for the violations of huma rights, in *Diallo*[59]. Considering compensation for non-material injury caused by violations of the ICCPR "adequate

compensation" without specifying the sum to be paid[60] or equitable considerations[61] are recommended. In *Diallo* the ICJ stressed that as Guinea is exercising diplomatic protection with respect to one of its nationals, Mr. Diallo, and is seeking compensation for the injury caused to him it is awarded a total sum of US $95,000 to be paid by the DRC[62] of which – the amount of US $85,000 is considered the "appropriate compensation" for significant psychological suffering and loss of reputation of Mr. Diallo[63].

Therefore, any state exercising diplomatic protection with respect to one of its nationals, seeking compensation for the injury caused to him/her by the other state acting in respect of him/her contrary to the provisions enshrined in Article 9 of the ICCPR and committing by this internationally wrongful acts which rise to its international responsibility is entitled to a compensation for this person's significant psychological suffering and loss of reputation.

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[2] C. Macken, *"Preventive detention and the right of personal liberty and security under the International Covenant on Civil and Political Rights 1966"* (Adelaide Law Review, 2005) [hereinafter "Macken"], p. 2.

[3] ECOSOC, *"Standard Minimum Rules for the Treatment of Prisoners"*, (1976) U.N. Doc. E/RES/2076, p. 95.

[4] UNSC, *"Resolution 1456"* (2003) U.N. Doc. S/RES/1456; ECOSOC, *"Situation of human rights in Timor-Leste"*, (2003) U.N. Doc. E/CN.4/2003/37.

[5] ECOSOC, "Resolution 2003/68 of 17 December 2002", U.N. Doc.E/CN.4.2003/68.

[6] *Union of India v. Paul Nanickan and Anr*, Appeal (Crl) 21 of 2002, (13 October 2003).

[7] United Nations Department of Economic and Social Affairs, Study of the Right of Everyone to be Free from Arbitrary Arrest, Detention and Exile (United Nations, 1964), 62–3.

[8] United Nations Economic and Social Council, Commission on Human Rights, SubCommission on Prevention of Discrimination and Protection of Minorities, 'Report on the Practice of Administrative Detention, submitted by Mr Louis Joinet', E/CN.4/Sub.2/1989/27 (6 July 1989) [hereinafter "Report of Administrative Detention"] , 7.

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[10] Report of Administrative Detention, 7.

[11] Report of Administrative Detention, 7.

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[13] *Case concerning Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)* (Merits, Judgment), 2010 ICJ Reports [hereinafter "*Diallo*"], p. 33, para. 77; *David Alberto Campora Schweizer v. Uruguay* (Communication No. 66/1980), 1980, UN Doc.Supp.No.40 (A/38/40), [18.1] [hereinafter *"Schweizer v. Uruguay"*].

[14] *International Covenant on Civil and Political Rights* (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171) [hereinafter "ICCPR"], art. 9 (1).

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[16] United Nations Department of Economic and Social Affairs, "*Study of the Right of Everyone to be Free from Arbitrary Arrest, Detention and Exile"*, (1964), p. 6.

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[19] *Van Alphen v. The Netherlands*, Communication No. 305/88, UN Doc. CCPR/C/39/D/305/1988.

[20] *A v. Australia*, Communication No. 560/1993, UN Doc. CCPR/C/59/D/560/1993 (30 April 1997).

[21] Ibid.

[22] Sarah Joseph, Jenny Schultz and Melissa Castan, The International Covenant on Civil and Political Rights: Cases, Materials, and Commentary (2000), 211.

[23] Macken, p. 15.

[24] Yoram Dinstein, 'Right to Life, Physical Integrity, and Liberty' in Louis Henkin (ed), The International Bill of Rights: The Covenant on Civil and Political Rights (1983) [hereinafter 'Dinstein'], 131.

[25] Dinstein, p. 130.

[26] Macken, p. 18.

[27] ICCPR, art. 9.

[28] ICCPR, art. 2, para. 3 (b).

[29] *Adolfo Drescher Caldas v. Uruguay* (Communication No.43/1979), 1979 UN Doc.Supp. No 40 (A/38/40) [hereinafter *"Caldas v. Uruguay"*], para. 13.2.

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[34] *Diallo,* p. 35, para. 84.

[35] *Diallo,* p. 35, para. 84.

[36] *Caldas v. Uruguay.*

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[38] *Ibid.*

[39] Macken, p. 23.

[40] *Barrington Campbell v. Jamaica* (Communication No. 618/1995), 1998 U.N.Doc. CCPR/C/64/D/618/1995, para. 6.3.
[41] *Daniel Monguya Mbenge v. Zaire* (Communication No. 16/1977), 1990 U.N. Doc. CCPR/C/OP/2.
[42] *Constitutional Rights Project and Civil Liberties Organisation v. Nigeria* (Communication No.102/93), 1 October 1998, ACHPR, 1998 IIHRL 111, p. 55.
[43] *De Wilde, Ooms and Versyp ('Vagrancy') v. Belgium* (App nos. 2832/66, 2835/66, 2899/66), ECHR, 18 June 1971, para. 76.
[44] M.J. Bossuyt, *"Guide to the 'TravauxPréparatoires of the International Covenant on Civil and Political Rights"* (1987), p. 212; *Vagrancy v. Belgium*, para. 76.
[45] *HRC, General Comment 8.*
[46] Y. Dinstein, *"Right to Life, Physical Integrity, and Liberty"* (The International Bill of Rights: the Covenant on Civil and Political Rights / Louis Henkin, editor., 1981), p. 132.
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[49] ICCPR, art. 9 (5).
[50] *Schweizer v. Uruguay*, para. 20.
[51] *A v. Australia* (Communication No. 560/1993), 1997 UN Doc. CCPR/C/59/D/560/1993 [hereinafter "*A v. Australia*"].
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[53] *Lusitania Cases (US v. Germany)* (Opinion of Mixed Claims Commission), 1923, United Nations, Reports of International Arbitral Awards (RIAA), Vol. VII, p. 40.
[54] *Diallo (2012), p. 13, para. 18.*
[55] *Diallo,* p. 56, para. 160.
[56] *Factory at Chorzów (Germany v. Poland)* (Merits) 1927 PCIJ Reports Series A No 17 [hereinafter "*Factory at Chorzów"*], p. 47.
[57] *Factory at Chorzów,* p.p. 29 and 47–48.
[58] *Corfu Channel Case (Assessment of Amount of Compensation) (UK v Albania)* (Judgment), 1949 ICJ Reports, p. 244.
[59] *Diallo.*
[60] *A*. v. *Australia*, para. 11; *Kenneth Good v. Republic of Botswana* (Communication No. 313/05), ACHPR, 2010, *28th Activity Report*, Ann. IV, para. 244.
[61] *Al Jedda v. United Kingdom* (App no. 27021/08), ECHR, 7 July 2011, para. 114; *Cantoral Benavides v. Peru* (Judgment, Reparations and Costs), 3 December 2001, IACHR, Series C, No. 88, para. 53.
[62] *Diallo (2012),* p. 23, para. 56.
[63] *Diallo (2012),* p. 15, para. 25.

Резюме

Поліванова О.М., Могильна Ю. П. **Процесуальні гарантії, закріплені у статті 9 Міжнародного пакту про громадянські та політичні права 1966 року, застосовувані до осіб, які перебувають у попередньому ув'язненні.**

Стаття містить аналіз процедурних гарантій, закріплених у статті 9 Міжнародного пакту про громадянські та політичні права (МПГПП) від 1966 р., що застосовується до осіб, які перебувають у попередньому ув'язненні. З метою визначення поняття «попереднє ув'язнення» та змісту заборони довільного ув'язнення, зазначеної у ст. 9 МПГПП, автори посилаються на різні джерела міжнародного права (міжнародні-правові інструменти Організації Об'єднаних Націй, практику Комітету з прав людини, судові рішення Міжнародного Суду ООН та національних судів тощо). Зроблено висновок, що міжнародне право і, зокрема, ст. 9 МПГПП передбачає, що особа має право бути поінформованою під час арешту про його причини, право на своєчасне повідомлення особі висунутого проти неї обвинувачення, право на перевірку законності ув'язнення особи, право на судовий контроль та на компенсацію.

Ключові слова: попереднє ув'язнення, адміністративне ув'язнення, заборона свавільного ув'язнення, МПГПП, Комітет з прав людини.

Резюме

Поливанова Е.Н., Могильная Ю. **П. Процессуальные гарантии, закрепленные в статье 9 Международного пакта о гражданских и политических правах 1966 года, применяемые к лицам, которые находятся в предварительном заключении.**

Статья содержит анализ процедурных гарантий, закрепленных в статье 9 Международного пакта о гражданских и политических правах (МПГПП) 1966 г., применяемых к лицам, которые находятся в предварительном заключении. С целью определения понятия «предварительное заключение» и содержания запрета произвольного заключения, включенного в ст. 9 МПГПП, авторы ссылаются на различные источники международного права (международно-правовые инструменты Организации Объединенных Наций, практику Комитета по правам человека, судебные решения Международного Суда ООН и национальных судов и т.п.). Сделан вывод, что международное право и, в частности, ст. 9 МПГПП предусматривает, что лицо имеет право на получение информации во время ареста о его причинах, право на своевременное сообщение лицу содержания его обвинения, право на проверку законности заключения лица, право на судебный контроль и на компенсацию.

Ключевые слова: предварительное заключение, административное заключение, запрет произвольного заключения, МПГПП, Комитет по правам человека.

Summary

Polivanova O., Mohylna Y. **Procedural safeguards enshrined in article 9 of the International Covenant on Civil and Political Rights of 1966 applicable to those in preventive detention.**

The article provides the analysis of the procedural safeguards enshrined in article 9 of the International Covenant on Civil and Political Rights (ICCPR) of 1966 applicable to those in preventive detention. For reasons either to define the notion of 'preventive

detention' or the content of the prohibition of the arbitrary detention stated in art. 9 of the ICCPR, authors refer to different sources of international law (United Nations international legal instruments, practice of the Human Rights Committee, judicial decisions of the International Court of Justice and national courts of states, etc.). Conclusion is made that international law and, in particular, art. 9 of the ICCPR imply the person's rights to be informed at the time of arrest of the reasons for his/her arrest, to be promptly notified of a charge or charges against him/her, to review the lawfulness of his/her detention, the right for judicial control and an enforceable right to compensation.

Key words: preventive detention, administrative detention, prohibition of arbitrary detention, ICCPR, Human Rights Committee.

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КВАЛІФІКУЮЧІ ОЗНАКИ СКЛАДУ ТРАНСНАЦІОНАЛЬНОГО ЗЛОЧИНУ У ТРАНСНАЦІОНАЛЬНОМУ КРИМІНАЛЬНОМУ ПРАВІ

Із зростанням глобалізації значно розширилося коло транснаціональних злочинів, зокрема збільшилися масштабні поставки вогнепальної зброї, у тому числі контрабандним шляхом із використанням транснаціональних злочинних угрупувань, зросла торгівля наркотиками і нелегальне перевезення людей через державні кордони, поширилися мережі міжнародної проституції і порнографії, фальшування грошей, крадіжка творів мистецтва тощо. Поширення транснаціональної злочинності спонукало міжнародну спільноту до прийняття міжнародно-правових актів у цій сфері, зокрема Конвенції Організації Об'єднаних Націй проти транснаціональної організованої злочинності, ухваленої Генеральною Асамблеєю 15 листопада 2000 р.[1], та необхідності співробітництва держав у сфері протидії організованій злочинності.

Ключовою категорією транснаціонального кримінального права – галузі, інтерес до якої останнім часом суттєво зростає, є поняття «*транснаціональний злочин*». Осмислення цієї категорії, її концептуального визначення, кваліфікуючих ознак, що дають можливість виокремити поняття транснаціонального злочину серед інших злочинів міжнародного кримінального права, а також складу злочину, відповідальності за його скоєння та інші питання потребують дослідження. Масштабний характер сучасної злочинності змушує визнати, що без якісних знань про основні елементи здійснюваних транснаціональних злочинів, їх ознак, властивостей та форм прояву в реальній дійсності неможливо суттєво знизити їх суспільну небезпеку та зменшити кількість. Визначення складу транснаціонального злочину зумовлює його кваліфікацію, відповідальність та міру покарання. Проблемним питанням тут є співвідношення норм міжнародного кримінального права та внутрішньодержавного законодавства як при кваліфікації транснаціонального злочину, так і при визначенні міри покарання.

Метою статті є вивчення кваліфікуючих ознак складу транснаціонального кримінального злочину для досягнення більш повної характеристики цієї категорії міжнародного кримінального права.

Транснаціональне кримінальне право та його основні категорії останнім часом все частіше трапляються як у вітчизняних, так і у зарубіжних дослідженнях. При формуванні його концепції основоположне значення мають класичні праці як зарубіжних, так і вітчизняних вчених, зокрема роботи Р. Аго, Д. Анцилотті, М. Баймуратова, М. Бассіоуні, І. Блищенко, А. Боссарда, М. Буроменського, В. Буткевича, В. Василенка, Г. Верле, М. Гнатовського, Л. Заблоцької, А. Кассезе, О. Кибальника, Д. Левіна, І. Лукашука, А. Наумова, В. Панова, В. Пелла, А. Фердросс, У. Шабаса та ін. Концепція транснаціонального кримінального права утвердилась у зарубіжній юридичній доктрині (М. Бассіоуні, Н. Бойстер, А. Боссард, Г. Верле, А. Кассезе, Дж. Мартін, А. Романо, К. Родіонов, Ю. Трунцевський, Дж. Шварценбергер). Вітчизняні вчені також беруть активну участь у її формуванні (В. Антипенко, П. Біленчук, Н. Зелінська, Н. Дрьоміна, О. Козаченко, Н. Кльован, Т. Сироїд). Визначенням складу міжнародного злочину свого часу займалися такі дослідники, як Р. Адельханян, А. Зелінський, М. Коржанський, В. Кудрявцев та інші вчені. Проте ключова категорія транснаціонального кримінального права – транснаціональний злочин – досліджена недостатньо. Зокрема, вимагають уваги його концепція, властивості, видова характеристика, склад злочину та його елементи, кваліфікація злочинів транснаціонального характеру, співвідношення міжнародно-правового регулювання та внутрішньодержавної юрисдикції. Щодо складу транснаціонального злочину, зазначимо, що певні дослідження вченими проводились (В. Антипенко, М. Бассіоуні, Н. Бойстер, І. Лукашук, Б. Накашидзе, В. Репецький), проте зазвичай увага приділялась суб'єктам злочинів та виміру кримінальної відповідальності.