TO THE CHARACTERIZATION OF GUARANTEES AND LEGAL LIABILITY OF TERRITORIAL DEPARTMENTS OF THE STATE BUREAU OF INVESTIGATION

In the article, based on the analysis of the scientific views of scholars and legislative provisions, the author identifies the range of legal guarantees of the activities of territorial departments of the State Bureau of Investigation and provides a substantive description thereof. The author emphasises that legal liability is one of the elements of a territorial department's administrative and legal status, which performs a guarantee and ensures the efficiency of its activities.

Keywords: guarantees; legal liability; territorial administrations; State Bureau of Investigation.

Statement of the problem. Establishing the State Bureau of Investigation is an important step in developing our country's law enforcement sector. This is because the consequences of most individual criminal acts committed by officials who are endowed with a special status and who usually have in-depth knowledge of certain public administration, law enforcement, judicial and other areas of legal relations may have even more significant destructive risks for the country's economy than those caused by illegal actions of ordinary citizens. Therefore, it is obvious that this body is one of the subjects of ensuring the economic component of state security and plays an important role in this process. This motivates the expediency of its inclusion in the group of law enforcement agencies authorised to counteract economic crime and also necessitates the study of its administrative and legal status as a subject of ensuring the economic security of the State [1, p. 128-129]. That is why an important task of the legislator is to create all the necessary conditions to ensure the effective operation of the State Bureau of Investigation and its territorial offices. This can be achieved by building an effective system of legal guarantees.

Analysis of current research and publications. It is worth noting that various scholars have already studied some aspects of the legal status of the State Bureau of Investigation. In particular, they have been paid attention to by O. V. Bordun, O. O. Jaburia, E. O. Dyka, Y. M. Kramarenko, N. O. Fedchun, I. V. Tsyupryk and many others. However, despite the substantial theoretical contribution, the scientific literature does not sufficiently characterise the guarantees and legal liability of the territorial departments of the State Bureau of Investigation.

Formulation of the article's objectives. The article aims to characterise the legal guarantees of the activities of the State Bureau of Investigation's territorial departments and their legal liability. To achieve this goal, it is necessary to solve the following tasks: to summarise the scientific views of scholars on the classification of relevant legal guarantees; to analyse the current legislation, the provisions of which define the general guarantees of the activities of the territorial offices of the State Bureau of Investigation, as well as the principles of legal liability of these entities.

Summary of the primary material. The Law of Ukraine "On the State Bureau of Investigation" defines certain guarantees of independence from unlawful interference in its activities, which are outlined by

1. special status of the State Bureau of Investigation, particular procedure, financing and organisational support of its activities;
2. particular procedure for selection, appointment and dismissal of the Director of the State Bureau of Investigation, as well as an exhaustive list of grounds for termination of his/her powers as defined by this Law;
3. procedure for exercising powers by the State Bureau of Investigation and its employees;
4. prohibition of unlawful interference with the exercise of powers of the SBI employees;
5. proper remuneration of the SBI employees.

It is also prohibited to unlawfully interfere with the SBI's activities by state bodies, local self-government bodies, their officials and employees, political parties, public associations, and other individuals or legal entities. Any instructions, suggestions, demands, or orders directed to the SBI and its employees concerning pre-trial investigation in specific criminal proceedings are unlawful and shall not be enforced. In case of receiving such an instruction, demand, order, etc., the employee shall immediately inform the Director in writing [2]. The above guarantees also include social and economic factors as elements of guaranteeing the reduction of the risk of corrupt interest of the SBI employees.

Outlining the guarantees of the SBI's independence, it is worth pointing out the validity of S. Mykytyuk's remark that, given the SBI's jurisdiction over criminal offences committed by prosecutors and judges, the issue of proper prosecutorial supervision and judicial control over the legality of the SBI investigators' activities is complicated by possible conditions of conflict of interest and abuse of procedural rights. There are still legal uncertainties regarding the performance of procedural guidance of the investigation, procedural supervision and judicial control based on the territorial principle of distribution of such powers, provided that criminal proceedings against a prosecutor or judge are conducted in the respective territory. Under such a system of investigation management, prosecutorial supervision and judicial control in cases investigated by SBI investigators (especially about judges or prosecutors or their close relatives), there are risks of abuse of the procedural rights of prosecutors or investigating judges, which may be manifested in refusal to approve a decision to conduct specific investigative or covert investigative (detective) actions, in particular granting permission to search, taking readings of technical devices and technical means that have the functions of photo, film, video recording, or photo, film, video recording means (Art. 245-1 of the CPC of Ukraine), removal of information from electronic communication networks, removal of information from electronic information systems, monitoring of bank accounts; imposition of preventive measures, removal from office, etc. Thus, there is a problem of eliminating the possibility of abuse of procedural powers by these employees about SBI employees, which should be reflected in the criminal procedure legislation.

It is worth noting that the guarantees of the SBI's independence do not exhaust the entire scope of guarantees of its activities. The guarantees include external, internal and public control. External control is exercised by a committee of the Verkhovna Rada of Ukraine, which is responsible for law enforcement issues. The SBI Director informs the President of Ukraine, the Verkhovna Rada of Ukraine and the Cabinet of Ministers of Ukraine on the central issues of the SBI and its units, on the fulfilment of their tasks, compliance with the Law, human and civil rights and freedoms, and annually, by February 15, submits a written report on the SBI's activities for the previous year of legally defined content to the President of Ukraine and the Verkhovna Rada of Ukraine [1].

Internal control is implemented by the internal control units of the territorial departments, which report to the head of the internal control unit within the SBI's central office. The responsibilities of these units are
1. preventing the commission of offences by employees;
2. monitoring their compliance with the rules of ethical behaviour and requirements to prevent conflicts of interest;
3. conducting integrity checks of employees and monitoring their lifestyle;
4. conducting psychophysiological interviews with persons using a polygraph during admission to and service in the SBI;
5. Verify information contained in appeals of individuals and legal entities, media, and other sources, including information received through a particular telephone.

The following should also be considered as guarantees ensuring compliance with the legality of the SBI's activities:
- establishment of guiding principles (fundamental principles) of the SBI's activities
- clear delineation of the SBI's competence from other law enforcement agencies
- determination of a sufficient scope of powers to achieve the goals and objectives
- a clear list of offences committed by SBI employees with legal liability for their commission.
The SBI's guarantees cover all of its structural units. However, some legal provisions can be considered legal guarantees that apply exclusively to territorial offices. Such guarantees include a legislative definition of the regions and other administrative-territorial entities covered by the activities of each separate territorial unit, approval of the regulation on such a unit, regulatory certainty of requirements for the head of a territorial unit, his/her rights and obligations; publicity of plans and results of the work of territorial units. In particular, upon appointment, the Director of the SBI's territorial office is obliged to prepare an annual program of activities of the SBI's territorial office no later than 30 days from the date of appointment. The program of activities of the SBI's regional office shall include, among other things: 1) tasks to be performed; 2) scope and sequence of tasks of the SBI's regional office; 3) public relations activities; 4) priorities of work; and 5) criteria for fulfillment/ nonfulfillment of the defined tasks and priorities. The Director of the territorial office submits the relevant programs and reports to the SBI Director, who approves the strategic program together with the annual program. Once approved, the programs and reports are posted on the official website of the SBI's territorial office [1].

The legal responsibility of the SBI's territorial office is not only an element of its administrative and legal status but can also be considered one of the guarantees of its functioning.

Researchers consider the following to be unique features characteristic of legal liability: 1) normative regulation; 2) manifestation of a reaction on the part of the State (represented by authorised bodies); 3) can be applied to individuals or legal entities (in any legal status); 4) the basis for the application is non-compliance (with norms, restrictions, prohibitions), failure to comply (with rules, obligations), violation (of obligations), causing harm or damage; and 5) manifested in the use of means of influence (in the form of deprivation of personal, property or organisational nature) [4, p. 50]. The above features are standard for all types of legal liability, traditionally divided into criminal, administrative, civil, and disciplinary liability.

The Law of Ukraine, "On the State Bureau of Investigation," explicitly states that the personal liability of each SBI employee is one of the main principles of the organisation and operation of the Bureau. It also stipulates that its employees independently make decisions within their powers as defined by this and other laws and are liable for their unlawful actions or omissions by the Law. This Law neither defines the types of legal liability nor provides a list of official offences, nor does it define the liability of the head of a territorial department. In this regard, M. S. Moiseev proposes to supplement Article 21 of the Law with the following provision: "Employees of the State Bureau of Investigation of Ukraine shall bear disciplinary, civil, administrative or criminal liability for their unlawful actions or omissions" [5, p. 5]. It is worth emphasising the fact that even without a direct indication in the Law of the type of legal liability to which an SBI employee is subject, the basis for bringing him/her to legal liability is the commission of an offence defined as such by the provisions of criminal, administrative, and civil Law.

At the same time, the peculiarities of bringing SBI employees to disciplinary responsibility are covered by legal acts of a general nature, as they are aimed at many employees without considering the specifics of the SBI's activities. The Law of Ukraine "On Civil Service" establishes the grounds for disciplinary liability for a disciplinary offence committed by a civil servant, i.e., an unlawful culpable act or omission or decision-making consisting of failure to perform or improper performance by a civil servant of his/her official duties and other requirements established by this Law and other regulations, for which disciplinary action may be taken. This Law defines the list of disciplinary offences [6]. SBI employees are also subject to the provisions of the Disciplinary Statute of the National Police of Ukraine, which defines the essence of service discipline, the powers of police officers and their supervisors to comply with it, the types of incentives and disciplinary sanctions, as well as the procedure for their application and appeal. This statute also applies to rank-and-file and senior State Bureau of Investigation officers, who must strictly comply with its requirements [7].

Taking into account the analysis of the legal acts used to bring SBI employees to disciplinary responsibility, A. Maksymovych draws attention to the variety of relevant grounds and notes that this may complicate the procedural aspects of disciplinary proceedings and, therefore, requires proper unification of all grounds for bringing SBI employees to disciplinary responsibility in a single legal act on disciplinary responsibility of SBI employees [4, p. 4].

According to M. S. Moiseev, legal liability of the SBI as an element of its administrative and legal status includes: 1) legal liability of the SBI as a legal entity; 2) legal liability of the SBI management; 3) legal liability of the SBI employees. Accordingly, the SBI as a legal entity may be subject to civil and administrative liability on the grounds established by Law. The researcher identifies
the following shortcomings of legal regulation of legal liability of SBI employees: 1) the issue of disciplinary liability of SBI employees needs to be clarified - the establishment of the SBI Disciplinary Commission, the adoption of the Disciplinary Statute of the State Bureau of Investigation; 2) it is necessary to determine and enshrine in Art. 216 of the CPC of Ukraine, which law enforcement agency has jurisdiction over criminal offences committed by SBI employees [5, p. 4-5].

Conclusions and Prospects for Further Research. Thus, the legal guarantees of the SBI include

1. guarantees of the SBI's independence from unlawful influence;
2. guarantees of reduction of corruption risks, including through legal regulation of the appropriate level of financial and social security;
3. guarantees of quality recruitment and further professional development of employees;
4. establishment and proper regulation of factors stimulating the SBI employees' good behaviour.

In turn, legal liability is one of the elements of the administrative and legal status of the territorial office that performs a guarantee and ensures a role in the effectiveness of its activities. Legal liability should be described as coercive measures of a negative nature based on the norms of criminal, administrative, civil and labour Law, which are incurred by employees of territorial offices when they commit acts that violate their official obligations and cause damage to public and/or private interests. It includes 1) the legal liability of the management of the territorial department and 2) the legal liability of each employee. Responsibility covers traditional types of legal liability: criminal, administrative, civil and disciplinary. The peculiarities of disciplinary liability lie in the need to use the general provisions of the Law of Ukraine "On Civil Service", which covers disciplinary offences of all civil servants. In contrast, the types of disciplinary sanctions and the procedure for their application are determined by the Disciplinary Statute of the National Police of Ukraine.

References